



DEVELOPMENT OF THE HERITAGE CENTER AS BANKRUPTCY CURATOR

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ABSTRACT

This study aimed to find out and analyze the implications of the regulation of the Curator in Law No. 37 of 2004 on the Semarang Heritage Agency and the development of the Heritage Agency as bankruptcy curator. This study was empirical normative legal research that combined normative legal research and empirical legal research presented in a descriptive qualitative analysis. This research found that the change in Law No. 37 of 2004 was to add another curator besides the Heritage Agency. The results of the study and discussion show that the implication of setting the curator as the administrator and insolvency of bankruptcy assets is that the number of cases handled by the institution is divided into two, but in practice it is less than the curator and the developments that occur at the Property and Heritage Agency of Semarang in general are with the tasks of administering third party money and specifically the separation of duties on heritage and state curator (bankruptcy).

A. INTRODUCTION

The business world has experienced many developments in line with the development of human life. The growth of the business world has grown rapidly in recent decades. One of the driving factors for this growth is the development of technology which is also growing rapidly.¹ Technology in the world is utilized by business people with the aim of making it easier to run their business. The use of technology here can provide convenience and efficiency.² The efficiency in question is that the existence of technology provides efficiency in time, cost, and place. Time efficiency, for example, such as reduced promotion because business actors only put their products in e-commerce only once and customers can see them many times. Efficiency from costs, one of which is that promotions carried out using e-

1 Richardus Eko Indrajit, "Evolusi Perkembangan Teknologi Informasi", *Renaissance Research Centre*, (2001): 1.

2 Amin Wahyudi, "Penggunaan Teknologi Informasi di Dunia Bisnis dan Perbankan," *Akutansi dan Teknologi Sistem Informasi* 7, No. 1 (2009): 12.

commerce by business actors have a positive impact,³ namely the costs that should be for renting a place are non-existent because they can do business from home with only a smartphone. The utilization of this technology also provides a breath of fresh air for MSME players to start, run, and even develop small businesses.⁴ The utilization of this technology is also utilized by large-scale business actors who also use technology to expand marketing targets and provide production efficiency.⁵ The development of this technology is considered by the community as an opportunity to pioneer and develop their business. Many small-scale and large-scale businesses have emerged. The emergence of these new businesses has created an atmosphere of increasingly intense competition between business actors with one another. Business actors are required to be more creative and skillful in utilizing technology in starting or developing their business.

The benefits brought about by technology can certainly be a double-edged sword in the business world.⁶ The utilization of technology in the business world that is not optimal has negative implications for business actors. This negative implication is one of the factors in the failure of the business run by business actors.⁷ Another factor is that the ease of starting a business creates tighter competition. Tight competition causes business actors to experience a higher risk of failure.⁸ Tight competition makes business actors inevitably have to be more persistent and ready to face developments. This unpreparedness can be a boomerang for himself that destroys his business. The capital of business actors in starting a business does not only come from their assets, the capital used there comes from borrowing either from funders such as banks or individual funders, not infrequently even pledging such as their house or land. The capital that comes from this loan is often wrapped around business actors experiencing failure. This failure starts from failing to pay the debt because the business

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- 3 Zefriyenni, Emil Salim, Sinta Wahana, "Pengaruh Promosi, Komunikasi Dan Kepercayaan Terhadap Pengambilan Keputusan Dalam Menjalankan E-Commerce Networking Bussiness Di Kota Padang (Study Kasus Mahasiswa Fakultas Ekonomi Dan Bisnis Jurusan Manajemen Universitas Putra Indonesia YPTK Padang)," *Scientific Journal of Reflection: Economic, Accounting, Management and Business* 4, No. 3 (2020): 63.
 - 4 Moch. Hari Purwiantoro, Dany Fajar Kristanto SW, and Widiyanto Hadi, "Pengaruh Penggunaan Media Sosial Terhadap Pengembangan Usaha Kecil Menengah (UKM)," *Eka Cida* 1, No. 1 (2016): 34.
 - 5 Ruey-Jer Bryan Jean, Rudolf R. Sinkovics, dan Daekwan Kim, "Information Technology and Organizational Performance Within International Business to Business Relationships A Review and An Integrated Conceptual Framework," *International Marketing Review* 25, No. 5 (2008): 564
 - 6 Afrizal Tahar, Hosam Alden Riyadh, Hafiez Sofyani, and Wahyu Eko Purnomo, "Perceived Ease of Use, Perceived Usefulness, Perceived Security, and Intention to Use E-Filing: The Role of Technology Readiness," *Journal of Asian Finance, Economics and Business* 7, No. 9 (2020): 541.
 - 7 Lisma Yana Siregar and Muhammad Irwan Padli Nasution, "Perkembangan Teknologi Informasi Terhadap Peningkatan Bisnis Online," *Hirarki: Jurnal Ilmiah Manajemen dan Bisnis* 2, No. 1 (2020): 73.
 - 8 Thomas Ritter dan Carsten Lund Pedersen, "Digitization Capability and The Digitalization of Business Models in Business-To-Business Firms: Past, Present, And Future," *Industrial Marketing Management* 86, (2020): 180.

is experiencing problems. Failure to pay can be negotiated with a suspension of payment or with a bankruptcy mechanism.⁹

This suspension of payment or postponement of payment can be done if both parties agree to suspend debt payments.¹⁰ The suspension of payments given by creditors is of course by giving consideration to the health of the business of the borrower of funds or debtor.¹¹ Business health is an important factor to consider because it would be useless to suspend payments if the debtor's business is not healthy. This unhealthy debtor business will not use a suspension of payment mechanism by creditors, but rather use a bankruptcy mechanism. It is used by creditors as a last resort to repay loans lent to debtors.

Bankruptcy is a general confiscation carried out by the court based on requests made by creditors or even debtors with the aim of clearing and distributing the debtor's assets to creditors.¹² It is a decision of the commercial court which decides that the debtor is in a state of financial incapacity to fulfill his obligations to his creditors.¹³ Bankruptcy is a debtor who is decided by the court to be in a state of bankruptcy after which his property is used to pay off his debts.¹⁴ Bankruptcy is the transfer of control over the assets of debtors who are unable to pay their debts or people who are unable to pay their debts to the Curator or Property and Heritage Agency (Balai Harta Peninggalan)¹⁵ by court order with the aim of being cleaned up and distributed to debtors or creditors. Bankruptcy based on Article 1 number 1 of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations has the meaning "Bankruptcy is a general confiscation of all assets of the Bankrupt Debtor whose management and management is carried out by a curator under the supervision of a Supervisory Judge as regulated in this Law". The definition of bankruptcy is very diverse among experts who express their opinions

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- 9 Yonatan, Bambang Sugiri, Sukarmi, Faizin Sulistio, "Selection of Methods of Proving the Inability of Debtors to Pay Debts and the Application of Prejudice Against Misuse of Insolvency Institutions in Insolvency Law in Indonesia," *International Journal of Environmental, Sustainability, and Social Science* 4, No. 2 (2023): 509.
 - 10 Lindati Dwiatin dan Dianne Eka R, "Analisis Homologasi Dalam Penundaan Kewajiban Pembayaran Utang (PKPU) Sebagai Upaya Pencegah Terjadinya Kepailitan (Studi Putusan No.59/Pdt.Suspdkpu.Pn.Niaga.Jkt. Pst)," *Pactum Law Journal* 1, No. 2 (2018): 93-94. Also see Shabrina Fadiyah Ghazmi, Tarsisius Muwardji, and Deviana Yuanitasari, "Pertanggungjawaban Otoritas Jasa Keuangan Terhadap Hak Agen Asuransi Sebagai Pemohon Pailit Asuransi," *Jurnal Hukum dan Kemasyarakatan Al-Hikmah* 2, No. 3, (2021): 487.
 - 11 Royfa Tri Pamungkas, "Permohonan Pernyataan Pailit Kepada Perusahaan Asuransi Yang Telah Dicabut Izin Usahanya," *Lex Renaissance* 6, No. 2 (2021): 355.
 - 12 Sheva Trisanda Adistia and Tata Wijayanta, "Eksistensi Balai Harta Peninggalan sebagai Pengurus dan Pemberes Harta Pailit," *Privat Law* 10, No. 3, (2022): 437.
 - 13 Sophar Maru Hutagalung, *Praktik Peradilan Perdata, Kepailitan, dan Alternatif Penyelesaian Sengketa*, (Jakarta: Sinar Grafika, 2019), 349.
 - 14 Tri Reni Novita, M. Faisal Husna, "The Application of The Concept of Managing and Settling the Bankrupt Debtor's Assets Process Performed by The Curator," *European Journal of Social Sciences Studies* 4, No. 2 (2019): 97.
 - 15 Munir Fuady, *Hukum Pailit dalam Teori dan Praktek*, (Bandung: PT. Citra Aditya Bakti, 2014), 175.

regarding bankruptcy, but the differences in understanding do not contradict each other or even negate each other.¹⁶

Verordening op de Faillissement en Surceance van Betaling Staatsblad 1905- 217 jo 1906-348 or commonly referred to as *Faillissement Verordening* or Bankruptcy Regulation.¹⁷ The Bankruptcy Regulations were formed in 1905 and 1906, Indonesia at that time was still called the Dutch East Indies, so population classification still applied. The legal subjects regulated in this *Faillissement Verordening* are only one group, namely the European Group.¹⁸ The legal subject regulated by the *Faillissement Verordening* is only for European groups, which has implications after Indonesia's independence, it becomes less familiar¹⁹ among the public because to use the *Faillissement Verordening* must go through the institution of applying the law *toepasselijkverklaring*.²⁰ This lack of use caused the *Faillissement Verordening* to be less well known by the public.²¹ The administrators and insolvency administrators under the *Faillissement Verordening* regime are only entrusted to Property and Heritage Agency as the only institution for the administrators and insolvency administrators.²² This agency is a Technical Implementation Unit under the Director General of General Legal Administration of the Ministry of Law and Human Rights.²³ The establishment of the institution was initially due to a special need aimed at managing the assets of foreign heirs during the VOC era. It initially had a name that still used the Dutch term *Wees-en Boedelkamer* or *Weskamer*.²⁴ The duties are not only in the field of bankruptcy, but there are other fields such as guardianship, guardianship, and management of absence. in the field of bankruptcy are two tasks, namely the task of managing bankrupt assets in the case of Postponement of Debt Payment Obligations as

16 Tata Wijayanta, *Undang Undang dan Praktik Kepailitan: Perbandingan Indonesia dan Malaysia* (Yogyakarta: Gadjah Mada University Press, 2015), 63.

17 F. Sekar Widiarini and Teddy Anggoro, "The Role of Balai Harta Peninggalan as Curator in The Management and Settlement of Bankrupt Assets," *Legal Brief* 11, No. 2 (2022): 977.

18 Tata Wijayanta, "Kewenangan Pengadilan Niaga dalam Penyelesaian Perkara Perniagaan Lain Berdasarkan Undang-undang Nomor 37 Tahun 2004," *Mimbar Hukum* 20, No. 2 (2008): 383.

19 Tata Wijayanta, "Kajian Tentang Pengaturan Syarat Kepailitan Menurut Undang-Undang Nomor 37 Tahun 2004," *Mimbar Hukum* 26, No. 1 (2014): 2.

20 Iwan Wahyu Pujiarto, Syafruddin Kalo, and Edy Ikhsan, "Pelaksanaan Pemberi Bantuan Hukum Dikaitkan Dengan Undang-Undang No. 16 Tahun 2011 Tentang Bantuan Hukum," *Arena Hukum* 8, No. 3 (2016): 325

21 Sutan Remy Sjahdeini, *Sejarah, Asas, dan Teori Hukum Kepailitan (Memahami undang-undang No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran)* (Jakarta: Kencana, 2016), 80.

22 Bernard Nainggolan, *Peranan Kurator dalam Pemberesan Boedel Pailit* (Bandung, Alumni, 2014): 50.

23 Super User, "Tugas dan Kewenangan BHP" Accessed July 27, 2023. <https://bhpsemarang.kemenkumham.go.id/>.

24 Muhammad Zulvikhar Kadir and Istiqamah, "Peran Balai Harta Peninggalan Dalam Pendaftaran dan Pembukaan Wasiat (Studi Kasus Balai Harta Peninggalan Kota Makassar)," *Alauddin Law Development Journal (ALDEV)* 4, No. 3 (2022): 566.

administrators and the task of managing and administering bankrupt assets in Bankruptcy cases as curators.²⁵

The bankruptcy regulatory regime after *Faillissement Verordening* is the Regulation in Lieu of Law No. 1 of 1998 concerning Amendments to the bankruptcy law.²⁶ The Regulation in Lieu of Law No. 1 of 1998 was enacted in the same year as Law No. 4 of 1998 on the Stipulation of Regulations in Lieu of Law No. 1 of 1998 on Amendments to the Bankruptcy Law into Law.²⁷ It was issued based on the IMF's consideration that the *Faillissement Verordening* was not effective in handling the 1997 monetary crisis, especially in debt restructuring issues.²⁸ The administrators of bankruptcy assets in the regulation in lieu of Law No. 1 of 1998 regime became two, with the addition of Individual Curators in addition to the property and heritage agency. After the issuance of the regulation in lieu of law, this institution is not the only administrator and insolvency of bankruptcy assets.

The bankruptcy regulation after regulation in lieu of Law No. 1 of 1998 is Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations.²⁹ Law No. 37 of 2004 continues to regulate the administrators and insolvency of bankruptcy assets, namely the property and heritage agency and Individual Curators.³⁰ The mention of curators (kurator) using a small "k" in the regime of Law No. 37 of 2004 refers to both Individual Curators and the property and heritage agency, while Curators using a large "K" refers to Individual Curators only.

The latest research was conducted by Taufik H. Simpatung with the title "Existence and Effectiveness of Performance of Probate Court Duties in Indonesia". The research analyzes the Heritage Center as a curator. The similarity is analyzing the Heritage Hall after the regulation of Individual Curators in Law No. 37 of 2004.

This research aims to determine the implications of the regulation of Individual Curators in Law No. 37 of 2004 on the property and heritage agency of Semarang and the development as a bankruptcy curator.

25 Mohammad Kurniawan, "Tugas Dan Fungsi Balai Harta Peninggalan Semarang Sebagai Kurator Kepailitan Berdasarkan Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang," *Jurnal Daulat Hukum* 1, No. 1 (2018): 69.

26 Nina Noviana, "Perubahan Pokok Dalam Peraturan Kepailitan Menurut Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang," *Jurnal Hukum & Pembangunan* 36, No. 2 (2006): 129.

27 Amanda Raissa, Avira Rizkiana Yuniar, and Anita Gladina Ayu Nurhayati, "Kelemahan Kurator Dalam Pemberesan Harta Pailit," *Jurnal Hukum Magnum Opus* 3, No. 3 (2020): 214.

28 M. Bagas Amirul Haq and Tata Wijayanta, "Recognition of Foreign Insolvency Proceedings: A Comparative Study between the Laws of Indonesia and South Korea," *International Journal of Innovation, Creativity and Change, Sydney*, 14, No. 12 (2020): 718

29 F. Sekar Widiarini and Teddy Anggoro, *Op.Cit*, 977.

30 Ida Nadirah, "Studi Komparatif Terhadap Kepailitan Perusahaan Asuransi Syariah Menurut Hukum Islam Dan Undang-Undang No 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU)," *Iuris Studia Jurnal Kajian Hukum* 2, No. 2 (2021): 258.

B. RESEARCH METHODS

The study started from searching, processing, analyzing, or reviewing and presenting data carried out systematically and objectively which was previously preceded by the act of searching and collecting data. It was based on the nature of the research, divided into two, namely empirical legal research whose data was in the form of primary data and normative legal research whose data was secondary data.³¹ It was descriptive research, that described and the aim was to obtain a description of a situation at a certain time or area.³²

The study was empirical normative legal research, so the data used were secondary data and primary data. Secondary data was from primary legal materials, secondary legal materials, and tertiary legal materials.³³ Primary legal materials were binding legal materials. Examples are Norms, Basic Regulations, Legislation, Treaties, Jurisprudence, Legal materials from colonial times that are still valid today. Secondary legal materials are those that provide an explanation of primary legal materials such as draft laws, research results. Tertiary legal materials are materials that provide guidance and explanation of primary and secondary legal materials.³⁴ Primary data was data derived from field research with the location of Semarang, namely the Office of the property and heritage agency of Semarang, the research subject was the resource person, namely the Curator of the property and heritage agency. The way to collect secondary data was the documentation method and the secondary data collection tool was and document study, while the primary data was obtained by interview and the data collection tool was an interview guide.³⁵ Data analysis is a method of analyzing a problem by utilizing the data that has been collected to solve problems in a study.³⁶ The analysis used was carried out qualitatively, namely the collected data derived from field research and literature was explained by providing a description or description through word form and used to describe and interpret oral or written data results.³⁷

31 Theresia Anita Christiani, "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object," *Procedia-Social and Behavioral Sciences* 219, (2016): 202.

32 Suteki and Galang Taufani, *Metodologi Penelitian Hukum (Filsafat, Teori, dan Praktik)*, (Surabaya: Raja Grafindo Persada, 2017), 23.

33 Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana, Jakarta, 2005, p. 14.

34 Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, (Jakarta, PT. Raja Grafindo Persada, 1995), 12.

35 Loraine Busetto, Wolfgang Wick, and Christoph Gumbinger, "How to use and assess qualitative research methods," *Neurological Research and Practice* 2, No. 14 (2020): 2.

36 Wendy J. McMillan, "Finding a Method to Analyze Qualitative Data: Using a Study of Conceptual Learning," *Journal of Dental Education* 73, No. 1 (2009): 55.

37 Carolin Graue, "Qualitative Data Analysis," *International Journal of Sales, Retailing & Marketing* 4, No. 9 (2015): 8.

C. RESULTS AND DISCUSSION

1. The implication of the regulation of Individual Curator in Law No. 37 of 2004 to Property and Heritage Agency of Semarang

The history of bankruptcy law in Indonesia dates back to the *Faillissement Verordening* which was issued in 1905 during the Dutch East Indies administration. The *Faillissement Verordening* was established with the aim of regulating defaults by traders at that time. It regulates bankruptcy and postponement of debt payment obligations or suspension of debt payments. Bankruptcy is regulated in Chapter I on bankruptcy, while suspension of payments is regulated in Chapter II on suspension of payments. It also stipulates that the administrator and insolvency of bankruptcy assets are by law handed over to the Property and Heritage Agency. The only administrator and insolvency of the bankruptcy estate is the Property and Heritage Agency. The task of the agency as the administrator and insolvency of bankruptcy assets is to take care of the debtor's assets that have been sentenced to bankruptcy by the court. The guardianship of assets starts from recording to managing assets which will later be distributed to creditors who provide loans to debtors. *Faillissement Verordening* is a regulation that was formed during the Dutch colonization. The regulation is also a derivative regulation from the Dutch country whose society is also different from that in Indonesia. The difference in circumstances and times at the time of formation led to differences in the benefits provided from a regulation. Legal regulations are required to provide benefits to society based on the utilitarian school of thought.³⁸

The difference in circumstances was further increased by the crisis experienced in 1997, which occurred in almost all parts of the world. The crisis caused a domino effect in various fields. This domino effect started with the economic crisis and spread to the social and political fields.³⁹ This situation encouraged the government to issue regulation in lieu of Law No. 1 of 1998 concerning bankruptcy, the cause of the issuance of a quo regulation was the declining economic conditions that caused the corporate or economic sector to become unstable. This instability began with the sluggish purchasing power in Indonesia which implies a decrease in revenue for companies. This decline in revenue had a domino effect of debt repayment failure and many companies have gone bankrupt. Massive bankruptcies became the benchmark for the enactment of *Faillissement Verordening*. It was considered ineffective, so the regulation in lieu of Law No. 1 of 1998 was issued.⁴⁰ One of the changes regulated in the regulation in lieu of law is the improvement of the position of the curator by confirming the duties

38 Richard A. Posner, "Utilitarianism, Economics, and Legal Theory," *The Journal of Legal Studies* 8, No. 1 (1979): 110.

39 Lepi T. Tarmidi, "Krisis Moneter Indonesia: Sebab, Dampak, Peran IMF Dan Saran," *Buletin Ekonomi Moneter dan Perbankan* 1, No. 4 (1999): 3.

40 Bambang Kesowo, "Perpu Nomor 1 Tahun 1998, Latar Belakang dan Arahnya" dalam A. Rudy Lontoh *et. Al, Penyelesaian Utang-piutang melalui Pailit atau Penundaan Kewajiban Pembayaran Utang*, Edisi Pertama, (Bandung: Alumnus, 2001), 80.

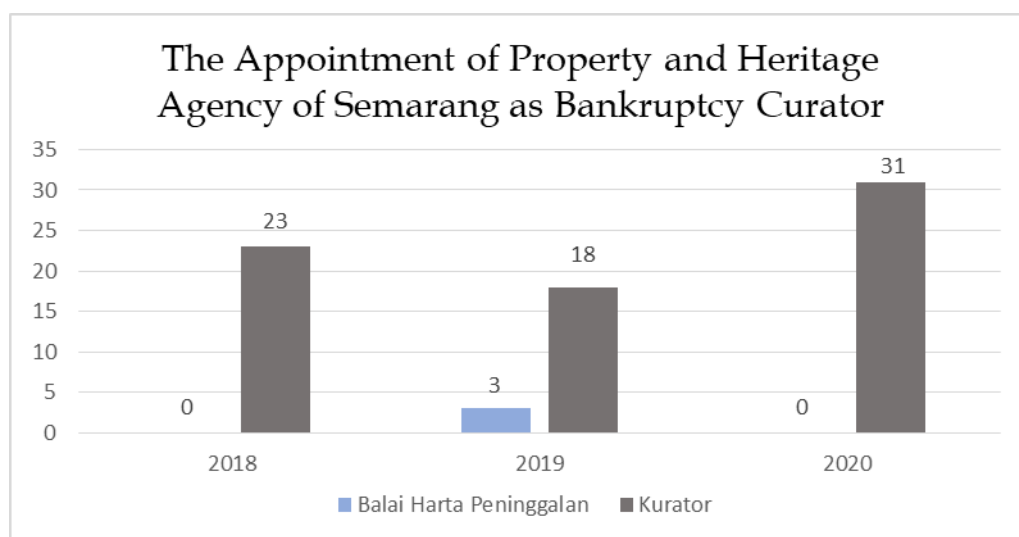
and functions of the curator. This refinement is also made by changing the curator by adding a Curator. Property and heritage agency is not the only curator anymore, but there is a Curator as the administrator and insolvency of the bankruptcy estate. The addition of the Curator was motivated by the shortage of staff at the Property and heritage agency during the monetary crisis. The monetary crisis caused a rapid increase in bankruptcy cases, while the employees of the Property and heritage agency could not immediately increase because there had to be a recruitment process. This situation is the reason that the regulation of the Curator is the best solution to provide a curator in a fast and precise time.⁴¹

The amendment of regulation in lieu of Law No. 1 of 1998 occurred in 2004 with the enactment of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations. Law No. 37 of 2004 provides several material changes that can be seen in the general explanation, which are as follows:

- a. Provide strict limitations on the definition of debt and maturity in order to avoid the interpretation of Law No. 37 of 2004.
- b. Stipulate a definite period of time for the decision to declare bankruptcy and/or postpone debt payment obligations as conditions and procedures regarding bankruptcy applications and postponement of debt payment obligations.

Law No. 37 of 2004 continues to regulate the addition of the Curator as the administrator and insolvency of the bankruptcy estate. The addition that is still maintained is interesting, because the background of regulating the addition of the Curator should have become irrelevant. One view is that the addition of a Curator provides an option for the public to use the property and heritage agency or the Curator as the administrator and insolvency of the bankruptcy estate. The addition of the Curator also indirectly provides a competitive atmosphere for the curator or administrator profession which has implications as a means of improvement and development of curators or administrators with a spirit that builds the infrastructure of legal institutions. One of the benchmarks for this improvement is by looking at the appointment of the property and heritage of Semarang in the 2019-2021 period.

41 Sheva Trisanda Adistia, *Balai Harta Peninggalan Semarang sebagai Pengurus dan Pemberes Harta Pailit setelah berlakunya Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang*, Skripsi, Tidak dipublikasikan, (Yogyakarta: Program Sarjana Ilmu Hukum Fakultas Hukum Universitas Gadjah Mada, 2023), 66.

Figure 1. The Appointment of Property and Heritage Agency of Semarang as Bankruptcy Curator

Source: *Property and Heritage Agency and Case Tracking Information System, 2023.*

The figure above shows that the Property and Heritage Agency was chosen by fewer applicants and then appointed by the Semarang Commercial Court. The appointment is based on several substantial factors. One of the reasons for the lack of appointment of the property and heritage agency is the existence of several obstacles, although these obstacles are not the only dominant factors that cause this to happen. The obstacles experienced by the institution are as follows socialization to the public conducted by the institution as a bankruptcy curator that has the task of managing and cleaning up bankruptcy assets is still lacking, the lack of socialization carried out by the institution causes it to be less known about its existence, especially in the field of bankruptcy, it lacks coordination with other government agencies in carrying out its duties and functions. This coordination is important because it can have a positive impact on this institution itself, The Human Resources of the institution employees are considered not qualified in handling bankruptcy cases as administrators and insolvency of bankruptcy assets. One example of this problem is the slow resolution carried out by the property and heritage agency, which causes the parties to prefer the Curator over the institution.⁴²

The implication of the regulation of the Curator in Law No. 37 of 2004 is the division of the number of cases handling bankruptcy cases as administrators and insolvency of bankruptcy assets. The administration and insolvency of bankruptcy assets which was initially mandated to the property and heritage agency as the only institution for managing and administering bankruptcy assets, caused every bankruptcy case to always be managed and administered by this

42 Mohammad Kurniawan, *Op.Cit*, 69.

institution.⁴³ The enactment of Law No. 37 of 2004 has caused the curator to be divided into two, namely the Property and Heritage Agency and the Curator. The implication is that the case becomes divided into two between the Property and Heritage Agency and the Curator. The difference regarding the handling of bankruptcy cases by the Property and Heritage Agency and the Curator is regarding the number of cases. Article 15 paragraph (3) stipulates that the maximum number of cases handled by the Curator simultaneously cannot exceed three cases, while the Property and Heritage Agency does not impose restrictions on the number of cases that must be handled because it is considered that it is an institution and not an individual. Article 15 paragraph (3) has already been tested by the Constitutional Court in 2009. The Constitutional Court Decision Number 19/PUU-VII/2009 decided that Article 15 paragraph (3) was not contrary to the 1945 Constitution of the Republic of Indonesia. One of the considerations of the Constitutional Court was that the handling of bankruptcy cases and postponement of debt payment obligations with the weight of difficulties and the number of creditors in the category of not a few must be resolved responsibly and fairly and must be resolved comprehensively.⁴⁴ The consideration of the legislators at the time Law No. 37 of 2004 discussed was that the handling of bankruptcy cases must be resolved quickly, efficiently, and precisely because the bankruptcy process of a business entity can have a domino effect on other fields. It is also the same as the limitation of the number of cases handled by the Curator.

The results in the figure are interesting to criticize that with the privileges possessed by the property and heritage agency such as not being limited to the number of cases it handles and being ahead of the Curator as the administrator and disposer of bankruptcy assets should make the institution superior in handling bankruptcy cases.⁴⁵ The obstacle that should not be experienced by the institution is at least the inadequacy of its employees rather than the Curator. The reason for this is because the institution first became the administrators and insolvency of bankruptcy assets, which should have understood how to handle the management and administration of bankruptcy assets more efficiently and more accurately. The insolvency and administration of bankruptcy assets by the property and heritage agency should be superior due to the trust in state institutions to have employees who have the competence to handle the management and administration of bankruptcy assets.

43 Raisa Inayati, "Tugas, Wewenang Dan Tanggung Jawab Balai Harta Peninggalan Dalam Pemberesan Harta Pailit," *E-Jurnal Spirit Pro Patria* 5, No. 1 (2019), 67.

44 Ali. "Perkara Kurator Tetap Harus Dibatasi." Accessed August 1, 2023. <https://www.hukumonline.com/>.

45 Taufik H. Simatupang, "Eksistensi dan Efektivitas Pelaksanaan Tugas Balai Harta Peninggalan di Indonesia," *Penelitian Hukum De Jure* 18, No. 3 (2018), 404.

2. The Development of Property and Heritage Agency of Semarang as Bankruptcy Curator

The development of the institution in quantity is based on the Dutch Kingdom's *besluit* with *staatsblad* 1921/489 issued on July 4, 1921 which states that it exists in each *Raad van Justitie* (Jakarta, Semarang, Surabaya, Padang, Makassar, and Medan).⁴⁶ *Staatsblad* 1926/41 *jo.* 127 states that the property and heritage agency exist in all six cities as *Raad van Justitie*. It was established in Bandung, Yogyakarta, and Malang by *Staatsblad* 1921/575, but were abolished on June 1, 1926.⁴⁷ It was also established in several cities which were eventually abolished.⁴⁸ The development of this institution is currently only five in Indonesia, namely in Medan, Jakarta, Semarang, Surabaya and Makassar.⁴⁹ It is now the same number as the Commercial Courts in Indonesia. There are also five commercial courts in Indonesia, namely in Medan, Jakarta, Semarang, Surabaya, and Makassar.

The position of the property and heritage agency is currently the same as the Commercial Court in Indonesia. It is interesting that there is an opinion stating that there is a need to add a Commercial Court in Indonesia, but whether the institution will also be added simultaneously with the establishment of a new Commercial Court. This opinion is interesting because there is no urgency regarding the establishment of the Commercial Court due to the fact that the need for the establishment of the Commercial Court does not yet exist.⁵⁰ The establishment of a new Commercial Court has not been deemed necessary because the number of existing Commercial Courts and established Depositories property and heritage agency compared to the number of bankruptcy cases is still considered adequate in handling bankruptcy cases. Figure 1 shows that cases filed with the Commercial Court can still be relatively resolved by the Commercial Court and are still relatively small in quantity.

The duties of the property and heritage agency of Semarang have evolved. The duties and functions of the institution have generally changed. The eight functions are as follows Guardianship, Collection, Bankruptcy, Registration and Issuance of Deed of Testament, Administration of Absenteeism, Certificate of Inheritance Rights, Handling of abandoned assets, Third Party Money Administrator.⁵¹

46 Syahrial Sidik. "Sejarah Pengadilan" Accessed May 7, 2023. <https://pt-makassar.go.id/tentang-pengadilan/profil-pengadilan/sejarah-pengadilan/>.

47 Raisa Inayati, *Tugas, Wewenang dan Tanggung Jawab Balai Harta Peninggalan Dalam Pemberesan Harta Pailit (Studi Kasus Pt Trisakti Putra Mandiri)*, Thesis, not published, (Yogyakarta: Laws Study Program, Faculty of Law Universitas Gadjah Mada, 2014), 46.

48 Muhammad Najib, "Kedudukan dan Peranan Balai Harta Peninggalan dalam Mengurus dan Membereskan Harta Pailit," *Hukum dan Kenotariatan* 2, No. 1 (2018), 99.

49 Desi Yani and Tengku Erwinsyahbana, "Perlindungan Hukum Terhadap Harta Warisan Anak Melalui Revitalisasi Balai Harta Peninggalan (BHP)," *Notarius* 1, No. 1 (2022), 13.

50 Tata Wijayanta, "Urgensi Pembentukan Pengadilan Niaga Baru," *Mimbar Hukum* 22, No. 2 (2010), 333.

51 Super User, *Op.Cit.*

The eighth task or administration of third party money is a new task regulated in 2019 with the issuance of Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 20 of 2019 concerning Administration of Third Party Money at the Property and Heritage Agency which revokes Regulation of the Minister of Law and Human Rights Number 13 of 2013 concerning Receipt and Management of Manpower Social Security Program Funds at the Property and Heritage Agency. This institution before being given the mandate to carry out the task of managing third party money was as a recipient and manager of social security agenda money to workers. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 20 of 2019 concerning Administration of Third-Party Money at the property and heritage agency revokes the task as recipient and manager of labor social security funds and replaces it by giving the task as an administrator of funds from third parties. The administration of third-party funds is the recording, accounting, and submission to the state of the money of persons or legal entities who based on a court decision are declared absent or unknown, persons under supervision, and persons who die and do not have family or heirs. This institution generally develops in its duties and functions as a Technical Implementation Unit of the Director General of General Legal Administration of the Ministry of Law and Human Rights.

Developments have also occurred in the duties and functions of the Property and Heritage Agency of Semarang specifically in the field of bankruptcy, namely with the Minister of Law and Human Rights of the Republic of Indonesia Regulation Number 41 of 2021 concerning Organization and Work Procedures of the Ministry of Law and Human Rights. The Ministerial Regulation has fundamentally changed the duties and functions of the institution. The real change occurred in 2015 with the issuance of Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 29 of 2015 concerning the Organization and Work Procedure of the Ministry of Law and Human Rights of the Republic of Indonesia. Ministerial Regulation Number 29 of 2015 provides changes regarding the separation or differentiation of duties for the institution. The separation of duties is regarding inherited property and state curators. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 41 of 2021 concerning Organization and Work Procedures of the Ministry of Law and Human Rights still regulates the differentiation regulated by Ministerial Regulation Number 29 of 2015. The separation is between the duties and functions regarding inheritance such as guardianship or guardianship and state receivership in bankruptcy cases.

The implication of the separation of the estate and the state curator is the separation of the employees who handle these matters, but there has not been a separation between inherited property and state curators. The separation of employees is important because it is irrelevant if the employees are still united to handle inheritance and

bankruptcy cases. The fields of inheritance and bankruptcy are of course quite different even though they remain in one corridor, namely civil law. Bankruptcy can be dominantly economic because it is in contact with business. The separation of the employees of the property and heritage agency is a positive thing for the development of the institution itself. The employees of the institution are required to be experts in the task at hand as a form of responsibility. Expert employees must also follow the development of the fields they are working on. Employees must keep abreast of all the developments in the duties of the property and heritage agency because they can handle the eight duties of the institution. The development of the eight tasks of the institution is not possible if it must be followed by an employee.

The separation between the estate and the state curator will have a positive impact on creating more competent human resources than now, because employees who handle bankruptcy cases will focus more on handling bankruptcy cases and employees who handle cases about the estate will focus more on handling estate cases. Employees handling one area will be better able to keep up with future developments. The growth of the estate and curator field is rapidly following economic and technological developments. Changes in bankruptcy will also be more rapid along with the developments experienced by technology and the economy which have also experienced rapid development recently. The employees of the Property and Heritage Agency are certainly required to be able to adapt to existing developments, so that they can provide services and provide maximum services.

D. CONCLUSION

Changes in the formation of curators occurred when Law No. 37/2004 was enacted by adding Individual Curators, which has implications for the Property and Heritage Agency, namely the division of the number of cases handled regarding bankruptcy. When this institution was the sole administrator and insolvency of bankruptcy assets, all cases would be handled by this institution. The two curators caused the cases to be divided into two. The quantity handled by the Property and Heritage Agency of Semarang for three years shows that in practice this institution tends to be less attractive. The figure above shows that the property and heritage agency has handled fewer bankruptcy cases, even though this institution is not limited to the number of cases it is handling unlike individual curators who are limited to handling three cases at the same time in accordance with Article 15 paragraph (3) of Law No. 37 of 2004. The development of the Property and Heritage Agency of Semarang in general experienced a difference with the issuance of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 20 of 2019 concerning Administration of Third Party Money which mandates the task of administering third party money to this institution, namely a person or legal entity who based on a court decision is declared absent or unknown, a person who is under supervision, and a person who dies and he has no

family or heirs. The development of this institution specifically in the field of bankruptcy is with the issuance of Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 41 of 2021 concerning Organization and Work Procedures of the Ministry of Law and Human Rights which regulates the separation of inheritance and bankruptcy (state curator). This separation of duties and functions has a positive impact on the institution itself. The separation has a positive impact on the human resources or employees of the institution. The employees of this institution will be more focused on following the development of the bankruptcy field which is also growing rapidly. The rapid development of bankruptcy is certainly due to the fact that the bankruptcy field is a mixture of legal and economic fields. The economic field is growing rapidly along with technological developments which have recently experienced rapid growth.

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