

Ideal Formulation of Control of Bankrupt Debtors' Assets Based on Positive Law

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Abstract. *This study aims to examine the curator's responsibility in managing the assets of bankrupt debtors and analyze cases of violations that occur. This study uses a qualitative method with a normative legal approach, focusing on the regulations that m11/Pdt.Sus-PKPU/2019/PN Smg are used to provide a real picture of the complexity and challenges in carrying out responsibilities as a curator. The results of the study indicate that the implementation of the curator's responsibility in managing and settling the assets of bankrupt debtors is in accordance with the provisions of Law Number 37 of 2004. However, curators still face various obstacles such as the complexity of debtor assets, legal and regulatory challenges, limited resources, and the involvement of third parties. To overcome these obstacles, curators need to improve their competence through ongoing training, strengthen technological infrastructure, and ensure adequate resource support. These efforts help curators carry out their duties more efficiently and professionally, as well as protect the interests of all parties involved in the bankruptcy process.*

Keywords: *Assets; Bankruptcy; Curator.*

1. Introduction

Bankruptcy is a condition in which a debtor is unable to pay debts that have matured and can be collected by creditors. In Indonesia, the bankruptcy mechanism is regulated by Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU). In the bankruptcy process, the curator has an important role in managing and settling the bankrupt's assets. The curator is responsible for ensuring that the rights of creditors and debtors are

fulfilled in accordance with applicable laws.¹ However, in its implementation, there are many challenges that hinder the effectiveness of the curator's work.²

In a bankruptcy study conducted by Huijgen and de Vries in the Netherlands, it was found that curators often faced difficulties in compiling an inventory of debtor assets due to obstacles arising from poor cooperation between the parties involved, such as debtors and creditors.³ This is similar to the situation in Indonesia, where coordination between the parties involved in the bankruptcy process is often a problem. Obstacles such as the existence of assets spread across various regions and resistance from debtors or creditors can slow down the bankruptcy resolution process.

The bankruptcy system in the United States, regulated by the US Bankruptcy Code through Chapter 7 and Chapter 11, offers a more flexible alternative in handling bankruptcy cases. Under Chapter 7, the debtor's assets are sold to pay creditors, while Chapter 11 allows the debtor to restructure its debts and continue to operate the business.⁴ This restructuring process is similar to the Debt Payment Suspension (PKPU) mechanism in Indonesia, which provides an opportunity for debtors to prepare a debt restructuring plan to avoid total bankruptcy.⁵

However, although various efforts have been made to improve the bankruptcy system in Indonesia, the issue of transparency and accountability in the implementation of the curator's duties is still a major concern. In a study conducted by Marwa et al., it was found that the lack of transparency in the debtor's financial statements often leads to creditor distrust, which in turn prolongs the bankruptcy resolution process. In some cases, curators are also accused of not being optimal in managing the assets of bankrupt debtors, which can worsen the financial condition of the debtor and reduce the results obtained by creditors.⁶

Along with economic development and the complexity of bankruptcy cases, the challenges faced by curators are increasing. Research conducted by Setiawan shows that one of the inhibiting factors in resolving bankruptcy in Indonesia is the lack of adequate human resource support on the part of the curator. Curators who

¹Adrian Sutedi, SHMH, *Bankruptcy Law*, (Bogor: Ghalia, 2009), p. 39

²Imran Nating, *The Role and Responsibilities of the Curator in the Management and Settlement of Bankrupt Assets*, Jakarta; PT. Raja Grafindo Persada, 2005. p. 54

³Qiuyuan Lei, et al, "MaPPing The Themes Underlying The Literature On Cross-Listing Of Shares— A Contemporary Corporate Strategy Of Sustainable Growth", *Sustainability* 15.12: 9316, 2023.

⁴Alimbayev Oglı Jakhongir Davron, "A Comparative Legal Analysis Of Insolvency (Bankruptcy) Of Individuals Under Uzbekistan and Foreign Legislation", *Texas Journal Of Multidisciplinary Studies* 25, 2023, Pg. 150-154.

⁵Sunarmi, *The Principle of Balance in Bankruptcy Law in Indonesia*, 2nd Edition, Softmedia, Jakarta, 2010, p. 69

⁶Rahayu Hartini, *Bankruptcy Law*, UMM Press Revised Edition, Second Printing, Jakarta, 2004, p. 15

do not have access to accurate and up-to-date financial information on debtors will have difficulty in making the right decisions regarding asset management.

Based on this background, this study aims to explore the ideal formulation of the implementation of control of bankrupt debtor's assets based on positive law in Indonesia. This study will use a case study of Case Number 11/Pdt.Sus-Pailit/2020/PN Smg Jo Number: 11/Pdt.Sus-PKPU/2019/PN Smg. to identify the obstacles faced by the curator and find solutions that can increase the effectiveness and fairness in the implementation of bankruptcy.

2. Research Methods

The research method used in this study is a qualitative method with a descriptive approach, where the main data is obtained through direct interviews with relevant sources, namely the curator involved in Case Number 11 / Pdt.Sus-Pailit / 2020 / PN Smg Jo Number 11 / Pdt.Sus-PKPU / 2019 / PN Smg. The data obtained from this interview is the primary source, while secondary data comes from various library sources such as journals, laws, books, theses, and internet sources. Data collection was carried out through field studies to obtain direct information related to the role of the curator in the bankruptcy process. All data obtained, both from primary and secondary sources, were then analyzed using a qualitative analysis method with a descriptive approach. This analysis process aims to provide a clear and comprehensive picture of the role of the curator in the bankruptcy process and to evaluate the effectiveness of the application of law in the field, by linking field findings with relevant literature and regulations.

2. Results and Discussion

3.1. Case No. 11/PDT.SUS-BANKABLE/2020/PN.SMG Jo No. 11/PDT.SUS-PKPU/2019/PN.SMG

In the bankruptcy case registered with case number 11/Pdt.Sus-Pailit/2020/PN.Smg Jo 11/Pdt.Sus-PKPU/2019/PN.Smg, one of the entities involved is PT. HARDIMAS KOKOH MANDIRI. This company is a Limited Liability Company established based on Deed of Establishment No. 32 dated August 13, 2004 and has undergone changes notarized by Deed No. 11 on December 4, 2014. The notary who handled the establishment and changes to this deed is Tini Prihatini Sriwidiyoko, SH, M.Kn.

The Supervising Judge in this case is Edy Suwanto, SH, MH, while the Chief Justice position is filled by Aloysius P. Bayu Aji, SH, MH. The Member Judges involved are Pudjo Hunggul HW, SH, MH, who was appointed based on the determination of the Chief Justice of the Commercial Court at the Semarang District Court. During the trial process, the verdict was pronounced by the Chief Justice who was accompanied by Member Judges and assisted by Afdlori, SH, MH, as the Substitute Clerk at the Semarang District Court.

The public hearing was attended by creditors, administrators, and the debtor's attorney. However, the debtor was not present at the hearing. The debtor's absence from the hearing did not hinder the legal process. Other parties involved, including the applicant, respondent, curator, and commercial court judge, participated in the hearing to ensure that the verdict could be taken fairly.

One of the legal impacts of bankruptcy is the loss of the bankrupt debtor's right to control and manage his assets since the bankruptcy verdict was pronounced by the panel of judges. However, there are certain exceptions where the bankrupt debtor still has authority over several aspects. For example, the bankrupt debtor can still take care of his family or carry out a marriage. This shows that not all of the bankrupt debtor's rights are completely lost.

With this court decision, the bankrupt debtor loses control over the management of his assets, which are then transferred to the curator to manage. The role of the curator becomes very important in managing and resolving the bankrupt estate for the benefit of the creditors. The Supervisory Judge monitors the performance of the curator to ensure that the bankruptcy process is carried out in accordance with applicable law and protects the rights of all parties involved.

PT. HARDIMAS KOKOH MANDIRI is a company engaged in various sectors, including construction, industry, trade, land transportation, livestock, agriculture, and services. This company is currently in bankruptcy status based on a court decision. The company's main directors have full responsibility to represent the company in creditor meetings in accordance with the explanation of Article 1 paragraph (5) of Law No. 40 of 2007 concerning Limited Liability Companies, which states that the directors are responsible for the management of the company inside and outside the court.

The bankruptcy application filed by PT. HARDIMAS KOKOH MANDIRI has fulfilled the provisions of Article 2 paragraph (1) of the Bankruptcy Law. In addition to the debtor himself, a bankruptcy application can also be filed by creditors or other parties such as the Attorney General's Office, Bank Indonesia, the Minister of Finance, and Bapepam. Creditors in this case can be preferred creditors, separatist creditors, or concurrent creditors. In this case, the applicant is PT. HARDIMAS KOKOH MANDIRI itself, which states that the sale and purchase agreement has matured and can be collected.

In the ongoing trial, the Commercial Court at the Semarang District Court granted the request for a temporary Suspension of Debt Payment Obligations (PKPU) for 45 days, starting from the date the verdict was pronounced. The Commercial Judge appointed as the Supervisory Judge is H. Muhammad Yusuf, SH, MH, and Denas Pamungkas, SH, was appointed as the Curator and Administrator. The Administrator is tasked with summoning the applicant and known creditors to attend the trial scheduled for August 22, 2019 at the Semarang District Court.

The court also decided to suspend the PKPU application fee and determine the management fee and service fee for the administrator after the PKPU ends. In the Voting Meeting regarding the Peace Plan and Permanent PKPU Application, the peace plan submitted by PT. HARDIMAS KOKOH MANDIRI was rejected by creditors. The appointed Commercial Judge is Muhammad Yusuf, SH, MH, and Denas Pamungkas, SH, was reappointed as Curator in this bankruptcy.

PT. HARDIMAS KOKOH MANDIRI is declared bankrupt with all its legal consequences. The curator is assigned to manage and settle the company's bankrupt assets in accordance with applicable laws. The court also stipulates that bankruptcy costs and service fees for the Curator will be determined after the Curator completes his duties. In addition, the company is required to pay court costs of IDR 2,246,000, (two million two hundred and forty-six thousand rupiah).

3.2. Implementation of Curator's Responsibilities in the Management and Settlement of Bankrupt Debtor's Assets

The curator's responsibility in managing and settling the assets of bankrupt debtors does not always run smoothly in accordance with the provisions of the Bankruptcy Law. Curators often face various obstacles that slow down their work process. For example, there are debtors who are unwilling to comply with court decisions or are reluctant to provide access to data and information regarding assets declared bankrupt. This condition certainly complicates the curator's task and prolongs the bankruptcy process.⁷

In the bankruptcy case of PT. HARDIMAS KOKOH MANDIRI (In Bankrupt), the appointment of a curator is very important to manage and settle the bankrupt debtor's estate. The Decision of the Commercial Court at the Semarang District Court No. 11/Pdt.Sus-Pailit/2020/PN.Smg Jo No. 11/Pdt.Sus-PKPU/2019/PN.Smg dated March 17, 2020 appointed Denas Pamungkas, SH, as the curator for the company. The main task of the curator is to manage and settle the debtor's bankrupt estate to ensure that all processes are carried out according to law and the rights of creditors are protected.

The implementation of the curator's duties cannot be done independently. The curator must always coordinate with the Supervisory Judge to arrange the creditor meeting schedule. In addition, the curator must also submit two daily newspapers, namely one national newspaper and one local newspaper, which will be determined by the Supervisory Judge⁸. This media is used to announce bankruptcy

⁷ Alusianto Hamonangan, et al., "The Role of Curators in the Bankruptcy of Limited Liability Companies", Pkm Maju Uda 2.1, 2021, p. 20-34.

⁸ Prayogo Hindrawan, et al. "Responsibility of Curator in Applying the Principle of Pari Passu Prorata Parte in the Management and Settlement of Bankrupt Assets", Locus Journal Of Academic Literature Review, 2023, p. 720-732.

decisions and invite creditors, debtors, and the general public to attend creditor meetings.

In addition, it is important for the curator to ensure that all creditors are aware of the debtor's bankruptcy situation. By announcing the bankruptcy decision in the designated media, the curator helps ensure that creditors who were previously unaware of the debtor's bankruptcy situation receive clear and timely information.⁹ This is important for transparency and fairness in the bankruptcy process.

The curator's task in managing and settling the assets of a bankrupt debtor involves many aspects, from administration to communication. The curator must ensure that all steps are taken carefully to comply with applicable legal provisions and minimize potential conflicts. The success of the bankruptcy process depends greatly on how the curator can overcome the various challenges and obstacles that arise during the process.

According to Article 185 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, the curator has the authority to sell the bankrupt's assets in public through an auction institution after the receivables verification meeting is completed and the nature and amount of creditors' claims have been determined by the supervising judge. If the public sale fails to attract buyers, the curator can conduct a private sale with permission from the supervising judge.¹⁰ This process must be carried out in accordance with the procedures set out in laws and regulations to ensure transparency and fairness for all parties involved.

Costs incurred during the bankruptcy process, including the cost of announcing bankruptcy in a daily newspaper, are the responsibility of the curator. The curator is allowed to make loans to third parties to meet bankruptcy financing needs.¹¹ However, the curator must be careful in spending costs so as not to harm the bankrupt estate. Before determining which newspaper will be used for the announcement, the curator needs to compare the prices offered by various newspaper media to find the most economical price. Thus, the curator can minimize costs and ensure that the available funds are used efficiently.

In carrying out their duties, curators must also always coordinate with the supervising judge. This coordination is important to ensure that every step taken

⁹ Amanda Raissa, Avira Rizkiana Yuniar, and Anita Gladina Ayu Nurhayati, "Weaknesses of Curators in the Settlement of Bankrupt Assets", *Magnum Opus Law Journal* 3.2, 2020, p. 457-598.

¹⁰ Muhammad Prawira Syeisar Nanda, "Curator's Liability for Causing Losses in the Settlement of Bankrupt Estates", *Dinamika* 27.5, 2021, p. 662-678.

¹¹ Sandy Mahardika Putra, "Curator's Liability for Causing Losses in the Settlement of Bankrupt Estate According to Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations and Debt Payment", *Indonesian Law Journal*, 2022, P. 47.

by the curator is in accordance with applicable legal provisions and has the approval of the supervising judge. This includes determining the schedule for creditor meetings and selecting media for announcing bankruptcy decisions. With good coordination, curators can carry out their duties more effectively and avoid potential legal problems in the future.

The curator's responsibility is not only limited to the management and settlement of bankrupt assets, but also includes protection of creditors' rights. The curator must ensure that the bankruptcy settlement process is transparent and fair, so that creditors receive an appropriate share of the proceeds from the settlement of bankrupt assets.¹² In addition, the curator must be able to adapt to various situations and challenges that arise during the bankruptcy process to achieve optimal results for all parties involved.

Often, even though the curator has announced the bankruptcy decision in several daily newspapers and state news, there are still many creditors who do not know the condition of the debtor's bankruptcy. This is often caused by the unwillingness of the bankrupt debtor to provide information to his creditors. Therefore, in the interests of creditors, the curator usually asks the bankrupt debtor to provide complete information along with the addresses of his creditors and submit related documents.

In accordance with Article 85 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, within a maximum period of five days after the bankruptcy declaration decision is received by the curator and the supervisory judge, the curator must notify known creditors of the holding of a creditors' meeting.¹³ This notification is made by registered mail or courier and also by advertisement in at least two daily newspapers. This is to ensure that all interested creditors can attend and know the progress of the bankruptcy process. Based on these provisions, the curator team of PT HARDIMAS KOKOH MANDIRI (In Bankrupt) has sent letters to known debtors and creditors.

In carrying out its duties, the curator is also responsible for receiving and verifying receivables documents. If there are deficiencies in the documents submitted by the creditor, the curator will negotiate with the creditor and request that the supporting documents be completed. This is in accordance with Article 116 paragraph (1) letters a and b of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. The curator is required to match the calculation of receivables submitted by the creditor with the notes made

¹² Ibnu Sahrul Ibrahim, Tofik Yanuar Candra, and Roni Pandiangan, "Criminal Liability of Curators Who Use Forged Letters in Bankrupt Asset Management", *Sentri: Scientific Research Journal* 3.5, 2024, p. 2381-2389.

¹³ Albert Davidson, "Curator's Actions on Bankrupt Debtor's Assets Reviewed from the Republic of Indonesia Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations", 2022.

previously and the statement from the bankrupt debtor. If there is an objection from the creditor to the collection received, the curator must negotiate to reach an agreement.¹⁴

The role of the curator in resolving bankruptcy also includes holding creditor meetings. This meeting aims to facilitate interested parties such as creditors, supervisory judges, and bankrupt debtors to find out the progress of the management and settlement of bankrupt assets carried out by the curator. The schedule of creditor meetings is determined by the supervisory judge after coordinating with the curator. This is important to ensure that the process runs according to plan and all parties involved can follow the development of the case properly.

According to Article 85 paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations Law, the supervisory judge acts as chairman in the creditor meeting, and the curator must attend the meeting. In addition, based on Article 86 paragraph (3) of the Bankruptcy and Suspension of Debt Payment Obligations Law, the curator must notify the schedule of the first creditor meeting to known creditors by registered mail or courier and by advertisement in at least two daily newspapers. This announcement must be in accordance with the provisions of Article 15 paragraph (4) letter e of the Bankruptcy and Suspension of Debt Payment Obligations Law.

At the first creditor meeting held at the Commercial Court at the Semarang District Court, the curator of PT. HARDIMAS KOKOH MANDIRI (In Bankrupt) provided a report on the curator's work since the bankruptcy decision until the first creditor meeting was held. In addition, the curator also conveyed the work agenda to the creditors and debtors present, so that they could find out the curator's work plan and provide input if necessary.

In every creditor meeting, the curator has the responsibility to ensure the presence of the bankrupt debtor or to represent him if necessary. One of the important moments in the first creditor meeting is the opportunity for the curator to request and examine documents related to the assets and companies owned by the bankrupt debtor.¹⁵ This is in accordance with Article 113 paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations Law, which stipulates that the supervisory judge must determine the final deadline for submission of claims by creditors within 14 days after the bankruptcy decision is pronounced.

¹⁴ Moh Saleh, et al., "Curator as Executor in Settlement of Bankruptcy Cases", *Journal of Notary Treatise* 2.1, 2021.

¹⁵ Duarjon Simalango, Marzuki Marzuki, and Mukidi Mukidi, "Criminal Liability by Curators for Their Actions that Harm Bankrupt Bundles (Case Study of Central Jakarta District Court Decision Number 2081/Pid, B/2011/Pn, Jkt, Pst)", *Scientific Journal of Metadata* 5.3, 2023, p. 126-138.

The submission of claims by creditors must be accompanied by a calculation or written statement explaining the nature and amount of receivables owned. The curator is responsible for receiving claims from creditors and ensuring that the documents are complete. In addition, the curator must also process requests for receipt of documents that have been submitted to the curator, in accordance with the creditor's request.

The curator's responsibilities in the bankruptcy process also include the completion of creditors' meetings, which are an important forum for the parties involved to discuss and make decisions regarding the management and settlement of the bankrupt's estate. The curator must ensure that creditors' meetings are held in accordance with applicable provisions and that all decisions taken during the creditors' meetings are based on proper procedures.

In addition, the curator must also provide clear and transparent explanations to creditors and debtors regarding the ongoing bankruptcy process, including the steps to be taken next in the management and settlement of the bankrupt estate. Effective communication between the curator, creditors, and debtors is essential to ensure that the bankruptcy process runs smoothly and fairly for all parties involved.¹⁶By fulfilling these responsibilities, the curator can help ensure that the assets of the bankrupt debtor are properly managed and distributed to pay receivables to creditors.

The curator in the management and settlement of the bankrupt debtor's assets involves a careful assessment process of the claims submitted by the creditors. The curator must carefully examine the billing documents, calculate the amount, and ensure the validity and accuracy of the information contained therein. This is important to prevent losses that may arise from false or invalid bills submitted to the bankrupt estate.¹⁷

In addition, the curator also has an important role in completing the receivables verification meeting, where the bankrupt debtor and his creditors gather to examine and match the submitted claims. The presence of the bankrupt debtor in this meeting is very important, because his absence can be considered as an acknowledgment of all the claims submitted by his creditors. Therefore, the curator must ensure that the bankrupt debtor is present at the receivables verification meeting to minimize the risk of recognizing the value of the claim that is not in accordance.

¹⁶ Rachmat Ihya, "The Authority of the Curator in the Management and Settlement of Bankrupt Assets", *Syariah: Journal of Legal Studies* 1.1, 2023, p. 71-83.

¹⁷Fauzi, Masyhurul, and Elvira Dewi Ginting. "The Defamation of Debt Posts on Social Media Accounts (Study of Medan District Court Decision NO. 3563/PID. SUS/2019/PN MDN)." *Jurnal Daulat Hukum* 7.2: p. 244-260.

In dealing with claims filed by creditors of PT. HARDIMAS KOKOH MANDIRI (In Bankrupt), the curator is responsible for assessing the validity and truth of the claims. This involves in-depth knowledge of bankruptcy laws and suspension of debt payment obligations, as well as a good understanding of the financial situation of the bankrupt company. Thus, the curator can make the right and fair decisions in responding to claims filed by creditors.

During the receivables matching meeting process, the curator must facilitate discussions between the bankrupt debtor and his creditors to reach a fair and mutually beneficial agreement.¹⁸ The curator must also monitor this process closely to ensure that each party complies with the procedures set out in the bankruptcy law.¹⁹ In doing so, the curator can help facilitate an efficient and fair bankruptcy resolution for all parties involved.

The curator's responsibilities in managing the bankruptcy process also include taking steps necessary to protect the interests of the bankrupt company. This includes rejecting claims that are deemed invalid or unfounded, as well as securing the assets of the bankrupt company to ensure that they can be used to pay receivables to creditors. By fulfilling these responsibilities, the curator can help ensure that the bankruptcy process runs smoothly and fairly for all parties involved.²⁰

The curator's responsibility in managing and settling the assets of the bankrupt debtor is not only limited to the process of matching receivables between the bankrupt debtor and its creditors. In addition, the curator is also responsible for ensuring that the entire process is carried out in accordance with the provisions of applicable laws. This includes providing reports on the condition of the bankrupt assets and the results of the receivables matching meeting to be provided to the court clerk.

In addition, the curator must also ensure that information regarding creditor claims that are accepted or rejected can be accessed by the public at large, especially the creditors involved. Therefore, the curator also provides the list in

¹⁸Rezha Abdillah Zulfikar, "Implementation Of Copyright In Intellectual Property Law As A Credit Guarantee Object In Banks Based On Government Regulation No, 24 Of 2022", *Journal of Sovereign Law* 7.2, 2024, P. 172-183.

¹⁹ Rumelda Silalahi, and Onan Purba, "The Role and Authority of the Curator in the Bankruptcy of Limited Liability Companies", *Retentum Journal* 2.2, 2020.

²⁰ Patar Sitinjak Bronson, Mukidi Mukidi, and Adil Akhyar, "Analysis of the Curator's Authority in Settling Debtors' Debts to Creditors Due to Bankruptcy from the Perspective of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Study of Supreme Court Decision No. 1021/K/Pdt, Sus-Pailit/2018)", *Scientific Journal of Metadata* 4.1, 2022, p. 251-271.

the commercial court announcement, so that interested parties can find out the status of each creditor's claim.²¹

In making decisions regarding the recognition of claims from bankrupt debtors and their creditors, the curator must adhere to the available evidence and ensure that the claims submitted meet the stipulated requirements. If there are claims that do not meet the requirements, the curator has the right to reject them and ask their creditors to provide more complete or valid evidence.

In addition, the curator must also be aware of the possibility of cooperation between the bankrupt debtor and its creditors to take advantage of the bankruptcy situation. This can occur in the form of recognition of the value of the bill that does not correspond to reality or other efforts aimed at deceiving the curator. Therefore, the curator must remain objective and not be easily influenced by baseless claims.

3.2. Obstacles Faced by Curators in Carrying Out Duties of Managing and Settlement of Bankrupt Debtors' Assets and Their Solutions

The curator has a very vital role in the bankruptcy process. His duties include managing and settling the assets of the bankrupt debtor. Although this task sounds simple, in practice, curators often face a number of complex obstacles. This section discusses several obstacles commonly faced by curators and efforts that can be made to overcome them.

One of the main challenges faced by receivers is the complexity of assets held by bankrupt debtors. Debtors often have large and diverse portfolios of assets, including property, shares, bank accounts, and even intangible assets such as receivables and licenses. Identifying, valuing and managing these assets requires extensive expertise and experience.

"I often face complexities in managing bankrupt debtor assets," said Mr. Soedirman. "Each case has its own challenges related to the amount and type of assets to be managed."

The bankruptcy process is governed by a variety of complex laws and regulations. The receiver must have a good understanding of the legal framework governing bankruptcy and have in-depth knowledge of the related legal procedures. This challenge can be further complicated if there are differences in interpretation of the law between the parties involved in the bankruptcy process.

²¹ Meriyanti Mesak, Sufiarina Sufiarina, and Eny Jaya, "Responsibility for the Curator's Negligence in the Management and Settlement of Bankrupt Assets Study of the Supreme Court Decision No. 110 Pk/Pdt, Sus-Pailit/2018", *Causa: Journal of Law and Citizenship* 2.5, 2024, pp. 35-45.

"Legal and regulatory challenges are an important part of my job as a curator," Mr. Soedirman explained. "I must always ensure that all the steps I take are in accordance with applicable legal provisions."

Receivers often face resource constraints, whether in terms of time, manpower, or budget. The bankruptcy process requires a significant investment in human and financial resources to ensure that all debtor assets are properly managed and settled. However, not all receivers have equal access to the necessary resources.

"Limited resources can be a challenge, especially in terms of time and manpower," Mr. Soedirman said. "I have to make sure that I use the available resources efficiently to complete the tasks at hand."

In some cases, the involvement of third parties such as creditors, shareholders, or other related parties can be an obstacle in the bankruptcy process. For example, creditors may have interests that conflict with the curator's efforts to resolve the bankruptcy quickly and efficiently. In addition, there may be disputes about the rights and claims to the debtor's assets.

"I always try to maintain good communication with all parties involved in the bankruptcy process," said Mr. Soedirman. "Open and transparent communication is very important to reach a mutually beneficial agreement for all parties."

Although technology has brought great progress to many aspects of life, in the world of bankruptcy, many curators still face limitations in terms of technology. Curators often rely on manual processes that are time-consuming and prone to human error. This can slow down the process and increase the risk of errors.

"I am always looking for ways to improve my technology infrastructure," Mr. Soedirman said. "While it is not always easy, investing in technology can help improve the efficiency and accuracy of my duties as a curator."

The curator has a very vital role in the bankruptcy process. His duties include managing and settling the assets of the bankrupt debtor. Although this task sounds simple, in practice, the curator often faces a number of complex obstacles. Based on the results of the interview with Mr. Soedirman, several obstacles faced by the curator in carrying out the task of managing and settling the assets of the bankrupt debtor and their solutions can be summarized as follows:

1. Complexity of Debtor Assets

One of the main challenges faced by receivers is the complexity of assets held by bankrupt debtors. Debtors often have large and diverse portfolios of assets, including property, shares, bank accounts, and even intangible assets such as receivables and licenses. Identifying, valuing and managing these assets requires extensive expertise and experience.

The solution to overcome this complexity is to conduct a thorough audit of the debtor's assets from the beginning of the bankruptcy process. The curator needs to work with a team of experts such as accountants and property appraisers to ensure that all assets are located and valued correctly. The use of technology can also help in efficient asset management.²²

2. Legal and Regulatory Challenges

The bankruptcy process is governed by a variety of complex laws and regulations. The receiver must have a good understanding of the legal framework governing bankruptcy and have in-depth knowledge of the related legal procedures. This challenge can be further complicated if there are differences in interpretation of the law between the parties involved in the bankruptcy process.

To overcome these legal and regulatory challenges, curators need to continually update their knowledge of legal developments related to bankruptcy. Collaboration with an experienced legal team can also help curators navigate the legal complexities and ensure that all steps taken are in accordance with applicable legal provisions.²³

3. Limited Resources

Receivers often face resource constraints, whether in terms of time, manpower, or budget. The bankruptcy process requires a significant investment in human and financial resources to ensure that all debtor assets are properly managed and settled. However, not all receivers have equal access to the necessary resources.

To overcome resource constraints, the curator needs to undertake careful and efficient planning. This includes the allocation of appropriate resources to each stage of the bankruptcy process as well as the identification and utilization of available external resources, such as consulting or financial services.²⁴

4. Third Party Involvement

In some cases, the involvement of third parties such as creditors, shareholders, or other related parties can be an obstacle in the bankruptcy process. For example, creditors may have interests that conflict with the curator's efforts to resolve the bankruptcy quickly and efficiently. In addition, there may be disputes about the rights and claims to the debtor's assets.

²² Chandra Arsana Yudi, Sukarno Abuhuraera, and Syamsuddin Pasamai, "Effectiveness of Bankrupt Asset Management and Settlement by Curators in Bankruptcy Cases", *Journal Of Lex Generalis (Jlg)* 1.7, 2020, p. 928-941.

²³ Paulus Sirait, et al., "Revocation of Bankruptcy Decision in Case of Bankrupt Assets Not Sufficient to Pay Bankruptcy Costs", *Jurnal Usm Law Review* 6.3, 2023, p. 1279-1294.

²⁴ Nicky Singal Yehezkiel, "Legal Study of Curator's Responsibilities in Settlement of Bankruptcy Cases Post Commercial Court Decision", *Lex Privatum* 10.1, 2022.

To overcome these challenges, curators need to maintain open and transparent communication with all parties involved in the bankruptcy process. This includes providing clear information about progress and developments to creditors and other parties on a regular basis. Good collaboration with third parties can also help resolve disputes and reach mutually beneficial agreements.²⁵

5. Technology Limitations

Although technology has brought great progress to many aspects of life, in the world of bankruptcy, many curators still face limitations in terms of technology. Curators often rely on manual processes that are time-consuming and prone to human error. This can slow down the process and increase the risk of errors.

To overcome technological limitations, trustees need to invest time and resources to improve their technology infrastructure. This includes implementing specialized software designed for insolvency management, automating repetitive processes, and training staff in the use of new technology. By leveraging technology wisely, trustees can improve the efficiency and accuracy of their duties.²⁶

3.3. Examples of Bankruptcy That Occur Between Countries

Recognition and Implementation of Japanese Bankruptcy Law in Other Countries
Before the amendment of the bankruptcy law, Article 3 of the Bankruptcy Law stipulated that in principle the effect of a bankruptcy decision on a debtor in Japan only covers the debtor's bankruptcy assets located within the territory of Japan. However, a curator may take the debtor's assets located outside the jurisdiction of Japan, as long as the curator acts as the attorney of the bankrupt debtor and has the authority to take the debtor's assets. However, with the enactment of Law 129/2000, the territoriality principle has been replaced by the universality principle so that the effect of a bankruptcy decision issued by the Japanese District Court also covers the debtor's bankruptcy assets located outside the territory of Japan as long as the application for recognition of the Japanese bankruptcy decision is accepted and recognized by the foreign court.²⁷

Recognition and Enforcement of Foreign Bankruptcy Law in Japan
Since the enactment of Law 129/2000, a bankruptcy decision from a foreign court can be enforced in Japan if there is recognition from the Japanese Court which is

²⁵ Lathifatun Najah, et al., "Analysis of Actio Pauliana as a Curator's Effort in Bankruptcy in a House Confiscation Case by a Bank. Case Study: House Confiscation by a Bank", *Diponegoro Private Law Review* 10.2, 2023, p. 122-141.

²⁶ Debi Zulkarnain, Maryano Maryano, and Marni Emmy Mustafa, "Legal Certainty of Deeds of Granting Mortgage Rights Without the Curator's Knowledge of Bankrupt Debtor's Assets and Its Legal Consequences", *Sentri: Scientific Research Journal* 3.3, 2024, p. 1309-1317.

²⁷ Jane LeMaster, "Recent Developments In Selected Asian Countries' Bankruptcy Laws: Should Multinational Company Strategists Be Concerned?", *International Business & Economics research Journal*, 2010, P. 4148.

authorized to determine the recognition of the validity of foreign bankruptcy law against the debtor's bankrupt assets in the territory of Japan. The recognition is given by first submitting an application from the debtor or foreign representative to the Japanese Court for recognition of foreign bankruptcy law as long as the debtor resides/is domiciled or has an office or conducts business activities in the jurisdiction of the country where the foreign bankruptcy decision was determined. The application for recognition of the foreign bankruptcy decision must be accompanied by evidence showing that the debtor is truly domiciled or conducts business activities in the jurisdiction where the foreign bankruptcy decision was determined. In addition, the debtor or his attorney must provide a number of deposits as costs for the process of recognizing the validity of the foreign decision to the Court.²⁸

The Court also has the authority to reject an application for recognition of a foreign bankruptcy decision based on the following factors: (1) If the debtor or his attorney does not have sufficient deposit as the cost required to carry out the procedure for recognition of foreign bankruptcy law by the Court; (2) If the foreign bankruptcy decision does not cover the debtor's assets in Japan; (3) If the foreign bankruptcy decision is contrary to public order; (4) If the debtor or his attorney does not provide information on the progress of the implementation of the foreign bankruptcy decision after an order from the Court; and (5) If it is clear that the application for recognition of the foreign decision submitted by the debtor or his attorney is not based on good faith.²⁹

After a court decision on the recognition of a foreign judgment, the court may issue an order to manage and protect the debtor's assets in Japan, including an order to suspend the implementation of local bankruptcy law against the debtor's assets and also prohibit both preferred and concurrent creditors from executing the assets of the bankrupt debtor. While the application for recognition of a foreign judgment is being processed by the court until recognition of a foreign judgment is determined, the court may appoint a curator to manage the debtor's business or assets in Japan. The curator is given the responsibility and authority to continue the debtor's business and to manage and take legal action against the debtor's assets with the permission of the court. In the event that the court has issued a decision to recognize a bankruptcy judgment, while a local bankruptcy judgment is being implemented against the same debtor, the court must cancel the decision to recognize the foreign judgment, except: (1) If the foreign court decision is included in the category of "foreign main proceeding"; (2) If there is no possibility that it will interfere with the interests of the creditors; and (3) If the

²⁸Jennifer D. Morton, "Recognition of Cross-Border Insolvency Proceedings: An Evaluation of Solvent Schemes of Arrangement and Part VII Transfers under US Chapter 15", *Fordham International Law Journal*, 2020, P. 1337.

²⁹B. Radu, "International Institutions with Authority in The Matter of Insolvency", *AGORA International Journal of Juridical Sciences*, 2013, P. 192.

recognition of the foreign bankruptcy judgment better guarantees the interests of the creditors.³⁰

As one of the Asian countries that also felt the impact of the global crisis, many debtors in South Korea experienced a crisis and bankruptcy. The collapse of debtors, both companies and individuals, was due to the poor and inefficient bankruptcy legal system in South Korea. Realizing this, South Korea reformed its bankruptcy law by adopting the UNCITRAL Model Law in the Debtor Rehabilitation and Bankruptcy Act (DBRA) or better known as the Unified Insolvency Act (UIA) on March 21, 2005, which was effectively implemented on April 1, 2006.³⁸ With the ratification of the UIA, foreign representatives or Representatives Of Foreign Insolvency Proceedings can apply for cooperation with the Seoul District Court.

Cross-border bankruptcy is a state or case of bankruptcy that crosses the territorial borders of a country and foreign elements in it, both creditors and debtors. Foreign judges' decisions cannot be directly implemented in Indonesia, especially decisions that are condemnatory in nature. Indonesian judges' decisions also cannot be directly implemented in other countries because they have not implemented the UNCITRAL Model Law and have not entered into bilateral or multilateral agreements with other countries in recognizing cross-border bankruptcy so that Indonesian judges' bankruptcy decisions cannot execute the assets of bankrupt debtors located abroad, as well as foreign court decisions.

Currently, international legal instruments that exist to facilitate cross-border bankruptcy processes such as (1) Convention Abolishing the Requirement of Legalization for Foreign Public Documents, (2) The Hague Convention on the Taking Evidence Abroad in Civil or Commercial Matters, (3) The Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters and The Supplementary Protocol of 1 February 19 to the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, and (4) UNCITRAL Model Law On Cross-Border Insolvency with Guide to Enactment, none of which have been ratified and adopted by Indonesia. This is different from Malaysia and Singapore which have bilateral agreements and member countries which have made regional multilateral agreements so that bankruptcy decisions can be recognized in member countries of the agreement.

4. Conclusion

Based on the previous discussion, it can be concluded that the implementation of the curator's responsibilities in managing and settling the assets of bankrupt debtors must be in accordance with the provisions of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. The curator

³⁰Roman Tomasic, "Insolvency Law Reform in Asia and Emerging Global Insolvency Norms", *Insolvency Law Journal*, 2007, p. 229 – 230.

must ensure that every action, including asset management, coordination with related parties, and reporting to the court, is carried out in accordance with applicable law, while maintaining the interests of all parties fairly and transparently. However, curators face a number of obstacles, such as asset complexity, legal challenges, limited resources, and technology. To overcome this, curators need to rely on knowledge and skills, as well as collaborate with related parties, improve technological infrastructure, and adopt an efficient approach so that the management and settlement process runs smoothly in accordance with legal provisions.

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