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Legal Protection of Bankrupt Debtors and Creditors Against Curators' Actions That Diminish the Bankruptcy Estate

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Abstract

The curator exercises control over the bankruptcy estate, including its receipts and expenditures, under the supervision of the supervisory judge in bankruptcy proceedings. In practice, however, some curators may engage in unlawful acts that diminish the bankruptcy estate, thereby causing losses to both bankrupt debtors and their creditors. Legal protection for bankrupt debtors and creditors, together with effective legal measures, is therefore necessary to ensure legal certainty and justice for both parties. This study aims to evaluate the structural weaknesses in the supervisory judge's institutional oversight of the curator's attributed authority and to formulate effective repressive legal measures available to debtors and creditors in response to unlawful acts or criminal offenses committed by curators that demonstrably cause losses to the bankruptcy estate. This study employs a normative juridical research method with a descriptive-analytical research specification. The supervisory judge may exercise oversight through passive, proactive, or responsive approaches. Although the supervisory judge may adopt any of these three approaches, there is no obligation to apply any particular approach. The supervisory judge also serves to limit the curator's powers and authority within a system of checks and balances. Creditors and bankrupt debtors who suffer losses as a result of unlawful acts committed by a curator may pursue criminal and/or civil legal remedies.

Keywords: Bankruptcy Estate; Debtor; Legal Protection.

A. Introduction

Bankruptcy, together with the instrument of suspension of payments (*surseance*), is conceptually a mechanism closely associated with the resolution of debt-related disputes. Pursuant to Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the Bankruptcy and PKPU Law), such disputes involve a party owing a debt (the debtor) and a party extending credit (the creditor) (Gunardi Lie et al., 2019; Mantili & Trisna Dewi, 2021). The debtor and creditor are bound by an agreement concerning a debt or a loan of money. Upon the declaration of bankruptcy, the curator's authority to administer and liquidate the assets of the bankrupt debtor takes effect immediately on the date the bankruptcy decision is rendered, irrespective of whether the decision is subject to cassation or judicial review (Aditya Rizal Ranovianto & Lyanthi, 2024). Accordingly, the curator exercises full authority over the *boedel pailit*, namely, the bankruptcy estate of the bankrupt debtor (Ridhwani & Setianto, 2026).

Pursuant to Article 70 paragraph (1) of the Bankruptcy and PKPU Law, a curator is defined as a natural person (*natuurlijke persoon*) appointed by the court. The curator is responsible for administering and liquidating the bankruptcy estate, with the performance of these duties being subject to the supervision of the supervisory judge as mandated by law. Apart from the *Balai Harta Peninggalan* (BHP), the requirements for appointment as a curator,

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including for public accountants or advocates, are as follows (Sinaga & Manurung, 2024):

1. The individual must be free from any conflict of interest with either the debtor or the creditors and may handle no more than three bankruptcy and Suspension of Debt Payment Obligations (PKPU) cases simultaneously;
2. The individual must reside within the territory of Indonesia and possess specific expertise in administering and liquidating bankruptcy estates; and
3. The individual must be officially registered with the ministry responsible for legal and legislative affairs (Pasaribu et al., 2026).

The curator exercises extensive authority over the bankruptcy estate, with no substantial limitations imposed on such authority. Nevertheless, the exercise of the curator's authority is subject to the supervision of the supervisory judge. Article 65 of the Bankruptcy and PKPU Law stipulates that the supervisory judge is responsible for supervising the administration and liquidation of the bankruptcy estate. Pursuant to this provision, the supervisory judge exercises a supervisory power and role to ensure that the administration and liquidation of the bankruptcy estate are properly conducted in accordance with the provisions of the Bankruptcy and PKPU Law, including by overseeing the curator in carrying out these functions. In practice, however, numerous cases have involved curators abusing their authority and committing unlawful acts (*onrechtmatige daad*), resulting in the diminution of the bankruptcy estate and consequently causing losses to both debtors and creditors (Aditya Rizal Ranovianto & Lyanthi, 2024).

The extensive authority vested in curators, as described above, may create opportunities for them to engage in unlawful acts that result in the diminution of the bankruptcy estate. To illustrate this issue, this study examines two cases. The first concerns the Decision of the DKI Jakarta High Court Number 275/PID/2018/PT.DKI dated November 8, 2018, jo. the Decision of the Class IA Special East Jakarta District Court Number 883/Pid.B/2017/PN.Jkt.Tim dated May 15, 2018. In these decisions, the Panel of Judges found three curators, namely Raymond Bonggard Pardede, Lukman Sembada, and Gindo Hutahean, lawfully and convincingly guilty of jointly committing the criminal offense of using a forged or falsified document and jointly committing the criminal offense of money laundering as a continuing offense. The Panel of Judges subsequently sentenced each curator to three years of imprisonment and imposed a fine of IDR 100,000,000 (one hundred million rupiah) on each of them.

According to the decisions, the three curators withdrew a portion of the bankruptcy estate funds from a designated bank account opened under the name of PT Asuransi Bumi Asih Jaya Qq Kurator PT Asuransi Bumi Asih Jaya (*Dalam Pailit*), amounting to a total of IDR 19,812,961,005 (nineteen billion eight hundred twelve million nine hundred sixty-one thousand and five rupiah). Consequently, PT Asuransi Bumi Asih Jaya incurred losses amounting to IDR 19,812,961,005 (nineteen billion eight hundred twelve million nine hundred sixty-one thousand and five rupiah). The curators used these funds for their personal benefit. In rendering its decision, the Panel of Judges stated the following consideration on page 70:

> "Considering that, in the opinion of the Appellate Panel of Judges, the Defendants, in their capacity as Curators, should have maintained the trust inherent in the responsibilities entrusted to them and safeguarded the creditors' assets, rather than causing losses to the creditors."

The considerations of the Appellate Panel of Judges essentially constitute a jurisprudential affirmation of the doctrine of fiduciary duty inherent in the office of a curator. The phrase "maintaining trust" explicitly underscores that the attributed authority exercised by the three curators over the bankruptcy estate does not constitute an absolute proprietary right but rather a conditional fiduciary responsibility (duty of loyalty). By transferring more than IDR 19 billion to an account for their personal benefit, the curators not only committed administrative malpractice but also fundamentally undermined the essence of legal protection afforded to creditors. The decision demonstrates that the professional independence of curators cannot serve as a basis for excluding criminal liability where a curator is proven to have abused their authority in administering the bankruptcy estate. Accordingly, the decision reinforces the principle that professional independence must remain exercised within the framework of applicable law.

The second case concerns the Decision of the Class I Special Central Jakarta District Court Number 2081/PID.B/2011/PN.JKT.PST dated April 23, 2012. In this decision, the Panel of Judges found two curators of PT Sarana Perdana Indoglobal (in Bankruptcy), namely Tafrizal Hasan Gewang and Denny Azani Baharuddin Latief, lawfully and convincingly guilty of jointly committing the criminal offense of embezzlement. The Panel of Judges subsequently sentenced each curator to three years of imprisonment. According to the decision, the actions of the two curators caused PT Sarana Perdana Indoglobal to incur losses amounting to IDR 5,298,994,521 (five billion two hundred ninety-eight million nine hundred ninety-four thousand five hundred twenty-one rupiah). One of the principal considerations of the Panel of Judges in rendering the decision was as follows:

> "Considering that the Bankruptcy and PKPU Law has, in fact, provided procedures for creditors to file objections so that the administration and liquidation of the bankruptcy estate may continue to proceed effectively; however, the Bankruptcy and PKPU Law does not prohibit creditors from reporting the matter to the police where there is an alleged misuse of bankruptcy estate funds."

The legal considerations of the Panel of Judges in this case provide a crucial juridical basis for determining effective legal measures. The *ratio decidendi* confirms that the civil remedies of opposition or objection provided under the Bankruptcy and PKPU Law do not constitute an exclusive legal avenue. Where an unlawful act is committed in bad faith, as demonstrated by the embezzlement of more than IDR 5 billion, the internal mechanisms of bankruptcy proceedings are no longer relevant as the sole means of redress. The court affirmed that repressive legal protection through criminal law constitutes a lawful and independent legal remedy. This demonstrates that filing a criminal complaint may serve as an effective coercive measure (*dwangmiddel*) available to debtors and creditors to produce a deterrent effect while simultaneously overcoming the impasse associated with the enforcement of civil remedies, which may often be protracted due to complex judicial bureaucratic processes.

The two cases discussed above give rise to two research questions to be analyzed in this study: (1) What is the role of the supervisory judge in exercising oversight over the curator? and (2) What effective legal measures may be pursued by bankrupt debtors and their creditors against curators whose actions result in the diminution of the bankruptcy estate? This study is significant because there remains a gap in the literature concerning the effectiveness of supervisory judges' oversight in preventing or addressing curators' abuse of authority, as well as the legal measures available to recover losses resulting from the diminution of the bankruptcy estate.

Several previous studies have examined issues relevant to legal protection in bankruptcy proceedings. First, a study by Togar Natigor focused on the normative framework of bankruptcy law in providing legal protection for debtors, as well as bankruptcy proceedings related to the administration of the bankruptcy estate (Natigor, 2008). Second, a study by Moch. Zulkarnain Al Mufti examined the limits of curators' liability and the forms of legal protection available to creditors and bankrupt debtors during the administration and liquidation of the bankruptcy estate (Mufti, 2016).

Although considerable scholarly attention has been devoted to curators' liability, a research gap remains that has not been comprehensively addressed by previous studies. Prior research has tended to focus on curators' liability under ideal normative conditions and on forms of legal protection that are essentially passive in nature. These studies have yet to address the abuse of curators' absolute authority through unlawful acts or criminal offenses that directly and actively result in the diminution of the bankruptcy estate. Moreover, previous studies have not critically examined the effectiveness of the supervisory judge's role as an institutional mechanism of checks and balances in preventing such malpractice.

Based on the identified research gap, the novelty of this study lies not only in its object of inquiry but also in the analytical approach employed. Whereas previous studies have focused primarily on curators' legal liability after losses have occurred, this study shifts the focus toward the effectiveness of the supervisory judge's oversight as a checks and balances mechanism for preventing the abuse of curatorial authority. Furthermore, this study integrates the theory of attributed authority, the doctrine of fiduciary duty, the theory of separation of powers, and the theory of legal protection to analyze the relationship among the extensive authority vested in curators, the limitations of existing supervisory mechanisms, and the effectiveness of legal remedies available to debtors and creditors. Accordingly, this study not only provides a normative analysis of the applicable legal framework but also offers a conceptual contribution to strengthening the supervisory system governing the administration of the bankruptcy estate, as well as a practical contribution by identifying alternative legal measures that may be pursued to protect the interests of the parties concerned.

To analyze the research questions formulated above, this study employs several legal theories. First, it applies the theory of attributed authority in conjunction with the doctrine of fiduciary duty. In bankruptcy law, a curator's authority to take control of and liquidate the bankruptcy estate does not arise from an ordinary private agreement; rather, it constitutes attributed authority conferred directly ipso jure by statute. Given the extensive and exclusive nature of this authority, its exercise is strictly constrained by the application of fiduciary duty, under which the curator acts as a fiduciary entrusted with the administration of the debtor's assets. Under this doctrine, the curator is strictly bound by the obligation to prioritize the maximization of the bankruptcy estate (duty of loyalty) and to act in accordance with a high standard of care (duty of care). A breach of these fiduciary duties, such as transferring bankruptcy estate funds to a personal account, conceptually undermines the legitimacy of such attributed authority and constitutes a fundamental source of abuse of authority. The prevention of such abuse therefore depends on the supervisory mechanisms embedded within the institutional framework of bankruptcy proceedings.

Second, this study employs the theory of separation of powers. Lord Acton famously stated that "power tends to corrupt and absolute power corrupts absolutely," meaning that power has an inherent tendency toward corruption and that absolute power may ultimately lead to absolute corruption (Irawan, 2025). The concept of separation of powers emerged from societal concerns regarding the concentration of state power in a single individual. Separation of powers constitutes a fundamental principle of the rule of law, as it maintains a balance of power and protects citizens against arbitrary actions by those exercising governmental authority (Sulardi, 2013).

In its modern application, the separation of powers is no longer understood as a rigid doctrine. State powers are not entirely separated in an absolute sense; rather, they are distributed through a flexible institutional arrangement. Such an arrangement enables state institutions to cooperate while preserving their respective supervisory functions over one another (Annisa, 2021). This principle ensures the supremacy of law over power, rather than the reverse. Accordingly, the government is required to ensure that all of its actions are accountable under the applicable law (Iswari, 2020).

A concrete manifestation of the separation of powers is the checks and balances mechanism, which operates through various institutional arrangements. The legislative branch exercises oversight over the executive branch. Conversely, the executive branch also participates in the legislative process, including by proposing legislation and exercising certain powers in the enactment of laws. The judiciary occupies a strategic position as the guardian of the constitution, with the authority to review legal instruments. Thus, in modern practice, the separation of powers is characterized by interaction among state institutions rather than by a rigid separation between them (Pamungkas & Suputra, 2023).

Alexander Hamilton and James Madison argued that the state should be institutionally designed in such a manner that each branch of government possesses both the incentive and the capacity to constrain the others. The proposition that "ambition must be made to counteract ambition" reflects a realistic understanding of human nature in the exercise of power and, consequently, underscores the need for institutional mechanisms capable of controlling the potential abuse of such power. In this context, checks and balances function as a mechanism for maintaining a sustainable balance of power.

Third, this study employs the theory of legal protection. According to Setiono, as cited in (Aisha, 2021), legal protection refers to measures aimed at protecting citizens from actions by public authorities that exceed the limits of their authority and contravene statutory provisions. Such protection is intended to ensure public order while safeguarding respect for and the enjoyment of the inherent dignity of every individual. Satjipto Rahardjo conceptualizes legal protection as an effort to safeguard human rights from harm caused by the actions of others. Furthermore, such protection is provided to society at large to enable individuals to exercise and enjoy all rights guaranteed by law (Rahardjo, 2000). This conception is grounded in the view that the fundamental purpose and orientation of law are to provide protection for society. Moreover, such protection must be manifested through concrete legal certainty.

Legal protection may essentially be implemented through two approaches, namely preventive protection (prevention) and repressive protection (remedial or dispute-resolution measures) (Hadjon, 1987). From the perspective of C.S.T. Kansil, legal protection encompasses various forms of legal measures facilitated by law enforcement authorities to ensure a sense of security. Such security encompasses both physical and psychological dimensions, thereby protecting individuals from threats and disturbances originating from any party (Kansil, 1989). Muchsin further argues that legal protection constitutes a means of safeguarding individuals through the harmonization of various values and norms. Such harmonization is subsequently manifested in attitudes and concrete actions aimed at establishing an orderly framework for social interaction among individuals (Muchsin, 2003).

Fourth, this study employs the theory of unlawful acts. An unlawful act (*Perbuatan Melawan Hukum* or PMH) is defined as any act that contravenes statutory provisions and results in loss or damage. The scope of such acts is not limited to violations of written law or acts exceeding the limits of legal authority but also encompasses conduct that infringes upon the rights of others, contravenes moral norms, and violates general principles of propriety recognized by law (Sari, 2020).

The concept of *Perbuatan Melawan Hukum* (PMH) is generally recognized within two areas of law, namely criminal law and civil law. In the context of civil law, PMH refers to an act or omission that causes loss or damage to another party, even in the absence of a pre-existing contractual relationship between the parties. Such conduct constitutes a breach of a general legal duty applicable within society and therefore entitles the injured party to claim compensation or damages (Anindita & Sitanggang, 2022). In civil law, *Perbuatan Melawan Hukum* is more specifically known by the Dutch legal term *onrechtmatige daad*. This concept is expressly stipulated in Article 1365 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or KUHPerdata), which defines an unlawful act as follows:

> "Every unlawful act that causes damage to another person obliges the person who, through their fault, caused such damage to compensate for the resulting loss."

Based on the foregoing discussion, the elements of a civil unlawful act comprise the existence of an unlawful act, fault, a causal relationship between the act and the resulting loss, and the existence of loss or damage. Rosa Agustina, in her work entitled *Perbuatan Melawan Hukum*, identifies four criteria that must be satisfied in determining whether an act may be classified as an unlawful act (Sari, 2020): 1) It is contrary to the legal obligations of the person committing the act; 2) It infringes upon the subjective rights of another person; 3) It is contrary to morality; and 4) It is contrary to the principles of propriety, diligence, and due care.

B. Research Methodology

This study employs normative juridical legal research with a descriptive-analytical research specification. This specification is intended to describe and identify relevant legal facts and to systematically examine the legal protection afforded to bankrupt debtors and their creditors against unlawful acts committed by curators that result in the diminution of the bankruptcy estate.

To examine these legal issues, this study simultaneously employs three approaches: the statute approach, the case approach, and the conceptual approach. The statute approach is applied by examining relevant legislation, particularly the provisions of the Law on Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy and PKPU Law) and the Indonesian Civil Code. The case approach is employed to analyze the ratio decidendi of final and binding court decisions concerning criminal offenses or unlawful acts committed by curators, particularly cases adjudicated by the Central Jakarta District Court and the East Jakarta District Court. Meanwhile, the conceptual approach is used to construct legal arguments based on relevant doctrines and theories, including the theory of sovereignty, the theory of separation of powers, and the theory of legal protection.

The data used in this study consist of secondary data, which are classified into three categories of legal materials:

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1. Primary Legal Materials, comprising the 1945 Constitution of the Republic of Indonesia, the Indonesian Civil Code, the Indonesian Criminal Code, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, Law Number 48 of 2009 concerning Judicial Power, Law Number 30 of 2014 concerning Government Administration, the Regulation of the Minister of Law and Human Rights concerning Guidelines for Curators' Remuneration, the Decision of the DKI Jakarta High Court Number 275/PID/2018/PT.DKI dated November 8, 2018, jo. the Decision of the Class IA Special East Jakarta District Court Number 883/Pid.B/2017/PN.Jkt.Tim dated May 15, 2018, and the Decision of the Class IA Special Central Jakarta District Court Number 2081/PID.B/2011/PN.JKT.PST dated April 23, 2012.
2. Secondary Legal Materials, used to provide explanations and scholarly interpretation of the primary legal materials, including literature on bankruptcy law, legal doctrines, expert opinions, previous research findings, and scholarly articles published in reputable academic journals.
3. Tertiary Legal Materials, which provide guidance and clarification regarding primary and secondary legal materials, including legal dictionaries and encyclopedias.

All legal materials collected were subsequently analyzed using a qualitative juridical analysis method. This analytical method involved interpreting positive legal norms, relating them to the legal facts identified in court decisions as part of the case approach, and integrating them with relevant theories and concepts of legal protection. The results of the analysis were then comprehensively described to address the research questions, from which conclusions were drawn using deductive reasoning, proceeding from general legal provisions to the resolution of specific cases concerning the protection of the bankruptcy estate.

C. Results

Normatively, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy and PKPU Law) confers extensive attributed authority upon curators. Such authority arises immediately upon the pronouncement of a bankruptcy decision, at which point the curator acts as an independent administrator exercising full control over the bankruptcy estate. Within the legal framework of bankruptcy, the conferral of such exclusive authority is inherently accompanied by the principle of fiduciary duty, namely, an obligation founded upon trust. Accordingly, every action undertaken by the curator in liquidating the bankruptcy estate, including the sale of movable and immovable assets, must be directed exclusively toward maximizing the value of the bankruptcy estate for the benefit of creditors rather than for the curator's personal interests.

Pursuant to Article 65 of the Bankruptcy and PKPU Law, the supervisory judge is vested with the authority to oversee the administration and liquidation of the bankruptcy estate undertaken by the curator. However, this provision does not explicitly impose an obligation on the supervisory judge to conduct periodic examinations of financial transactions or audits of the administration of the bankruptcy estate. This regulatory framework indicates that the supervisory function established under the Bankruptcy and PKPU Law is directed primarily toward overseeing the exercise of the curator's authority through specific approval or judicial determination mechanisms, rather than through continuous operational supervision of the administration of the bankruptcy estate. Consequently, the scope of preventive oversight aimed at detecting and preventing the improper use of the bankruptcy estate remains relatively limited.

The practice of administering bankruptcy estates reveals instances of irregularities that have resulted in losses to the bankruptcy estate. These legal facts are confirmed by the Decision of the DKI Jakarta High Court Number 275/PID/2018/PT.DKI and the Decision of the Central Jakarta District Court Number 2081/PID.B/2011/PN.JKT.PST. In both cases, the Panels of Judges placed particular emphasis on the abuse of authority in exercising control over the bankruptcy estate. The analysis of these decisions demonstrates that the curators engaged in improper administration of the bankruptcy estates, resulting in substantial financial losses. These circumstances indicate that the existing supervisory mechanisms have not been sufficient to prevent irregularities during the administration of bankruptcy estates.

The absence of provisions expressly empowering the supervisory judge to take immediate measures, such as freezing bank accounts or suspending transactions involving the bankruptcy estate, means that the effectiveness of supervision depends largely on reports submitted by curators and objection mechanisms available to the parties. This condition may limit the capacity of the supervisory mechanism to detect irregularities at an early stage, particularly where an abuse of authority occurs before any report or objection is submitted by the debtor or creditors.

D. Discussion

D.1 The Role of the Supervisory Judge in Exercising Oversight over Curators

Based on the theory of attributed authority discussed above, a curator's authority is conferred directly by statute through attribution; therefore, its exercise must remain within the purposes for which such authority was granted. Accordingly, any action by a curator that exercises such authority for purposes other than the administration and liquidation of the bankruptcy estate constitutes a deviation from the statutory purposes underlying the conferral of that authority under the Bankruptcy and PKPU Law. This structural weakness in the supervisory framework creates opportunities for curators to commit unlawful acts and criminal offenses.

When analyzed through the doctrine of fiduciary duty, the actions of the curators in the Decision of the DKI Jakarta High Court Number 275/PID/2018/PT.DKI demonstrate a breach of the duty of loyalty. Curators vested with the authority to take control of and administer the bankruptcy estate are required to exercise such authority solely in the interests of the bankruptcy estate and its creditors. The use of bankruptcy estate funds for personal benefit demonstrates that the statutory authority conferred upon the curators was exercised for purposes beyond those for which it was granted.

From the perspective of the theory of separation of powers, oversight by the supervisory judge represents an application of the principle of checks and balances within the bankruptcy system. However, the analysis of the two court decisions indicates that the existing supervisory mechanisms have not been fully effective in controlling the exercise of curatorial authority. Accordingly, the role of the supervisory judge as a normative oversight mechanism requires further strengthening to ensure that the principle of checks and balances operates more effectively.

Based on the two court decisions analyzed in this study, curators continued to abuse their authority despite the supervisory mechanisms established under the Bankruptcy and PKPU Law. This finding demonstrates that the normative existence of a checks and balances mechanism does not necessarily prevent abuses of authority in practice. Therefore, the effectiveness of the supervisory mechanism requires further strengthening, both in terms of the authority conferred upon the supervisory judge and its practical implementation. This ineffectiveness is rooted in structural weaknesses inherent in the supervisory framework itself. In bankruptcy proceedings, supervisory judges also adjudicate other cases, and their overall caseload may therefore affect the intensity of their oversight of curators' performance. An excessive caseload (*overcrowded caseload*) significantly limits their capacity to exercise proactive supervision.

Furthermore, when compared with other jurisdictions, these systemic weaknesses become more apparent. By way of comparison, under the United States bankruptcy system, supervisory functions are not entrusted exclusively to the courts but are also actively supported by the United States Trustee Program (USTP) under the authority of the Department of Justice. The USTP serves as an independent supervisory body with investigative authority and specialized forensic auditing resources to oversee the conduct of bankruptcy trustees. By contrast, the Indonesian Bankruptcy and PKPU Law places the supervisory judge in a largely passive position. The supervisory judge relies heavily on periodic reports prepared by the curator, without the support of an independent auditing mechanism.

This comparison demonstrates that bankruptcy supervision in the United States does not rely solely on judicial oversight but is also supported by an institution specifically entrusted with administrative and investigative functions. By contrast, under the Indonesian Bankruptcy and PKPU Law, supervisory functions remain concentrated in the supervisory judge, without a supporting institution vested with independent auditing authority. This difference in institutional design may constitute one of the factors affecting the effectiveness of oversight over the administration of bankruptcy estates, thereby creating opportunities for curators acting in bad faith to conceal, embezzle, or manipulate assets of the bankruptcy estate without being detected at an early stage.

D.2 Effective Legal Remedies Available to Bankrupt Debtors and Their Creditors Against Curators' Actions Resulting in the Diminution of the Bankruptcy Estate

In addressing the second research question, it must first be clarified that this study does not examine preventive measures but rather focuses on effective legal remedies available in response to wrongful acts already committed by curators. For creditors and bankrupt debtors, the restoration of assets to the bankruptcy estate constitutes the principal objective of an effective legal remedy, as such restoration enables creditors' rights in the liquidation and distribution of the bankruptcy estate to be duly realized.

The first effective legal remedy is to bring a civil claim based on an unlawful act (*onrechtmatige daad*) against the curator, seeking an order from the district court requiring the curator to compensate for the losses sustained by the bankruptcy estate. It should be recognized, however, that judicial proceedings in Indonesia may be relatively lengthy. Even where a district court decision orders the curatorial team to pay compensation, if the assets removed from the bankruptcy estate are no longer under the curators' control, such a judgment may amount to little more than a "victory on paper." In practice, the actual recovery and restoration of assets to the bankruptcy estate may require a considerable period of time.

The second effective legal remedy is to file a criminal complaint against the curator for an alleged criminal offense, with the expectation that the prospect of imprisonment may compel the curator to restore the assets or funds improperly removed from the bankruptcy estate. However, as demonstrated by the two cases discussed above, the curators did not yield despite the criminal proceedings, and the assets were not restored to the bankruptcy estate.

From the perspective of the theory of legal protection, the legal remedies available to debtors and creditors are intended not only to provide legal certainty regarding curators' liability but also to constitute a form of repressive legal protection as conceptualized by Hadjon. Accordingly, both civil claims and criminal complaints constitute legal remedies that may be pursued after an abuse of authority has occurred and resulted in the diminution of the bankruptcy estate.

Based on the foregoing discussion, the effectiveness of these legal remedies is primarily normative insofar as they provide legal certainty for creditors and bankrupt debtors. In practice, however, the recovery and restoration of assets lost from the bankruptcy estate remain difficult to achieve. Moreover, the enforcement of court decisions cannot necessarily be carried out immediately and does not automatically result in the prompt restoration of assets to the bankruptcy estate.

E. Conclusion

The current institutional oversight exercised by the supervisory judge over the curator's attributed authority is characterized by structural weaknesses. These weaknesses stem from the absence of an independent auditing body and an excessive judicial caseload, resulting in a supervisory framework that tends to be passive and administrative in nature and is therefore insufficiently effective in preventing the misuse of the bankruptcy estate. Consequently, effective repressive legal remedies for aggrieved debtors and creditors cannot rely solely on the internal objection mechanisms provided under the Bankruptcy and PKPU Law. A strategic course of action is to utilize criminal complaints concerning alleged offenses, such as embezzlement or money laundering, as a coercive legal measure (*dwangmiddel*) capable of producing a deterrent effect, while simultaneously pursuing a civil claim based on an unlawful act (*onrechtmatige daad*) under Article 1365 of the Indonesian Civil Code to seek the restoration of the bankruptcy estate and compensation for losses caused by curators acting in bad faith.

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