

Legal Steps by Curators as a Form of Legal Protection for Curators Who Carry Out the Task of Settling Bankruptcy Assets

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Abstract

This article discusses the perspective of legal protection for the curator, which derives from the phenomenon of curator being sued both criminally and civil while carrying out their duties to settle bankruptcy assets. It is not uncommon for the curator to be litigated with consequences where not only the process of clearing bankruptcy assets is hampered, but the curator also experiences losses because he has to follow the existing legal process. The solutions and forms of legal protection discussed in this article are that the curator as the aggrieved party can also take legal actions against the party deemed to be detrimental as long as it is carried out within the legal framework and code of ethics.

Keywords: Curator, Bankruptcy, Legal Action, Bankruptcy Asset.

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A. INTRODUCTION

1997 was a historic year for the Indonesian economy. In that year, the national economy experienced a monetary crisis. The condition of the economic crisis directly affected the world of national law, especially the realm of bankruptcy law with the emergence of a Government Regulation instead of Law No.1 of 1998 concerning Amendments to the Bankruptcy Law (Peru 1 of 1998) which replaced the bankruptcy law inherited from the Dutch era, namely *faillissement, verordening, staatsblad* 1905: 217 Juncto 1906: 348 (Simamora, 2001). The presence of the Perpu 1 of 1998 is the first step towards reforming, amending, or adjusting the national law in the field of bankruptcy. The Peru 1 of 1998 was later upgraded to a Law through the DPR RI Plenary Session which gave birth to Law Number 4 of 1998 concerning Stipulation of Government Regulations instead of Law Number 1 of 1998 Concerning Amendments to the Bankruptcy Law (Law No.4 1998).

Over time, the principles stipulated in Law No.4 of 1998 are no longer deemed appropriate to keep up with developments in the economic world concerning bankruptcy. Therefore, the government issued Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (Bankruptcy Law) to cover various shortcomings and weaknesses of Law no. 4 of 2004.

In the Bankruptcy Law, Article 1 point 1 explains that what is meant by bankruptcy is general confiscation of all assets of the bankrupt debtor whose management and settlement is carried out by a curator under the supervision of the supervisory judge as regulated in the law. Bankruptcy occurs when a debtor (a person who has debts due to an agreement or law that can be collected in court) has

two or more creditors (people who have receivables due to agreements or laws that can be collected in court) and do not pay in full at least one debt that has matured and is collectable is declared bankrupt by a court decision, either on his request or at the request of one or more creditors. The meaning of debt itself is explained in Article 1 number 6 of the Bankruptcy Law, namely obligations that are declared or can be stated in an amount of money either in Indonesian currency or foreign currency, either directly or will arise at a later date or contingent, stemming from an agreement or law. - The debtor must fulfil the law and, and if not fulfilled, it gives the creditor the right to obtain fulfilment from the debtor's assets.

According to the Bankruptcy Law, Article 70 Paragraph (1) states that the curator is the Heritage Hall or other curators. What is meant by other curators is explained in Article 70 Paragraph (2), which in essence is someone who has the expertise to manage and settle bankruptcy assets and has been certified as a curator registered with the Ministry of Law and Human Rights. In Article 69 of the Bankruptcy Law, it is explained that the task of a curator is to carry out the management and/or settlement of bankruptcy assets. This is in line with Vollmar's opinion as quoted by M. Hadi Subhan, which means that the curator has the duty, according to the law, to manage and settle bankruptcy assets (Hadi Subhan, 2008). The curator himself begins to serve under the supervision of the supervisory judge when the decision on the bankruptcy declaration is pronounced even though the decision is filed for cassation or review, and immediately for the sake of law the bankrupt debtor loses his right to control and manage his wealth which is included in the bankruptcy estate.

Furthermore, the commercial court decides who will be appointed as curator (Sutendi, 2009). Then the curator can be proposed by the debtor or creditor. If the debtor or creditor does not offer the appointment of a curator, the Heritage Treasure Hall will then be appointed as curator.

In macro terms, the duties of a curator include two stages, namely the management stage and the settlement stage (Nating, 2004). In both stages, the curator has many tasks as defined by the Bankruptcy Law. Of the various existing tasks, the main tasks of curators can be grouped as follows (Sjahdeini, 2016):

1. Curator duties in administrative

In the administrative field, the curator is tasked with administering the processes that occur in bankruptcy, for example making announcements (Article 15 Paragraph 4 of the Bankruptcy Law), inviting meetings to creditors, securing the assets of bankrupt debtors, carrying out an inventory of bankruptcy assets (Article 100, 101, 102, 103 of the Bankruptcy Law), also makes regular reports to the supervisory judge every three months (Article 74 of the Bankruptcy Law).

2. The task of managing bankruptcy assets

As long as the bankruptcy process has not reached the state of insolvency, the curator can continue to manage various bankrupt debtor businesses as a company organ (board of directors) with the creditors' license (Article 104 Paragraph 1 of the

Bankruptcy Law), this management can only be carried out if the bankrupt debtor still has a business that is still running.

Apart from their duties, curators are also provided with authority based on the Bankruptcy Law. Some of them are:

- a. Applying for loans to third parties, assuring the continuation of the implementation of agreements that have not been fulfilled or have only been partially fulfilled by the debtor (Article 36 paragraph (1) of the Bankruptcy Law);
- b. Has the authority to terminate the lease of goods conducted by the debtor (Article 38 of the Bankruptcy Law);
- c. Stop the renewal of a work agreement with the debtor employee (Article 39 paragraph (1) of the Bankruptcy Law);
- d. Releasing or changing the terms of suspension of execution rights for creditors using pledge, fiduciary security, mortgages, mortgages, or other collateral rights as if bankruptcy had not occurred (Article 57 paragraph (2) of the Bankruptcy Law);
- e. Demand the creditor holding the property collateral to hand over the collateral, after the expiration of the period for the creditor to exercise the right of execution for the collateral as if there was no bankruptcy (Article 59 paragraph (1) of the Bankruptcy Law);
- f. Continue the debtor's business, with the approval of the creditor committee (Article 100 paragraph (4) of the Bankruptcy Law);
- g. Opening letters and or telegrams addressed to the debtor (Article 105 of the Bankruptcy Law);
- h. Transferring the bankruptcy price with the approval of the supervisory judge (Article 107 paragraph (1) of the Bankruptcy Law);
- i. Making peace (Article 109 of the Bankruptcy Law);
- j. Requesting creditors to submit letters that have not been raised, showing original notes and evidence to match the calculation of creditors' receivables (Article 116 paragraph (2) of the Bankruptcy Law);
- k. It is selling bankruptcy assets underhand with permission from the supervisory judge (Article 185 paragraph (2) of the Bankruptcy Law).

In exercising such broad authority, the curator must be independent based on Article 15 paragraph (3) of the Bankruptcy Law. What is meant by independent here is explained in the explanation of Article 15 paragraph (3) of the Bankruptcy Law which reads "independent and has no conflict of interest," which means that the existence of a curator does not depend on debtors or creditors. Curators do not have the same economic interests as those of the economy of the debtor or creditor (Sembiring, 2018). The follow-up to this article is as regulated in Article 234 paragraph (1) of the Mortality Law, which states that curators and managers who are proven not to be independent may be subject to criminal and/or civil sanctions following statutory regulations.

The presence of Article 15 paragraph (3) Jo. Article 234 paragraph (1) of the Bankruptcy Law illustrates how heavy the burden on curators is to protect the interests of debtors and creditors and even third parties to achieve the mandate of the Bankruptcy Law. Conflicts of interest that often arise have resulted in the Bankruptcy Law giving quite severe sanctions if a curator commits things that are deemed to be detrimental to a party in the process of managing and settling bankruptcy assets. This burden of responsibility is exacerbated by Article 72 of the Bankruptcy Law, which states that curators are responsible for errors or negligence in carrying out management and settlement tasks that cause losses to bankrupt assets. According to Jerry Hoft, as quoted by Imran Dating (Nating 2004), a curator who by nature can commit legal actions, he can also take personal legal responsibility in the event of losses to third parties due to efforts of curators that are outside the limits of his authority.

Conversely, suppose the loss arises beyond the control of the curator even though the actions of the curator are following statutory provisions and carried out in good faith. In that case, the curator is not personally responsible but will be borne by the assets of the bankruptcy. Then, if the curator commits irregularities while carrying out his duties and authorities, he can be dismissed by the Supervisory Judge and may also be sued in court by the party who feels aggrieved. Therefore, curators are supervised by a curatorial organization based on the curator's Code of Ethics. In brief, Article 72 of the Bankruptcy Law opens space for parties who feel aggrieved by curators to ask for their accountability.

This condition was strengthened by several cases which also involved curators, such as the case of curator Jandri Onasis who was a curator of PT. Surabaya Agung Pulp & Paper Industry (PT. SAIP) (under bankruptcy). Jandri Onasis was arrested by the police as soon as he set foot in Indonesia after returning to seek treatment from Malaysia. Jandri Onasis himself was accused of having committed a criminal act of forgery of documents Letter Number 50.01 / PKPU-SAIP / JP-JOS / IV / 13 dated April 15, 2013, regarding the report on the results of voting (voting) on the proposed PKPU extension and the proposed PT. SAIP. This case then rolled around with Jandri Onasis named a suspect and detained when he had just returned for treatment from abroad (Hukum Online.com). After going through a case process that took approximately one year from April 2014 to June 2015, and Jandri Onasis had to be detained for about 3 months (Supreme Court, 2015).

This and other cases involving a curator who is currently carrying out a bankruptcy settlement process raises critical questions about what legal protections a curator in that position has. This paper itself is the result of a study conducted by the author using the normative juridical research method, which examines the Bankruptcy Law to find the cause of the tug of war between bankruptcy stakeholders and curators and tries to offer the concept of legal protection for curators. The main argument of this paper regarding the principles of balance and fairness in the traditional bankruptcy law should also act as legal protection for

curators. Furthermore, it tries to justify legally and ethically against the curator's efforts to seek justice for parties deemed to have harmed the curator.

B. METHOD

This research uses normative legal research methods. Normative legal research methods are also commonly called doctrinal regular study or library research. It is called doctrinal law research because this research is only aimed at written regulations so that this research is very closely related to the library because it will require secondary data in the library. In written legal normative legal research, it is examined from various aspects such as aspects of theory, philosophy, comparison, structure/composition, consistency, general explanation and explanation of each article, formality and binding strength of law and the language used in legal language (Soekanto, 2006).

So it can be concluded that normative legal research has a broad scope. Normative legal analysis can also collect primary data, but the preliminary data is only intended to strengthen secondary data. Normative legal research methods are usually known as prescriptive methods because, in this method, they must always be accompanied by recommendations or suggestions to look for new norms or complement the models being studied to make them better. Besides, this normative method is also pure because it tests the object under study, namely the norm (Marzuki, 2005).

C. RESULT AND DISCUSSION

1. Curator Can Be Courted

Based on the research conducted, it was found that the justification either in statutory regulations or the Bankruptcy Law itself opens up space for parties who feel that their interests are being harmed to prosecute a curator who is carrying out a settlement task. The first legal basis is the principle that the court is prohibited from refusing to examine, hear and decide a case filed because the law does not exist or is unclear. Still, it is obligatory to read and judge it. This means the court must examine a lawsuit filed against the curator. It becomes the burden of the plaintiff to prove the legality of the lawsuit following the accounting burden regulated in Article 1865 of the Civil Code (KUHPPerdata) where the party arguing that he has a right is required to prove that right.

Second is Article 1, number 24 Jo. Article 108 paragraph (1) and paragraph (6) of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP) in which everyone who experiences, sees, witnesses and or is a victim of an event which constitutes a criminal act has the right to submit a report or complaint to investigator and or investigator, both oral and written. This article is the basis for reporting suspected criminal acts committed by a curator while he is carrying out his duties. Another legal basis that shows that curators can be sued on a civil basis can also be seen in the Bankruptcy Law itself, namely in Article 3 paragraph (1) and Article 127 paragraph (1) of the Bankruptcy Law. Article 3 paragraph (1) of the Bankruptcy Law

regarding claims against "other matters" related to bankruptcy include Action Pauliana, opposition from third parties outside the bankruptcy court against confiscation, or other matters in the form of cases where debtors, creditors, curators or managers became a party in a case relating to bankruptcy assets, including a lawsuit from the curator against the Board of Directors which resulted in the company being declared bankrupt due to his negligence or fault. Meanwhile, the lawsuit in Article 127 paragraph (1) of the Bankruptcy Law is a lawsuit in the form of a rebuttal to the list of accounts that have been prepared by the curator based on Article 117 of the Bankruptcy Law. The presence of a lawsuit mechanism regulated in the Bankruptcy Law illustrates that lawmakers open up space for curators, bankrupt debtors, creditors, and even third parties to take legal steps if they feel their rights have been harmed in a Bankruptcy case. This means that even if the curator is deemed to have damaged the rights of another party, then a lawsuit can be filed against him based on the Bankruptcy Law in particular Article 3 paragraph (1) or Article 127 paragraph (1).

Then Article 72 of the Bankruptcy Law states that curators are responsible for mistakes or negligence when carrying out management and/or settlement tasks which then cause losses to the bankruptcy property. This article also shows that if a curator makes a mistake or negligence and causes a loss to the bankruptcy estate and other parties, the parties can hold the curator accountable.

The curator has the right to bring a lawsuit against any party deemed to have harmed him or the bankrupt assets.

Although on a legal basis it is possible to hold accountable and bring a curator to a legal case, it can be said that any legal action against a curator has the potential to hinder the curator's performance. With the curator's performance hampered, it is not only the creditors or debtors who can suffer losses, but the curator himself is also very likely to experience losses because he has to pay additional costs needed to face the legal steps brought against him. Coupled with the determination of the curator fee which is determined at the end of the bankruptcy estate settlement process, a condition may occur where the remaining bankruptcy assets are not sufficient to pay fees and other costs incurred by the curator.

For this reason, the Bankruptcy Law has not provided sufficient legal protection against potential losses that may be experienced by curators. As discussed in previous chapters, legal protection for curators is based on Article 1 point 5 of the Bankruptcy Law which is interpreted as a court representative that exercises judicial power, and Article 50 of the Criminal Code (KUHP) as long as the curator performs duties and authorities within the scope of the Bankruptcy Law.

When discussed further, the two views of legal protection for curators still have several problems. The first view which states that the curator is appointed by the court and becomes a representative in carrying out court duties based on the Bankruptcy Law (statutory obligation) so that all third party interference to the curator to interfere with the implementation of his duties can be categorized as contempt of court based on Article 3 paragraph (2) of Law 48 of 2009 concerning

Judicial Powers which states that "all interference in judicial affairs by other parties outside the Judicial Power is prohibited, except as referred to in the 1945 Constitution." The problem with this viewpoint is that although in interpretations the curator bears a statutory obligation from the court, it does not necessarily give the curator legal immunity when carrying out his duties. The Bankruptcy Law itself explicitly states in Article 72 of the Bankruptcy Law that curators are legally responsible for the loss of bankruptcy property that occurs due to their mistakes or negligence and open up space to submit legal steps to curators based on Article 3 paragraph (1) and Article 127 paragraph (1) The Bankruptcy Law.

Meanwhile, the second view is based on Article 50 of the Criminal Code which states that parties which carry out their duties based on law cannot be convicted so that if a curator carries out his duties and powers based on the scope of the Bankruptcy Law, he cannot be condemned. Although this view is powerful as an excuse to release a curator who has carried out his duties and authorities according to the Bankruptcy Law from being caught in criminal charges, the entire process of proving that the curator has carried out his duties and authorities according to law must still go through the criminal justice process. This means that the curator is even threatened with loss because he has to spend a lot of money and time to participate in the criminal justice process.

From the construction of the Bankruptcy Law, it appears that the Bankruptcy Law provides a strategic position and authority for curators in a bankruptcy case. This position and authority are considered to be very likely to harm other parties, in particular creditors, debtors and third parties. Therefore, the Bankruptcy Law provides a scope of accountability for curators based on Article 72 of the Bankruptcy Law and provides an opportunity for parties who feel they have suffered losses to file a lawsuit against the implementation of duties by curators based on Article 3 paragraph (1) and Article 127 paragraph (1) of the Bankruptcy Law. If you pay attention, this construction is a manifestation of legal protection for parties other than the curator, where the law, on the one hand, gives authority to the curator. Still, on the one hand, it also does not close the eye that the curator can make mistakes or negligence and provide space for the injured party to fight for their rights through legal steps in the form of litigation or reports of alleged criminal acts.

Suppose the previous description is carried out analogous legal construction. In that case, it can also be interpreted that the curator has the same right to file legal action against parties who have harmed him. This also means that actions were taken by creditors, debtors, or third parties which harm a curator can be held legally liable, both in civil law and in criminal law. Therefore, it makes sense that a curator who can also suffer losses because a bankruptcy case has not ended or is caught in a legal process that is not proven can legally fight for his rights through a regular step.

When examined further, the Bankruptcy Law has opened room for curators to file a lawsuit against the party that caused the loss of bankruptcy assets which he had to resolve. In the explanation of Article 3 paragraph (1) of the Bankruptcy Law, it is stated that the curator can file a lawsuit against the debtor *Actio Pauliana*, and a

lawsuit against the Board of Directors which results in the company going bankrupt due to his mistake or negligence. Article 26 paragraph (1) implies that the curator has the authority to demand the fulfilment of the rights and obligations of other parties as long as this is related to bankruptcy assets. This is reaffirmed in Article 83 paragraph (1) of the Bankruptcy Law which states that before filing a lawsuit, proceeding with an ongoing case, or refuting a proposed or ongoing claim, the curator is obliged to ask the creditor committee's opinion. Although before filing a lawsuit, the curator must ask the creditor committee's opinion based on Article 83 paragraph (1) of the Bankruptcy Law, it is stated in Article 84 paragraph (1) of the Bankruptcy Law that the opinion of the creditor committee does not bound the curator. This means that even if the creditor's committee does not agree, the curator can still file a lawsuit. However, it should also be noted that according to Article 78 Paragraph (1) and (2), claims filed without the approval of the creditor's committee are the responsibility of the creditors themselves to the bankrupt debtor or creditors.

Based on these articles, if there is a legal action against a curator that hinders his performance so that it is detrimental to the bankruptcy estate, the curator, as the party appointed to settle the bankruptcy estate, has the right to claim compensation from the party deemed to be detrimental.

Regarding criminal action by curators, conceptually, curators can also report suspected criminal acts following Article 1 point 24 Jo. Article 108 paragraph (1) and paragraph (6) KUHP. This depends on the alleged criminal acts committed by related parties. However, if a curator is reported to the police and feels baseless or feels it only aims to obstruct the curator's duties, the curator can also report back on the alleged false report based on Article 220 of the Criminal Code or Article 317 paragraph (1) of the Criminal Code.

2. Legal Steps by Curators as a Form of Legal Protection for Curators

Satjipto Raharjo stated that legal protection means protecting human rights that have been harmed by others. That protection is given to the community so that they can enjoy all the rights provided by law (Raharjo, 2000). The starting point of this theory is the protection from the law so that everyone can enjoy their rights and not be harmed by other parties. The problem that arises is that in the traffic of everyday life, the various interests of humans cause collisions between the rights of one citizen and the rights of another citizen. Here the role of law which has the highest authority based on Article 1 paragraph (3) of the Constitution of the Republic of Indonesia must be present to provide balance and fulfilment of these conflicting rights.

In the context of bankruptcy, this balance is contained in the principle of justice in the Bankruptcy Law, which means preventing the bankruptcy institution from being confused by parties with bad intentions. This means that bankruptcy officers may be misused by one of the parties because they have goals or interests that then harm the other party. According to Susan Remy Sjahdeini, bankruptcy

should provide benefits not only for creditors but also for debtors. In line with that, the Bankruptcy Law must also provide equal protection for creditors and debtors. For creditors, bankruptcy is held to provide benefits and protection if the debtor does not pay his debts so that the creditors can be opened and have access to the assets of the bankrupt debtor because they are no longer able to pay their debts. However, the benefits and protection provided by the Bankruptcy Law should not be detrimental to the interests of the debtor and the stakeholders of the debtor concerned (Sjahdeini, 2010). Sutan Remy Sjahdeini also said that a good Bankruptcy Law must be based on the principle of providing benefits and equal protection for all parties involved and having an interest in the bankruptcy of a person or a company. In this regard, a good Bankruptcy Law should not only provide benefits and protection for creditors but also for debtors and their stakeholders (Sjahdeini, 2010).

Therefore, the principle of balance in the Bankruptcy Law must also be interpreted broadly, which includes not only the balance between debtors and creditors but also between the stakeholders in a Bankruptcy case, including curators. So if interpreted this way, there is a belief that a bankruptcy institution can be abused by the curator to harm other parties, or vice versa, namely other parties using bankruptcy institutions to harm the curator. In these conditions, the law as the highest authority must be able to provide a balance in the flow of the implementation of their respective interests in the Bankruptcy legal framework.

This also means that stakeholders (debtors, creditors, curators, and third parties) in a Bankruptcy case must also receive balanced legal protection to ensure that their rights can be realized and not violated by other parties. This is in line with Fitzgerald's opinion about the purpose of law, namely to integrate and coordinate various interests in society by regulating the protection and limitations of these multiple interests (Nola, 2006). If the Bankruptcy Law is further analyzed, it can be seen that the legal protection approach chosen by the legislators to protect stakeholders consists of preventive legal protection and repressive legal protection. One example of a preventive legal guardian in the Bankruptcy Law is the detailed regulation of the rights and obligations of debtors, creditors and curators. Meanwhile, repressive legal protection is manifested in the form of mechanisms for resolving conflicts of interest in bankruptcy, such as by filing objections or filing other claims.

With legal protection for curators, curators appointed by the court are statutory obligations from the court to clear bankruptcy assets. Therefore, as long as the curator carries out his duties and powers following the framework of the Bankruptcy Law, the Bankruptcy Law can be ensured to provide preventive legal protection in the sense that the rights and obligations of the curator regulated in the Bankruptcy Law, if fully implemented, have minimized the potential for conflict of interest and the potential for harm. Other stakeholder rights. In this situation, Article 50 of the Criminal Code applies where curators who have carried out their duties based on and following the Bankruptcy Law cannot be convicted.

However, this preventive legal protection does not address the condition in which the curator is harmed by the actions of other stakeholders such as debtors or creditors. In this case, the curator should have the means to claim the fulfilment of his rights, which he thinks have been harmed by other parties. Therefore, the form of repressive legal protection in this context is the filing of legal action in the form of a lawsuit or reports of allegedly criminal acts by the curator against parties deemed to have harmed him. This legal step was proposed to obtain justice and to secure the fulfilment of the curator's right as a citizen and statutory obligation from the Judiciary to settle bankruptcy assets.

The submission of legal action by curators as a form of repressive legal protection can be drawn from construction analogously to the provisions of Article 72 of the Bankruptcy Law. Article 72 of the Bankruptcy Law itself states that the curator is responsible for his or her mistakes or negligence when carrying out management and/or settlement tasks that cause losses to bankruptcy assets. If the curator is responsible in the event of a loss to the bankruptcy property if he is wrong or negligent, then it should also be interpreted that other stakeholders (debtors, creditors, third parties) are also responsible if they make mistakes or negligence that cause losses to the bankruptcy property. In this condition, the curator, as a statutory obligation from the court and holding material rights to replace the bankrupt debtor, has the right to file legal steps against stakeholders who are deemed wrong or negligent, causing losses to the bankruptcy assets. This is evidenced by the curator's authority to file miscellaneous claims based on Article 3 paragraph (1) of the Bankruptcy Law and other claims based on Article 83 of the Bankruptcy Law. Not only that, if the curator is the holder of material rights over the bankruptcy property, then he is also entitled to file a report on suspected criminal acts against parties which he deems to be detrimental to his right as the duty bearer to settle the bankruptcy estate.

The concept of legal action by curators as a form of repressive legal protection also fulfils the element of legal protection conveyed by Satjipto Raharjo, where legal protection must have a part of protection from the government for its citizens, a guarantee of legal certainty, relating to the rights of citizens, and the existence of sanctions for those who violate them (Raharjo, 1999). It can be seen that legal action by the curator in the form of a lawsuit or report on alleged criminal acts has also basically been facilitated by existing legal instruments, both civil and criminal, as well as a form of fulfilling the curator's right to impose penalties for those who violate the curator's rights.

3. The Role of the Curator's Code of Ethics

In addition to the legal framework stipulated in the Bankruptcy Law, curators must also obey and obey the curator's Code of Ethics. The curator's Code of Ethics serves as a code of conduct for curators when carrying out their professional duties. Violation of the curator's Code of Ethics brings consequences in the form that the

curator can be given ethical sanctions and is no longer authorized for the curator to handle bankruptcy cases and postponement of ongoing debt payment obligations.

If it is related to the legal protection for curators in the Bankruptcy Law above, the curator's Code of Ethics is useful as a parameter or track that assesses morally and professionally the actions taken by the curator, including when the curator takes legal steps in the form of a lawsuit or reports of alleged not being criminalized against the which is considered detrimental to it as a form of repressive legal protection. This is important considering that the main task of the curator is to settle bankruptcy assets under the supervision of the Supervisory Judge, so that the curator may be deemed to have neglected his main task by filing legal action against certain parties. For this accusation, the curator can use the parameters of the curator's Code of Ethics to explain his position in the legal action either in the lawsuit or the police report.

One of the most important aspects is to show that all legal steps in the form of litigation or reports of alleged criminal acts committed by the curator are carried out in good faith and are solely carried out to carry out his professional duties and ensure legal protection is given to him. This affirmation is crucial considering that the Bankruptcy Law provides broad powers for curators, so that curators may be deemed to be abusing the authority given by the Bankruptcy Law (abuse of power). Parties who feel that they are in a weaker position because they do not control bankruptcy assets such as bankrupt debtors and creditors will question any actions taken by the curator because of concerns over the potential abuse of power, so the curator must be able to fortify himself by basing all his efforts on the curator's Code of Ethics. Therefore, the curator's Code of Ethics needs to be fully implemented by the curator to confirm his position that all actions, including legal steps, are carried out solely in the context of carrying out his duties based on law.

D. CONCLUSION

Based on the research conducted, it was found that the justification either in statutory regulations or the Bankruptcy Law itself opens up space for parties who feel that their interests are being harmed to prosecute a curator who is carrying out a settlement task. Another legal basis that shows that curators can be sued on a civil basis can also be seen in the Bankruptcy Law itself, namely in Article 3 paragraph (1) and Article 127 paragraph (1) of the Bankruptcy Law. Article 3 paragraph (1) of the Bankruptcy Law regarding claims against "other matters" related to bankruptcy is *actio Pauliana*. Meanwhile, the lawsuit in Article 127 paragraph (1) of the Bankruptcy Law is about a lawsuit in the form of a rebuttal to the list of receivables that have been made by the curator based on Article 117 Bankruptcy Law.

The curator has the same right to file legal action against those who have harmed him. This also means that actions were taken by creditors, debtors, or third parties which harm a curator can be held legally liable, both in civil law and in criminal law. Therefore, it makes sense that a curator who can also suffer losses

because a bankruptcy case has not ended or is caught in a legal process that is not proven can legally fight for his rights through a legal step.

Concerning legal protection for curators, curators appointed by the court are statutory obligations from the court to clear bankruptcy assets. Therefore, as long as the curator carries out his duties and powers following the framework of the Bankruptcy Law, the Bankruptcy Law can be ensured to provide preventive legal protection in the sense that the rights and obligations of the curator regulated in the Bankruptcy Law, if fully implemented, have minimized the potential for conflict of interest and the potential for harm. Other stakeholder rights.

The curator's Code of Ethics is useful as a parameter or track that assesses morally and professionally the actions taken by the curator, including when the curator takes legal steps in the form of a lawsuit or allegation of non-criminal reports against parties deemed to be detrimental to him as a form of repressive legal protection. This is important considering that the main task of the curator is to settle bankruptcy assets under the supervision of the Supervisory Judge, so that the curator may be deemed to have neglected his main task by filing legal action against certain parties. For this accusation, the curator can use the parameters of the curator's Code of Ethics to explain his position in the legal action either in the lawsuit or the police report.

REFERENCES

1. Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia
2. Code of Civil law
3. Criminal Code
4. Criminal Procedure Code
5. Hartono, S. R. (2000). Hukum Perdata Sebagai Dasar Hukum Kepailitan Modern. *Jurnal Hukum Bisnis*, 2(2).
6. hukumonline.com. (2014). *Curhat Kurator yang Pernah Duduk di Kursi Terdakwa*. Retrieved from <https://www.hukumonline.com/berita/baca/lt5475a02bb6a67/curhat-kurator-yang-pernah-duduk-di-kursi-terdakwa/>.
7. Kusumaatmadja, M. (1975). *Pembaharuan pendidikan hukum dan pembinaan profesi*. Lembaga Penelitian Hukum dan Kriminologi, Fakultas Hukum, Universitas Padjadjaran: Binacipta.
8. Law No. 48 of 2009 concerning Judicial Power
9. Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations.
10. Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP)
11. Marzuki, P. M. (2005). *Penelitian Hukum*. Kencana.

12. Nating, I. (2004). *Peranan dan Tanggung Jawab Kurator Dalam Pengurusan dan Pemberesan Harta Pailit*. Jakarta: Raja Grafindo Persada.
13. Nola, L. F (2006). Upaya Perlindungan Hukum Secara Terpadu Bagi Tenaga Kerja Indonesia. *Jurnal Negara Hukum*, 7(1)
14. Raharjo, S. (1993). Penyelenggaraan Keadilan dalam Masyarakat yang sedang berubah. *Jurnal masalah hukum*, 2(3).
15. Raharjo, S. (2000). *Ilmu Hukum*, Bandung: Citra Aditya Bakti.
16. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 37 of 2018 concerning Requirements and Procedures for Registration and Submission of Curator and Management Reports
17. Sembiring, S. (2018). Eksistensi Kurator Dalam Pranata Hukum Kepailitan. *ADHAPER: Jurnal Hukum Acara Perdata*, 3(1), 91-110.
18. Simamora, Y. S. (2001). *Catatan Terhadap Undang-Undang Nomor 4 Tahun 1998 tentang Kepailitan*. Majalah Hukum Yuridika.
19. Sjahdeini, S. R. (2010). *Hukum Kepailitan Memahami Undang-Undang No. 37 Tahun 2004 Tentang Kepailitan*. Jakarta: Pustaka Utama Grafiti.
20. Sjahdeini, S. R. (2016). *Sejarah, Asas, dan Teori Hukum Kepailitan (Memahami undang-undang No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran)*. Surabaya: Kencana.
21. Soekanto, S. (2006). *Pengantar Penelitian Hukum*. Depok: UI-Press.
22. Shubhan, M. H. (2008). *Hukum Kepailitan Prinsip, Norma, dan Praktik di Peradilan*. Surabaya: Kencana.
23. Supreme Court Decision Number 231 K/Pid/2015.
24. Sutendi, A. (2009). *Hukum Kepailitan*. Bogor: Ghalia Indonesia.