



## Legal protection for curators in performing their duties and authorities against obstacles and resistance from bankrupt debtors

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### Abstract

This article is titled and formulates the issue of Legal Protection for the Curator in Carrying Out Their Duties and Authorities Against Obstacles and Resistance from Bankrupt Debtors. Aiming to enrich the treasury of knowledge and to be used for the development of Law in general, for Criminal Procedure Law and Bankruptcy Law, as well as to contribute ideas to law enforcement practitioners, legislators, and curators in dealing with bankruptcy cases. The research method used in this study is normative juridical legal research. Legal research is conducted to solve the legal issues faced. Legal research is carried out to identify legal problems, perform legal reasoning, analyze the issues encountered, and then provide solutions to those problems. Based on the discussion, it can be concluded that the legal protection of the curator in carrying out their duties and authority against obstacles and resistance from the bankrupt debtor is that the legal protection of the curator when performing the management and settlement of the bankrupt debtor's assets can be subject to civil or criminal charges related to the execution of the management and settlement of the bankrupt debtor's assets, which are considered to have committed unlawful acts. According to Article 72 in conjunction with Article 78 paragraph <sup>[2]</sup> of the UUK PKPU, the curator has personal responsibility for the authority to perform the duties of managing and settling the bankrupt debtor's assets. The legal protection of the curator based on Article 50 of the Criminal Code states that a curator appointed according to the bankruptcy decision from the Commercial Court, in accordance with the provisions of the UUK PKPU and the Civil Code, in performing the duties of managing and settling the bankrupt debtor's assets by securing and seizing the bankrupt debtor's assets, does not constitute a criminal act. In Article 50 of the Penal Code, the use of authority can be justified when performing such duties in accordance with their authority and in line with the objectives and mandates of the legislation. The curator can take various legal actions against the obstacles and resistance of the bankrupt debtor, such as filing other lawsuits and settling the bankrupt estate.

**Keywords:** Bankruptcy, Curator, Debtor's Objection, Legal Protection

### Introduction

Bankruptcy is regulated by Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK PKPU). The definition of bankruptcy according to Article 1 Paragraph <sup>[1]</sup> of UUK PKPU is a general seizure of the assets owned by the Bankrupt Debtor based on a bankruptcy decision requested in the Commercial Court, after which the management and settlement of the bankrupt assets are carried out by the Curator appointed by the Commercial Court under the supervision of the Supervisory Judge. The bankruptcy decision rendered by the Commercial Court is based on the legal fact that the bankrupt debtor is unable or defaults on their obligations to pay debts owed to their creditors. The inability to pay debts by the bankrupt debtor is generally due to the debtor experiencing difficult financial conditions as a result of their business suffering a decline in income and profit. The bankruptcy petition decision rendered by the Commercial Court has legal consequences, namely a general seizure of all the bankrupt debtor's assets, both existing and those that may arise in the future. The task of managing and settling the bankrupt debtor's assets is carried out by the curator under the supervision of the supervisory judge, with the main objective of using the proceeds from the sale of the bankrupt debtor's assets to pay off the entire debt of the bankrupt debtor proportionally (prorate parte) and according to the rank of the creditors <sup>[1]</sup>. organs as the debtor

Bankruptcy in its process, the curator's task when managing and settling the bankrupt estate includes the wealth of the

bankrupt debtor. The curator's task in managing and settling the bankrupt estate in bankruptcy does not affect an individual's personal status and is not placed under guardianship. The bankruptcy decision pronounced by the Commercial Court, once declared, means that the organs and structure of the declared bankrupt company remain intact. In that bankruptcy, the management and settlement of the bankrupt estate can only be carried out by the curator, but actions other than management and settlement remain the authority of the company's organs as the debtor <sup>[2]</sup>.

Bankruptcy regulated under the UUK PKPU was created to be a solution or way out of the debt problems faced by bankrupt debtors who no longer have the ability to settle their debts with their creditors. Therefore, a bankrupt debtor in a state of inability to settle overdue debts, if no creditors file for bankruptcy, can file a voluntary petition for self-bankruptcy. The bankruptcy petition submitted to the Commercial Court by the debtor themselves, if it later proves that the debtor is indeed unable to settle their overdue and collectible debts, becomes a step that allows for the resolution of the creditors' debts <sup>[3]</sup>.

Bankruptcy regulated under the UUK PKPU is described as the seizure of all the debtor's assets listed in the bankruptcy petition, which are then entered and recorded by the curator in the bankruptcy asset list under the supervision of the supervisory judge. From the moment the bankruptcy declaration is pronounced in the Commercial Court, the bankrupt debtor loses the right to control and manage the bankruptcy assets, as these responsibilities are transferred to the curator. However, the bankrupt debtor does not entirely

lose the ability to perform legal actions concerning the declared bankrupt company<sup>[4]</sup>.

Bankruptcy regulated under the UUK PKPU serves as a measure to prevent arbitrary actions by creditors who have debts with the debtor, which could force them to prioritize their debts through legal actions. Thus, bankruptcy becomes a means that allows the debtor to pay their debts to the creditors proportionally based on the principle of *pari passu prorata parte*. Bankruptcy regulated under the UUK PKPU is based on several principles explained in the general explanation of Article 1 of the UUK PKPU, where these principles are important factors in supporting the performance of the curator in managing and settling the bankrupt debtor's assets, including the following: Principle of Balance; Principle of Business Continuity; Principle of Justice; Principle of Integrity; Principle of Speed in Decision-Making; Principle of Transparency; Principle of Effectiveness<sup>[5]</sup>.

In Article 2 paragraph<sup>[1]</sup> of the UUK PKPU, the conditions and decisions regarding bankruptcy are explicitly regulated, where a bankruptcy application submitted either by the debtor themselves or by one or more creditors in the Commercial Court is declared bankrupt if the debtor has two or more creditors whose debts have not been fully paid, with at least one debt being overdue and collectible. Therefore, if the debtor has only one creditor, the bankruptcy application cannot be submitted. In the explanation of the Article, it is clarified that the term "creditor" in that paragraph refers to concurrent creditors, *separatis* creditors, and preferred creditors. Separatist creditors and preferred creditors have a special position that allows their debts to be prioritized, as they can file for bankruptcy or submit claims without losing their collateral rights over the bankrupt debtor's assets that have been registered by them, and they have the right to be prioritized during the distribution of the proceeds from the sale of the bankrupt debtor's assets.

Based on Article 1 paragraph<sup>[7]</sup> of the UUK PKPU, it regulates the court authorized to examine, adjudicate, and decide on bankruptcy petitions, namely the Commercial Court within the general judiciary. The jurisdiction of the Commercial Court covers the area where the legal domicile of the debtor is located within the general judiciary.

In practice and legal fact, bankruptcy often occurs in companies or limited liability companies. The bankruptcy of limited liability companies recently has been partly triggered by the occurrence of a national disaster, namely the Covid-19 pandemic since 2020, the effects of which can be felt post-pandemic, that is, endemic in 2023 to the present.

Bankruptcy regulated under the UUK PKPU is a civil law that refers to and is based on the Civil Code (KUH Perdata), which specifically covers areas such as commercial law, limited liability company law, fiduciary law, and obligation law. The scope of civil law is the legal rules that govern the legal relationships between individuals or legal entities, with an emphasis on the interests of individuals or legal entities. Thus, bankruptcy regulated under the UUK PKPU should not touch on issues within the realm of criminal law. But, in practice, bankruptcy cases can still be found when the curator conducts the management and settlement of bankrupt assets, which ultimately becomes a criminal issue, because the bankrupt debtor files a criminal report with the police.

Whereas, returning to the UUK PKPU, it does not explicitly

regulate whether a curator can be subject to criminal sanctions while performing their duties of management and settlement. However, Article 72 of the UUK PKPU regulates the curator's responsibility for negligence in managing bankrupt assets, so this article explains that the curator will be held accountable for mistakes or negligence in carrying out the management and settlement of bankrupt assets that cause losses, and this can only be directed at administrators and curators who can be proven not to be independent. That is what underlies the emergence of criminal issues when the curator manages and settles the bankrupt estate. In the end, the process of managing and settling bankrupt assets, which should have been carried out simply, ultimately became complicated.

The curator, when carrying out the task of managing and settling the bankrupt debtor's assets, must obtain permission and approval from the Supervisory Judge, which can take the form of a decree serving as the legal basis for the curator's protection. Furthermore, based on Article 15 paragraph<sup>[3]</sup> which regulates the independence of the curator in bankruptcy law, the curator in carrying out the management and settlement of bankrupt assets under the supervision of the supervisory judge can also become a criminal matter. Article 15 paragraph<sup>[3]</sup> explains that the curator in carrying out the management and settlement of bankrupt assets is required to be independent, without any conflict of interest with creditors and debtors, so that the curator in carrying out the management and settlement of bankrupt assets is not influenced by creditors and debtors, and the curator should not have an interest in gaining the same benefits as creditors and debtors. And the curator is also not handling more than three bankruptcy and PKPU cases. Therefore, if it can be proven that the curator is not independent while performing the management and settlement of bankrupt assets, they can be subjected to both civil and criminal penalties in accordance with the law.

Based on the background of the issues as previously described, the problem formulation that the author will discuss in this article is how the legal protection of the curator in carrying out their duties and authority against obstacles and resistance from the bankrupt debtor.

## Methods

The research method used in this study is normative juridical legal research. Legal research is conducted to solve the legal issues faced. Legal research is carried out to identify legal problems, engage in legal reasoning, analyze the issues encountered, and then provide solutions to those problems<sup>[6]</sup>. Normative legal research essentially conducts a legal study designed as rules applicable to society. Normative legal research is legal research carried out by examining legal materials<sup>[7]</sup>. The problem-solving approaches used are the Legislative Approach, the Case Approach, and the Conceptual Approach. Peter Mahmud Marzuki explains that legislation is carried out by studying all laws and regulations related to the legal issue being addressed<sup>[8]</sup>. The Case Approach is conducted by studying cases related to the issue at hand based on court decisions that have become final and binding<sup>[9]</sup>. The Conceptual Approach is based on the views and doctrines that have developed in legal science. By studying the views and doctrines in legal science, researchers will discover ideas that create legal understandings, legal concepts, and legal principles relevant to the issues at hand. Understanding

these views and doctrines is the foundation for building a legal argument to resolve the issues at hand <sup>[10]</sup>.

## Result and Discussion

### Duties and Authority of the Curator

Based on the provisions regulated in Article 16 paragraph <sup>[11]</sup> of the UUK PKPU, in accordance with the principle of zero hour, the Curator appointed based on the Commercial Court's decision has the authority to carry out the management and settlement of the bankrupt debtor's assets starting from the date the bankruptcy decision is rendered, and the appointment of the Curator designated by the Commercial Court is stated in the bankruptcy decision in accordance with Article 98 of the UUK PKPU <sup>[11]</sup>.

The authority of the Curator in carrying out the management and settlement of the bankrupt debtor's assets begins from the reading of the bankruptcy petition decision in court, retroactively effective from 00:00 on the day the bankruptcy decision is read. The appointed curator can know that he is appointed by the Commercial Court both in writing and through publication. In writing, the curator appointed by the Commercial Court is informed of his appointment as curator in the bankruptcy case a few days after the bankruptcy decision, when the copy of the decision has been received by the curator. Then, through publication, the curator appointed by the Commercial Court is informed of his appointment as curator via the website or the Case Tracking Information System of the Commercial Court decision at the District Court that issued the bankruptcy decision.

The duties and powers of the curator are required to have the ability to manage and settle the bankrupt debtor's assets. Therefore, the curator must possess the skills and expertise in managing and settling the bankrupt debtor's assets. The execution of the curator's duties and powers must be able to distinguish their authority based on the law, namely the authority that can be carried out without the need for approval from other parties and the authority that can be executed after obtaining approval from the Supervisory Judge. The execution of the curator's duties and powers must also possess the ability, namely mastery of civil law and bankruptcy law, management skills to analyze whether the bankrupt debtor's company can still save its business activities or not, and financial mastery. These abilities are required to be possessed by the Curator because, in practice, there are several Curators who work less than optimally in managing and settling the bankrupt debtor's assets. Additionally, Curators often lack the human resources capable of conducting due diligence and examining the bankrupt debtor's financial statements, resulting in the bankrupt debtor's assets being managed suboptimally <sup>[12]</sup>.

The actions of the curator have binding force in carrying out the management and settlement of the bankrupt debtor's assets, which is counted from the pronouncement of the bankruptcy decision and from the appointment by the Commercial Court. In practice, the curator can carry out the management and settlement tasks of the bankrupt debtor's assets after receiving a copy of the bankruptcy decision in accordance with Article 9 of the Bankruptcy and Suspension of Debt Payment Obligations Law (UUK PKPU). In the absence of the bankruptcy decision, a curator who works professionally, independently, and without conflicts of interest with the parties will not hastily commence the task of managing and settling the bankrupt debtor's assets <sup>[13]</sup>.

The duties of the curator in managing and settling the

bankrupt debtor's assets have been regulated in the provisions of the UUK PKPU. Based on the law, the authority of the curator can be identified as follows

### Administrative Authority

Administrative authority refers to the curator's authority related to the formalities of their duties, including the policies and actions taken by the curator, so that their actions are valid and binding on the assets of the bankrupt debtor. The curator's administrative authority is granted within the scope of managing and settling the assets of the bankrupt debtor. The administrative authority of the curator appointed by the Commercial Court is as follows

- a. The curator is authorized to publish the debtor's bankruptcy by including it in the Official Gazette of the Republic of Indonesia and in 2 (two) national newspapers and local newspapers.
- b. The curator is authorized to announce the debtor's bankruptcy that is carried out again because the peace proposal that has been agreed upon and approved by the Commercial Court turns out to be void because the bankrupt debtor has failed to fulfill the terms of the peace agreement.
- c. The curator is authorized to invite all known or registered creditors to attend the specified creditors' meeting by sending a registered letter.
- d. The curator is authorized to hold the specified creditors' meeting based on the order of the Supervisory Judge appointed by the Commercial Court.
- e. The curator is authorized to manage the documents or correspondence of the bankrupt debtor with its creditors and other parties related to the management and settlement of the bankrupt debtor's assets.
- f. The curator is authorized to record the bankrupt debtor's assets, including the debtor's receivables and debts.
- g. The curator is authorized to announce the recording of the bankrupt debtor's assets directly controlled by the bankrupt debtor, including the amount of the debtor's debts and receivables.
- h. The curator is authorized to announce the interim receivables list resulting from the pre-verification process conducted by the curator and the receivables list from the debt reconciliation meeting verification process.
- i. The curator is authorized to announce the dissolution of the company declared insolvent after being declared bankrupt, which is published in the State Gazette and in two national and local newspapers, and subsequently to notify the Minister of Law and Human Rights of the Republic of Indonesia regarding the dissolution or liquidation of the bankrupt company.
- j. The curator is authorized to create a distribution list based on the order stated in the decree from the Supervisory Judge, based on the results of the verification and debt reconciliation recorded in the minutes, including the nominal percentage of each creditor's share.
- k. The curator is authorized to submit the distribution list along with its attachments to the Supervisory Judge for examination and approval by the Supervisory Judge.
- l. The curator is authorized to announce the distribution list that has been approved by the Supervisory Judge so that it can be seen by the creditors in the Commercial Court's clerk's office announcement.

- m. The curator is authorized to prepare quarterly reports on the condition of the bankrupt debtor's assets and the progress of the management and settlement of the bankrupt debtor's assets carried out by the curator, as well as to prepare other reports related to the bankruptcy.
- n. The curator is authorized to demand a portion of the preferred creditor's claim from the secured creditor against the proceeds from the sale of the secured bankrupt assets if the secured creditor does not provide a share of the sale proceeds to the preferred creditor.
- o. The curator is authorized to demand that the secured creditor surrender the secured bankrupt assets if, after 90 (ninety) days from the declaration of insolvency of the bankrupt debtor's assets, the secured creditor is unable to sell the secured bankrupt assets themselves.
- p. The curator is authorized to sell the secured bankrupt assets when the secured creditor is unable to sell the secured bankrupt assets themselves after 90 (ninety) days from the declaration of insolvency of the bankrupt debtor's assets <sup>[14]</sup>.

### Authority of the Representative

This authority is the curator's authority, which forms the basis of the curator's overall execution of duties in managing and settling the bankrupt debtor's assets, still related to the curator's administrative authority. The curator's representative authority also constitutes part of the administrative role as follows

- a. The curator is authorized to represent the interests of the creditors regarding the security of the bankrupt debtor's assets, aimed at fulfilling the creditors' claims, as the UUK PKPU does not allow creditors to arbitrarily take the bankrupt debtor's assets to settle their respective claims.
- b. The curator is authorized to manage the bankrupt debtor's assets and has the authority to represent the bankrupt debtor and the creditors to carry out legal actions both in court and out of court in the context of managing and settling the bankrupt debtor's assets <sup>[15]</sup>.

The curator's representative authority cannot be replaced by any party other than the curator appointed and designated by the Commercial Court in the bankruptcy decision. The curator's actions related to representative authority are as follows

- a. The curator is authorized to file an *actio pauliana* lawsuit, which aims to annul legal acts committed by the bankrupt debtor before the debtor was declared bankrupt and deemed detrimental to the bankrupt estate.
- b. The curator is authorized to continue or terminate lease agreements for the bankrupt debtor's assets after the debtor is declared bankrupt.
- c. The curator is authorized to make decisions regarding the termination of employment of the bankrupt debtor's employees to reduce bankruptcy costs.
- d. The curator is authorized to make decisions regarding whether or not to accept inheritances intended for the bankrupt debtor.
- e. The curator is authorized to act as a representative of creditors to pursue demands for cancellation of debt payments filed by the bankrupt debtor when the bankrupt debtor files for bankruptcy with the Commercial Court.
- f. The curator is authorized to represent the interests of

- creditors by filing lawsuits to annul gifts made by the bankrupt debtor prior to the bankruptcy declaration, as the implementation of such gifts is deemed to have harmed the bankrupt estate.
- g. The curator is authorized to represent the interests of creditors by filing lawsuits for the relinquishment of bankrupt assets voluntarily given by the bankrupt debtor to third parties deemed to have harmed the bankrupt estate.
- h. The curator is authorized to file lawsuits for the replacement of bankrupt assets held by third parties with compensation in the form of a sum of money.
- i. The curator is authorized to decide whether to continue an ongoing lawsuit related to the prosecution of the bankrupt debtor's assets or to terminate the lawsuit.
- j. The curator is authorized to pursue peace efforts to resolve ongoing disputes over the bankrupt debtor's assets.
- k. The curator is authorized to file lawsuits against secured creditors to demand the restitution of proceeds from the sale of collateralized bankrupt assets, which constitute part of the preferred creditor's claims.
- l. The curator is authorized to act as a manager and also as a liquidator in the implementation of the liquidation process for a company that has been declared bankrupt and dissolved in accordance with the provisions of Article 142 paragraph (1) letter e of Law No. 40 of 2007 concerning Limited Liability Companies (UUPT) <sup>[16]</sup>.

### Authority

The curator's authority refers to the full authority of the curator that does not require permission or approval from the parties, namely the debtor or the creditors' committee. The curator's authority related to the bankrupt debtor is regulated in Article 69 paragraph <sup>[2]</sup> letter a of the UUK PKPU, and the authority related to the Supervisory Judge is regulated in Article 78 paragraph <sup>[1]</sup> of the UUK PKPU.

The curator's authority that has been regulated based on the provisions of the UUK PKPU is as follows

- a. The curator is authorized to perform actions permitted by the PKPU Law and other applicable regulations for the purpose of securing the assets of the bankrupt debtor from the time the debtor is declared bankrupt.
- b. The curator is authorized to determine the steps to be taken to acquire and register the assets of the bankrupt debtor.
- c. The curator is authorized to establish standards for changing or lifting the conditions of the suspension if requested by secured creditors or interested third parties.
- d. The curator is authorized to establish requirements for changing the conditions of the suspension period for secured creditors who apply for permission to shorten the suspension period or to change the conditions of the suspension period so that secured creditors can execute the collateralized bankruptcy assets even though the bankrupt debtor's assets have not been declared insolvent.
- e. The curator is authorized to use the bankrupt debtor's assets or sell the bankrupt debtor's assets, which constitute movable property or inventory under the curator's control, during the suspension period.
- f. The curator is authorized to plan and determine the

- steps to be taken by the curator in the event of a plan to continue the business of the bankrupt debtor.
- g. The curator is authorized to determine the actions to be taken to protect the interests of creditors or related third parties. The curator shall sell the bankrupt debtor's assets encumbered with collateral or security rights during the suspension period to ensure the continuity of the bankrupt debtor's business, in the event the curator decides to continue the bankrupt debtor's business.
  - h. The curator is authorized to release the bankrupt debtor's assets encumbered with collateral by paying the lesser of the market value and the amount of debts of the bankrupt debtor's assets encumbered with collateral to the relevant creditors.
  - i. The curator is authorized to submit a proposal to the Supervisory Judge to seal the bankrupt debtor's assets.
  - j. The curator is authorized to borrow money and encumber the bankrupt debtor's assets with liens, fiduciary guarantees, and mortgages to cover bankruptcy costs.
  - k. The curator is authorized to take all actions that do not conflict with the PKPU Law, other laws, or business practices, to assess whether the debtor's business can continue as a going concern, that is, to continue the operational continuity of the bankrupt debtor's business while the curator appointed by the Commercial Court carries out the management and settlement of the bankrupt debtor's assets.
  - l. The curator is authorized to propose replacing another curator or to propose adding another curator.
  - m. The curator is authorized to inventory the debtor's debts submitted by creditors to the curator. The curator then verifies and reconciles the claims against these claims at a debt verification and verification meeting. After verifying and verifying the claims, the curator will create a list of temporarily recognized or unrecognized receivables, which will be recorded in the temporary receivables list.
  - n. The curator is authorized to dispute creditor claims during the verification and verification of receivables at the verification and verification meeting, even if the bankrupt debtor does not dispute the claims.
  - o. The curator is authorized, during the verification and verification meeting for receivables, to acknowledge a creditor's claim in full or conditionally acknowledge it, and to demand that the creditor fulfill the requirements for the recognized claim. The curator also has the authority to demand that the creditor swear an oath to confirm the status of their claim.
  - p. The curator is authorized to hold meetings with the creditor committee when the curator requires their opinion or advice before acting to manage and settle the bankrupt debtor's assets.
  - q. The curator is authorized to claim assets of the bankrupt debtor controlled by third parties by filing a lawsuit or through a reconciliation effort.
  - r. The curator is authorized to annul any legal actions of the bankrupt debtor deemed detrimental to the bankrupt estate.
  - s. The curator is authorized to increase the liquidity value of the bankrupt estate in accordance with the provisions of the PKPU Law.
  - t. The curator is authorized to decide on the transfer of bankrupt assets deemed to have maintenance costs that burden the bankrupt estate.
  - u. The curator is authorized to make decisions regarding the storage of deposits in the form of money, jewelry, securities, or other valuable documents.
  - v. The curator is authorized to hold cash from the bankrupt debtor's assets in a bank to earn bank interest to increase its value.
  - w. The curator is authorized to conduct a cost-benefit analysis of ongoing lease agreements and decide whether to continue the lease or terminate the lease agreement.
  - x. The curator is authorized to make decisions regarding the termination of employment of the bankrupt debtor's employees with the aim of minimizing bankruptcy costs.
  - y. The curator is authorized to make decisions to accept an inheritance intended for the bankrupt debtor if the inheritance benefits the bankrupt estate, or the curator can reject the inheritance intended for the bankrupt debtor if the inheritance burdens the bankrupt estate.
  - z. The curator is authorized to demand the cancellation of debt payments made by the bankrupt debtor at the time the bankrupt debtor is filed for bankruptcy in the Commercial Court or because the debt payments were made collusively by the bankrupt debtor.
    - The curator is authorized to annul donations made by the bankrupt debtor before the bankruptcy decision by the Commercial Court, which are deemed to cause losses to the bankrupt estate.
    - The curator is authorized to demand the return of bankrupt assets that have been disposed of by the bankrupt debtor, which are deemed to be detrimental to the bankrupt estate, or to replace the disposed bankrupt assets with a sum of money.
    - The curator is authorized to set off debts if the debts and receivables arose before the bankruptcy decision.
    - The curator is authorized to demand that the separatist creditor hand over the sale of the bankrupt assets secured to the curator, after 90 (ninety) days have passed since the bankruptcy assets were declared insolvent.
    - The curator is authorized to demand that the separatist creditor who has executed or sold the secured bankrupt assets hand over to the curator a sum of money from the sale proceeds, which constitutes part of the preferred creditor's claim.
    - The curator is authorized, when the bankruptcy ends due to a settlement, to withhold valuable items and documents of the bankrupt assets in the curator's possession if the bankrupt debtor does not provide an equivalent amount of money or guarantee to pay the preferred creditor's claims and bankruptcy costs.
    - The curator is authorized to sell the bankrupt assets in their possession if, within 30 (thirty) days after the date of the settlement approval decision has become legally binding, the debtor still does not fulfill their obligation to provide money to the curator to settle the preferred creditor's claims and bankruptcy costs.
    - The curator is authorized to use the services of the bankrupt debtor to assist the curator in carrying out the management and settlement of the bankrupt estate and to determine the remuneration for the bankrupt debtor [17].

## Legal Protection for Curators in Carrying Out Their Duties and Authorities

### Legal Protection Based on UUK PKPU

In the UUK PKPU, there is no explicit regulation regarding the claims that can be pursued or filed against the curator related to mistakes or negligence committed in carrying out the management and settlement of the bankrupt debtor's assets that are deemed to have caused losses.

The curator's responsibility is regulated by law, specifically in their capacity as a curator, which involves carrying out the management and settlement of bankrupt assets, and not as a personal curator. This can be illustrated with the following examples

- a. The curator forgets to include one of the creditors' bills in the receivables list and the distribution list.
- b. The curator sells the bankrupt debtor's assets that are not included in the bankruptcy estate.
- c. The curator sells third-party assets.
- d. The curator attempts to collect the bankrupt debtor's debts and seizes the bankrupt debtor's assets, but it later turns out that the bankrupt debtor's claims were false.
- e. The curator continues the business activities without careful consideration or prior research.
- f. The curator enters into a contract knowing that the payment they are obligated to make cannot be fulfilled.
- g. The curator fails to pursue legal action against a claim or to limit liability, for example, by filing an appeal against a tax claim.
- h. The curator does not inform the creditor of their preferential rights under the law if they believe that the creditor is unaware of having such rights.
- i. The curator pursues a civil lawsuit that incurs non-reimbursable legal costs despite having no valid grounds to win the case <sup>[18]</sup>.

Curators can still be sued civilly or criminally in connection with the management and settlement of the bankrupt debtor's assets if they are deemed to have committed unlawful acts. The category of unlawful acts in legal science can be categorized into three criteria, namely: unlawful acts with intent; unlawful acts without fault, and unlawful acts due to negligence.

Meanwhile, Article 1365 of the Civil Code regulates the elements of unlawful acts as follows: There is a fault; The act is unlawful; There is a fault from the perpetrator; The loss incurred is due to the factual act of the perpetrator <sup>[19]</sup>.

The personal responsibility of the curator who has the authority to carry out the management and settlement of the bankrupt debtor's assets is specifically regulated in Article 72 in conjunction with Article 78 paragraph <sup>[2]</sup> of the UUK PKPU. The actions of the curator can be classified as unlawful acts and can be subject to claims for damages if the curator's actions include the following elements

- a. The curator's actions are contrary to the applicable regulations or not permitted under the UUK PKPU.
- b. The curator's actions are contrary to his legal obligations as a manager in PKPU and a curator in bankruptcy.
- c. The curator's actions are contrary to the subjective rights of the debtor or creditor.
- d. The curator's actions are contrary to decency.
- e. The curator's actions are contrary to the principle of caution or necessity in good social conduct.

The curator's actions have caused factual losses to the

bankrupt debtor's assets <sup>[20]</sup>.

The curator can also be sued for abuse of rights. Abuse of rights is an action based on the legitimate authority of a person in accordance with applicable regulations, but the act is carried out in a deviant manner or with a different intention from the purpose for which the right was granted. Based on Article 1365 of the Civil Code, an act of abuse of rights can fulfill the elements of an unlawful act if it causes harm to others, involves a violation of propriety, decency, or negligence, and there is a causal relationship to the harm. Therefore, the act of abuse of rights constitutes an unlawful act.

The curator in their actions is also not exempt from criminal charges if it can be proven that the curator's actions in managing and settling the bankrupt debtor's assets contain criminal elements. For example, the curator embezzles the bankrupt assets under their control with the intention of unlawfully appropriating them for personal use, the curator falsifies documents and uses those forged documents, the curator commits fraud, and other criminal acts related to their duties and authority that harm the bankrupt debtor's assets.

### Perlindungan Hukum Berdasarkan KUHP

Acts and actions carried out under the command of the law, in principle, should not be punishable. Based on Article 50 of the Criminal Code, a Curator who, based on a bankruptcy decision from the Commercial Court in accordance with the provisions of the Bankruptcy Law and the Civil Code, carries out the management and settlement of the bankrupt debtor's assets by securing and seizing the bankrupt debtor's assets, does not commit a criminal act. The curator's actions are not considered unlawful acts. Other examples of actions or deeds carried out under the command of the law, which cannot be punished, include a bailiff executing a court decision, a soldier shooting an enemy under the orders of a superior, and a firefighter or police officer breaking a window to enter a burning house or where an inspection must be conducted, all of which are lawful actions <sup>[21]</sup>.

In Article 50 of the Criminal Code, the use of authority can be justified if, when carrying out their duties, it aligns with their authority and is in accordance with the purpose and mandate of the law. The use of such authority must be valid based on formal and material jurisprudence. A curator who exercises their authority and duties in managing and settling the bankrupt debtor's assets, in accordance with the intended purpose but contrary to the authority they possess or not in accordance with formal and material jurisprudence, or valid in form but not in substance, cannot be protected by law. Therefore, the curator can be subject to criminal charges.

### Legal Steps of the Curator Against Obstacles and Resistance from Bankrupt Debtors

#### Obstacles and Resistance of Bankrupt Debtors

The curator can take various legal actions against the obstacles and resistance of the bankrupt debtor, such as filing miscellaneous lawsuits and liquidating the bankrupt estate. Other lawsuits are regulated in Article 3 paragraph <sup>[1]</sup> of the UUK PKPU as follows: Bankruptcy petitions and other related lawsuits that have been regulated in bankruptcy are decided by the Commercial Court in the General Judiciary whose jurisdiction covers the area where the Debtor's legal domicile is located.

Based on the explanation of the Article, other lawsuits refer

to matters related to *actio pauliana*, third-party opposition to seizure, or cases where the Debtor, Creditor, Curator, or administrator is a party in cases related to the bankrupt estate, including the Curator's lawsuit against the Directors who caused the company to be declared bankrupt due to their fault or negligence. The procedural law applicable in the examination, adjudication, and decision-making process of such cases is the same as in bankruptcy petition cases, which refers to Civil Procedure Law.

Based on that explanation, the legal remedies for other lawsuits or other matters consist of the following

1. *Actio Pauliana*. The *actio pauliana* lawsuit is contained in Article 1341 of the Civil Code, which is a legal remedy pursued by creditors by filing a petition in the Commercial Court to annul actions taken by the debtor that have harmed the creditor. Based on Article 41 paragraph <sup>[2]</sup> of the Bankruptcy Law, the annulment petition can only be filed if the legal act performed can be proven, and the debtor and the party with whom the legal act was performed knew or should have known that the legal act could cause harm to the creditor. An example based on Article 43 of the Bankruptcy Law is a debtor making a gift.
2. Third Party Objection to Seizure. Based on the UUK PKPU, which refers to civil law, if the seized item belongs to a third party, they can file a third-party objection to the collateral seizure placed by the court. This forms the basis for other lawsuits regarding Third Party Objection to Seizure in bankruptcy. Regarding the opposition, in accordance with Article 26 paragraph <sup>[1]</sup> of the UUK PKPU, the opposition related to bankruptcy assets is as follows: Claims regarding rights or obligations related to bankruptcy assets must be filed by or against the Curator.
3. Cases where the Debtor, Creditor, Curator, or Management are one of the parties in matters related to bankruptcy assets, including the curator's lawsuit against the Board of Directors who caused the company to be declared bankrupt due to their mistakes or negligence. According to Article 104 Paragraph <sup>[2]</sup> of Law Number 40 of 2007 concerning Limited Liability Companies (LLC Law), if bankruptcy occurs due to the fault or negligence of the board of directors and the bankrupt estate is insufficient to pay all the company's debts, then each member of the board of directors can be jointly and severally liable for all debts that cannot be settled from the bankrupt estate. Based on this, the Curator can file a lawsuit for other claims regarding the negligence of the board of directors.
4. Objection to the Receivables List. An Objection to the Receivables List is a lawsuit to dispute the receivables listed in the receivables list. The objection is submitted by the Debtor and/or Creditor against the Creditor's bill. This objection is submitted by the Debtor and/or Creditor who object to the receivables list against the bills accepted or rejected by the Curator.
5. Objection to the Distribution List. An Objection to the Distribution List is a legal effort that can be made by creditors and interested parties regarding the amounts listed in the distribution list. The distribution list will only take effect if there are no objections within the specified period. If there are objections, the distribution list will not be binding until there is a final and binding court decision. If the objection is upheld, the curator

must amend the details of the distribution list so that the rights of the aggrieved creditors can be restored. Creditors also have an interest in the distribution details in the distribution list because the amount of receipts and expenditures in the bankruptcy settlement can affect how much the creditors receive.

### **Legal Steps of the Curator Against Obstacles and Resistance from Bankrupt Debtors**

The UUK PKPU in Article 184 has emphasized that the curator must carry out the liquidation by selling all of the bankrupt assets without the approval of the bankrupt debtor. The task of liquidating by selling all of the bankrupt debtor's assets is primarily the curator's responsibility. The curator must continue to perform the management and settlement duties over the bankrupt debtor's assets even if a cassation or review is pursued against the bankruptcy decision in the Supreme Court. The settlement of the bankrupt estate means the liquidation of assets aimed at paying and/or settling the debts of creditors whose claims have been submitted to the curator and have undergone verification and reconciliation of receivables.

### **Conclusion**

Based on the discussion of the issues, the following conclusions can be drawn: the legal protection of the curator in carrying out their duties and authority against obstacles and resistance from the bankrupt debtor, the legal protection of the curator while performing the management and settlement of the bankrupt debtor's assets can be subject to civil or criminal lawsuits related to the execution of the management and settlement of the bankrupt debtor's assets, which are considered to have committed unlawful acts. According to Article 72 in conjunction with Article 78 paragraph <sup>[2]</sup> of the Bankruptcy Law, the curator has personal responsibility for the authority to perform the duties of managing and settling the bankrupt debtor's assets. The legal protection of the curator is based on Article 50 of the Criminal Code, where the curator appointed according to the bankruptcy decision from the Commercial Court, in accordance with the provisions of the Bankruptcy Law and the Civil Code, in performing the duties of managing and settling the bankrupt debtor's assets by securing and seizing the bankrupt debtor's assets, is not considered a criminal act. In Article 50 of the Criminal Code, the use of authority can be justified when performing such duties in accordance with their authority and in line with the objectives and mandates of the legislation. The curator can take various legal actions against the obstacles and resistance of the bankrupt debtor, such as filing other lawsuits and liquidating the bankrupt estate.

### **Recommendation**

Based on the conclusions of the problem discussion, the following recommendations can be made

- a. The legal protection of curators while performing their duties and authorities needs to be supported by the immediate revision of the UUK PKPU so that curators receive legal certainty regarding their profession in managing and settling the assets of bankrupt debtors.
- b. The House of Representatives, Political Parties, and Curator Organizations are expected to synergize in the implementation of the UUK PKPU revision.
- c. More in-depth education for law enforcement officers

about the curator profession and their authorities in the bankruptcy process.

- d. The scope and direction of the UUK PKPU revision regarding the curator profession are to regulate the professionalism of curators, which includes the following
  1. Procedures for the appointment and dismissal of Curator and Administrator Professions.
  2. Professional education for Curators and Administrators.
  3. Professional examinations for Curators and Administrators.
  4. Awards for Curators and Administrators.
  5. Procedures and protocols for professional licensing and certification of Curators and Administrators.
  6. Organizational Management Structure and Certification Board, Honorary Board, and Ethics Board.
  7. Sanctions for violations of the Curator and Administrator Professions.
  8. Rights and Obligations of the Curator and Administrator Professions.
  9. Immunity Rights of the Curator and Administrator Professions.
  10. The direction of this regulation is aimed at providing legal certainty and guarantees to the curator profession. The direction of this regulation is aimed at providing legal certainty and guarantees to the profession of curators.

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