



THE CURATOR'S AUTHORITY TO MANAGE AND CONTROL THE ASSETS OF THE "BANKLE DEBTOR"

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ABSTRACT

In the decision to declare bankruptcy, a Curator and a Supervisory Judge must be appointed from among the Court judges. Bankruptcy Law and postponement of debt payment obligations Article 69 number 1 regulates that the Curator's task is to manage and/or settle bankrupt assets, there is no further explanation regarding what is meant by "management of bankrupt assets" or "clearance of bankrupt assets". The formulation of the research problem is how the curator's duties and authority are regulated based on the Bankruptcy Law and whether in carrying out these duties and authority the curator is obliged to obtain approval from the supervising judge. The aim of this research is to find out the duties and authority of the curator and whether or not the curator needs the approval of the supervising judge to carry out his duties. The method used in this research is normative legal research with a statutory approach, a conceptual approach. The results of the analysis in the Bankruptcy Law and the postponement of debt payment obligations regulate the duties and authority of the curator, however there are several articles which regulate that the duties or authority of the curator require approval from the supervisory judge and other articles regarding the duties or authority of the curator are not clearly regulated whether the curator In carrying out their duties, the approval of the supervising judge is required.

Keywords: *Curator, Debtor, Bankrupt*

INTRODUCTION

Bankruptcy is a situation where the debtor is unable to pay or repay. payments for all debts owed by debtors to their creditors. Bankruptcy can be found in the treasury. The Dutch language is failliet which means strike or jam in making payments. A debtor is a person who has a debt due to an agreement or law whose repayment can be claimed before the court.

In the decision to declare bankruptcy, a Curator and a Supervisory Judge must be appointed from the court judges and in the event that the Debtor, Creditor, or authorized party submits a 1Hadi Shubhan, 2008, Bankruptcy Law Principles, Norms and Practices in the Courts, Kencana Prenada Media Group, Jakarta , p. 1. 2Ivida Dewi and Herowati Poesoko, Bankruptcy Law Position and Rights of Separatist Creditors on Collateral Objects of Bankrupt Debtors, LaksBang PRESSindo, Yogyakarta, p. 63. 3 applications for bankruptcy as intended in Article 12 paragraph (2), paragraph (3), paragraph (4), or paragraph (5), do not submit a proposal for the appointment of a Curator to the Court, then the Inheritance Property Office is appointed as Curator, the appointed Curator The party must be independent, have no conflict of interest with Debtors or Creditors, and not be

handling bankruptcy cases and postponement of debt payment obligations for more than 3 (three) cases. The decision of a debtor to become a bankrupt debtor by a commercial court brings legal consequences, namely, for the debtor a general confiscation is imposed on all of the bankrupt debtor's assets and the bankruptcy debtor's authority to control and manage his bankrupt assets is lost. Meanwhile, creditors will experience uncertainty regarding the legal relationship that exists between creditors and bankruptcy debtors. For this purpose, the Law has determined that the party who will handle debtor and creditor matters is the Curator.

FORMULATION OF THE PROBLEM

How are the duties and authorities of the curator regulated based on the Bankruptcy Law and is the curator obliged to obtain approval from the supervisory judge to carry out these duties and authorities?

METHOD

The type of method used in this journal is normative legal research methods. Normative legal research is legal research that embeds law as a building system of norms. The norm system in question is principles, norms, rules from statutory regulations, court decisions, agreements and doctrines (teachings). The characteristics of normative research are that the research starts from gaps in legal norms/legal principles, does not use hypotheses, uses a theoretical basis, uses primary legal materials, secondary legal materials and tertiary legal materials.

The approach used in this research is the statutory approach which is used to examine legal regulations related to the regulation of the authority and duties of curators. A conceptual approach is used to understand the concepts contained in the Bankruptcy Law and Suspension of Debt Payment Obligations. Sources of legal materials in normative research, there are two types of data studied, namely primary and secondary.

RESULTS AND WETTING

1. Arrangement of Duties and Authorities of the Curator

The main task of the curator is to manage and settle the bankruptcy estate. The curator has the obligation to carry out the duties of managing and/or settling the bankruptcy estate. The purpose of bankruptcy is to pay the rights of creditors that they should receive according to the level of their claims. Therefore, the curator must act in the best interests of the creditors, but the curator must also pay attention to the interests of the bankrupt debtor, these interests must not be completely ignored.

Based on the Bankruptcy Law, the primary duties and authorities of the curator include the following:

- a. the curator has the authority to act independently within the limits of his duties (Article 73 Paragraph 3);
- b. The main task of the curator is to manage and settle bankruptcy assets (Article 69 Paragraph 1);

- c. permitted to take out loans from third parties with conditions and the aim of increasing the value of the bankrupt's assets (Article 69 Paragraph 2);
- d. through the approval of the supervising judge, the curator has the authority to encumber the bankrupt's assets with Mortgage Rights, Pawns and other Collateral Rights (Article 69 Paragraph 3);
- e. the authority referred to in Article 36 is a reciprocal agreement unless there is an agreement that gives the debtor the right to carry out the action himself;
- f. authority to sell collateral from separatist creditors after 2 (two) months of insolvency (Article 59 Paragraph 1) or curator to sell movable property in a stay/quiet condition (Article 56 Paragraph 3);
- g. the curator has the authority to continue the business of a debtor who has been declared bankrupt (with the approval of the supervisory judge or creditors' committee) even though the decision to declare bankruptcy is submitted for cassation or judicial review (Article 104);
- h. the curator has the obligation to make a description or record of the bankruptcy assets (Article 100);
- i. authorized to transfer bankruptcy assets before verification (with the approval of the supervisory judge) (Article 107 Paragraph 1);

2. Duties and Authorities of the Curator and Approval of the Supervising Judge

The curator plays a role in carrying out duties and/or settling bankrupt assets in the event of bankruptcy. Article 16 paragraph 1 Law no. 37 of 2004 regulates that: "The curator has the authority to carry out the duties of managing and/or settling bankruptcy assets from the date the bankruptcy decision is pronounced even if the decision is submitted for cassation or judicial review." based on Article 16 paragraph 1 of Law no. 37 of 2004 mentioned above, it can be seen that the authority of a Curator is very broad. Moreover, if you look at paragraph 2 of the article, Article 16 paragraph 2 of Law no. 37 of 2004 regulates that: "In the event that the decision to declare bankruptcy is canceled as a result of a cassation or judicial review, all actions that have been carried out by the Curator before or on the date the Curator receives notification of the decision to cancel as referred to in Article 17 remain valid and binding on the Debtor."

Based on Article 16 paragraph 2, everything that has been done by the Curator as long as it is carried out in carrying out management and/or settlement duties, then the actions taken by the Curator remain valid and binding on the Debtor. For this reason, it is necessary to pay attention to the extent of the Curator's authority in carrying out the task of managing and/or settling bankruptcy assets, especially in the event that the bankruptcy assets are greater than the debts of the bankruptcy debtor.

In the Big Indonesian Dictionary, authority is defined as follows:

1. The right and power to act; authority;
2. The power to make decisions, command, and delegate responsibility to others;

3. Functions that may not be implemented.

Authority is an understanding that comes from the law of government organizations, which can be explained as all the rules relating to the acquisition and use of government authority by public law subjects in public legal relations. Authority in legal language is not the same as power. Power only describes the right to do and not to do. Authority simultaneously means rights and obligations. Authority is the right to use the authority possessed by an official or institution according to applicable provisions, thus authority also concerns the competency of legal actions that can be carried out according to formal rules, so authority is the formal power possessed by an official or institution.

Based on this definition of authority, the authority possessed by the curator may or may not be exercised. The authority of the Curator is:

1. authority that can be exercised without having to notify or obtain prior approval from the debtor or one of the debtor's organs, although for such actions, if in circumstances other than bankruptcy, such approval or notification is not required.
2. authority that can be exercised after obtaining approval from another party, in this case the supervising judge. For example, the curator's action to obtain a loan from a third party by encumbering the bankrupt's assets with mortgages, pledges or collateral rights for other assets.

One example of a curator's duties which is not confirmed by the Bankruptcy Law regarding whether or not approval from the supervising judge is required is when the curator frees the object that is used as collateral by paying the creditor concerned the smallest amount of the market price of the collateral item with the amount of money guaranteed by the collateral item (Article Paragraph 3).

COUNCLUSION AND RECOMENDATION

1. Conclusion

The duties and authority of the curator can be found in the Bankruptcy Law, the main task is to manage and/or settle the bankruptcy estate and in carrying out his duties and authority, there are several tasks that are required to obtain approval from the judge 15Ibid. The 12 supervisors and their other duties or authorities are not explained in the Bankruptcy Law regarding whether approval from the Supervisory Judge is required or not.

2. Suggestion

In this case, it would be better for the government to play an important role in strengthening or reaffirming the Bankruptcy Law, so that in its regulations related to the duties and authority of the curator, priority is given or reaffirmed to the duties and authorities that require the approval of the supervisory judge and duties and authorities that do not require the approval of the supervisory judge.

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