

## Curator's Immunity Right Against Civil Claims in the Management of Bankruptcy Boedel

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### ABSTRACT

*The uncertainty of legal protection for curators in executing the settlement of bankrupt estates, who often face civil lawsuits. Although curators perform their duties based on court orders, they are not equipped with adequate immunity rights like other legal professions, such as advocates and notaries. The right to immunity is a freedom and or immunity of the curator profession from all lawsuits in carrying out the administration of bankruptcy assets as long as it is carried out in good faith. The lack of immunity for the curator has the effect of disrupting the task of administering the bankruptcy estate. This study aims to analyze the regulations regarding immunity rights for legal professions in Indonesia and the implementation of curatorial immunity in facing civil lawsuits. The research employs a normative juridical method with a legislative and analytical approach. The findings of this research indicate that, despite the crucial role curators play in the bankruptcy process, there is no explicit regulation providing immunity rights against civil lawsuits. There is a need for revisions to the applicable laws so that the immunity rights of curators can be clearly and comprehensively regulated, thereby providing legal certainty, utility, and justice for curators in carrying out the settlement of bankrupt estates. The findings offered are to revise the Bankruptcy Law to add a regulation on Curator immunity, or make a special regulation on the Curator Profession by including the Right to Immunity, or establish a*

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*joint ethics board as a performance supervisor by the curator.*

**Keywords:** *Bankruptcy; Curator; Immunity Right.*

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## I. INTRODUCTION

The Efforts to resolve debt disputes are often a strategic step to ensure that creditors get their rights back.<sup>1</sup> This Settlement of dispute can be done through a commercial court, with two main routes, namely, a bankruptcy petition or a request for a suspension of debt payment obligations (PKPU). These two options allow creditors and debtors to file a dispute resolution according to the conditions of each party. Bankruptcy becomes a commercial solution when the debtor is no longer able to pay his debts.<sup>2</sup> In this case, the debtor or creditor can file a bankruptcy petition with the condition that there are at least two creditors and one unpaid debt. This is regulated in Article 2 paragraph (1) in conjunction with Article 8 paragraph (4) in conjunction with Article 222 of Law Number 37 of 2004 concerning Bankruptcy and PKPU. After going through the evidence process in the trial, the judge will give a decision on whether or not the debtor is bankrupt.

The Commercial Court's decision declaring the debtor bankrupt results in legal consequences, namely that the debtor legally loses the right to control and manage his assets referred to in the bankruptcy, starting from the bankruptcy.<sup>3</sup> The examination of the bankruptcy application by the commercial court must be carried out within a maximum of 60 days after registration. If the application is granted, the judge will appoint a curator to manage and settle the bankrupt's assets under the supervision of the supervising judge. Another mechanism is to apply for a Postponement of Debt Payment Obligations (PKPU). The debtor requests a PKPU with the aim of preparing a payment plan with the creditor. The PKPU application can be submitted by the debtor or creditor. If the PKPU application is submitted by the debtor, the court must grant the application

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<sup>1</sup> Christiawan, Rio. *Hukum Kepailitan & Penundaan Kewajiban Pembayaran Utang*. Jakarta, Raja Grafindo Persada, 2020, p. 214.

<sup>2</sup> Subhan, M Hadi. *Hukum Kepailitan: Prinsip, Norma, dan Praktik di Peradilan*. Jakarta, Kencana Prenadamedia Group, 2014, pp. 361-374.

<sup>3</sup> Aprita, Serlika. *Etika Profesi Kurator*. Jember, Pustaka Abadi, 2019, p. 272.

within three days after registration. Whereas if the PKPU application is submitted by the creditor, the court must grant it within 20 days.<sup>4</sup>

After bankruptcy or PKPU is granted, all responsibility for managing the bankrupt estate is transferred to the curator. According to Law No. 37 of 2004, the curator's duties are divided into two stages: management and settlement.<sup>5</sup> At the management stage, the curator is responsible for securing the debtor's assets, inviting creditors to meetings, and preparing regular reports to the supervising judge. In addition, the curator also has the authority to seal, terminate employment, and take other important steps to ensure the continuity of the bankrupt debtor's business, if the business is still running. At the settlement stage, the curator sells the bankrupt debtor's assets to pay off debts to creditors. The curator must verify the debtor's bills and obligations, and prepare a list of assets that can be sold. This settlement process is regulated in detail in the Bankruptcy and PKPU Laws, including provisions on the curator's rights and obligations and his authority to terminate lease agreements and terminate employment.<sup>6</sup>

Although curators have huge responsibility in the bankruptcy process, they are not protected by immunity rights that can exempt them from civil lawsuits. Curators are often sued in court by parties who feel aggrieved by their actions in the process of settling bankrupt assets.<sup>7</sup> One example of a case that shows the vulnerability of the curator's position is case Number 36/Pdt.Sus-Other Claims/2023/PN Niaga Jkt.Pst, where PT. Kagum Guna Usaha Maju sued the curator team regarding control of seven land certificates that were included in the list of bankrupt assets. In that case, the plaintiffs argued that they were the rightful owners of the certificates, but the Panel of Judges ruled that the certificates were assets of the bankrupt debtor. Although the plaintiffs' lawsuit was ultimately rejected by the court for failing to prove that they were purchasers in good faith, this case shows how vulnerable curators are to civil lawsuits, especially when

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<sup>4</sup> Sukma, Cantika Ayuri, et al. "Kedudukan Kurator Dalam Pembersihan Harta Pailit Sesuai Undang-Undang No.37 Tahun 2004." *Judakum: Jurnal Dedikasi Hukum*, Vol. 2, No. 2, 2023, p. 220, <http://103.241.192.17/~jurnalunidha/index.php/JDH/issue/view/53>.

<sup>5</sup> Sukardi, Didi. "The Legal Responsibility Of Debtor To Payment Curators In Bankruptcy Situation." *Jurnal Pembaharuan Hukum*, Vol. 8, No. 2, 2021, p. 142, <http://dx.doi.org/10.26532/jph.v8i2.15905>.

<sup>6</sup> Hartini, Rahayu. "Curator's Legal Efforts in Executing State-Owned Enterprise Assets in Bankruptcy." *AMCA Journal of Community Development*, Vol. 1, No. 2, 2021, pp. 27–30, <https://doi.org/10.51773/ajcd.v1i2.65>.

<sup>7</sup> Raissa, Amanda, et al. "Kelemahan Kurator Dalam Pembersihan Harta Pailit." *Jurnal Hukum Magnum Opus*, Vol. 3, No. 2, 2020, p. 215, <http://doi.org/10.30996/jhmo.v3i2.3442>.

dealing with parties who are not acting in good faith. The losses suffered by curators due to lawsuits of this kind can be material, such as court costs and other expenses, as well as immaterial, such as disruption of the task of managing and settling the bankrupt estate. Furthermore, if the lawsuit is granted, the curator is required to pay high value compensation, even up to trillions of rupiah.

The position of curator as a legal profession should receive equal protection with other legal professions in Indonesia, such as advocates and notaries. Advocates, for example, are protected by the immunity rights regulated in Article 16 of Law No. 18 of 2003 concerning Advocates.<sup>8</sup> Meanwhile, notaries receive legal protection in carrying out their duties based on Article 66 of Law No. 30 of 2004 concerning the Position of Notary. However, this is different from curators who are not protected by clear and firm immunity rights. This creates an inequality in legal treatment of the curator profession compared to other legal professions. This discrimination is contrary to the principle of "equality before the law" guaranteed in Article 28D paragraph (1) of the 1945 Constitution, which states that everyone has the right to equal treatment before the law.

This article emphasizes the importance of granting immunity rights to curators as a form of legal protection against the curator's civil liability. The issues discussed in this paper include the regulation of immunity rights for the legal profession in Indonesia and the implementation of curator immunity rights from civil lawsuits in the settlement of bankrupt estates. First, the regulation of immunity rights is important in protecting the legal profession, such as advocates and notaries, from civil and criminal lawsuits as long as they carry out their duties in good faith. Second, the review of these immunity rights is applied in the context of curators who are responsible for the settlement of bankrupt estates. Given the important role of curators in the bankruptcy process, questions arise regarding how curator legal immunity can be applied to protect them from potential civil lawsuits while carrying out their duties in the settlement of bankrupt estates, and to what extent current regulations provide adequate legal certainty.

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<sup>8</sup> Novi, Fransiska Putri Novi and Suryono. "Implementasi Hak Imunitas Advokat dalam Praktek Peradilan Pidana." *Indonesian Journal of Law and Justice*, Vol. 1 No. 3, 2024, p. 5, <https://doi.org/10.47134/ijlj.v1i3.2104>.

## II. DISCUSSION

### 2.1 The Urgency of The Absence of Curator's Immunity Rights.

In Private law, curators have an important role, especially in bankruptcy cases. A curator is a party appointed by the court to manage and settle the assets and liabilities of a debtor declared bankrupt. His position is independent and is responsible for the process of administering the bankruptcy estate in accordance with the provisions of the law. Some major aspects of receivership in private law:

1. As manager of the bankruptcy estate; the Curator is tasked with inventorying, managing, and selling the debtor's assets to pay debts to creditors.<sup>9</sup>
2. As a legal representative; The curator acts on behalf of the debtor in various legal transactions during the bankruptcy process.<sup>10</sup>
3. Under the supervision of the supervisory judge; All actions of the receivers shall be subject to the direction and supervision of the supervisory judge to ensure compliance with the law.<sup>11</sup>
4. Has broad authority; The curator can take various legal actions such as cancelling transactions that harm creditors or filing lawsuits if necessary.<sup>12</sup>

In conducting the administration of bankruptcy assets, the curator has a crucial role because the success of the administration of bankruptcy assets lies in the performance of the curator who is safe from various disturbances including lawsuits. This is the reason why the right to immunity for curators is important in carrying out their duties in the administration of bankruptcy assets.

This is different from advocates and notaries as a legal professionals in Indonesia, who have protection in the form of immunity rights. Immunity rights is the right to immunity, which provides protection to legal professionals from civil or criminal lawsuits when they carry out their duties in good faith. However, to date, the regulation regarding

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<sup>9</sup> Sukma, Cantika Ayuril, et al. Log Cit.

<sup>10</sup> Oktavira, Bernadetha Aurelia. "Tugas Kurator dan Hakim Pengawas dalam Kepailitan", *Hukum Online*, <https://www.hukumonline.com/klinik/a/tugas-kurator-dan-hakim-pengawas-dalam-kepailitan-cl738/>

<sup>11</sup> Singal, Nicky Yehezkiel. "Kajian Hukum Tanggung Jawab Kurator Dalam Penyelesaian Perkara Kepailitan Pasca Putusan Pengadilan Niaga." *Lex Privatum*, Vol. 10, No. 1, 2022, pp. 229-239. <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/38087>.

<sup>12</sup> Silalahi, Rumelda and Onan Purba, "Peran Dan Wewenang Kurator Dalam Kepailitan Perseroan Terbatas." *Jurnal Retentum*, Vol. 2 No. 2, 2020, pp. 119-126, <http://dx.doi.org/10.46930/retentum.v2i2.710>.

the right to immunity has not been fully applied evenly to all legal professions, including curators. The immunity rights regulated in Law No. 18 of 2003 concerning Advocates provide protection to advocates in carrying out their professional duties. In Article 16 of the Law, advocates cannot be sued civilly or criminally as long as they carry out their duties in good faith in defending the interests of clients in court.<sup>13</sup> Constitutional Court Decision Number 26/PUU-XI/2013 expands the meaning of this protection to include advocates' actions both inside and outside the court, as long as they carry out their professional duties in good faith.

The same thing also happens to notaries who are given immunity rights for protection in carrying out their duties. Article 66 of Law No. 30 of 2004 concerning the Position of Notary, stipulates that law enforcement against notaries, such as summons or examinations, must obtain approval from the Notary Honorary Council. This legal protection provides notaries with the guarantee that they can carry out their duties without the threat of unwarranted lawsuits. However, similar arrangements have not been clearly regulated for curators, even though they play an important role in the bankruptcy process. Curators are responsible for the management and settlement of the bankruptcy estate, including selling the debtor's assets and distributing the proceeds to creditors. Thus, curators often face the risk of civil lawsuits from various parties, including creditors or third parties who feel aggrieved by the curator's actions. Although curators are appointed by the court to act independently, the absence of clear legal protection in the form of immunity rights makes their position vulnerable to lawsuits.

Literally, the term immunity comes from the Latin Immunitas which means immunity or inviolability.<sup>14</sup> According to Robert M. Unger, the Right to Immunity is the right to individual protection from domination and intervention, this will guarantee a very personal individual area such as civil liberties.<sup>15</sup> Namely the right not to be undermined by the power of other parties.<sup>16</sup> In relation to the curator profession, the right to immunity is a freedom and or immunity of the curator profession from all lawsuits in carrying out

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<sup>13</sup> Hafidzi, Anwar. "Eksistensi Advokat Sebagai Profesi Terhormat (*Officium Nobile*) Dalam Sistem Negara Hukum Di Indonesia." *Khazanah: Jurnal Studi Islam Dan Humaniora*, Vol. 12. No. 2, 2015, pp. 263-274, <https://doi.org/10.18592/khazanah.v13i1.517>.

<sup>14</sup> Efendi, Jonaedi, et al. *Kamus Istilah Hukum Populer*. Jakarta, Prenada Media Group, 2016, p. 187.

<sup>15</sup> Hamidi, Jazim, et al. *Membedah Teori-Teori Hukum Kontemporer*. Malang, UB Press, 2013, p. 183.

<sup>16</sup> Fuady, Munir. *Filsafat dan Teori Hukum Postmodern*. Bandung, PT Citra Aditya Bakti, 2005, p. 175.

the administration of bankruptcy property as long as it is carried out in good faith. The meaning of the word free is without pressure, threats, obstacles, without fear, or treatment that degrades the dignity of the profession.<sup>17</sup> Meanwhile, the meaning of the word good faith is that the process of managing bankruptcy assets carried out by the curator must be in accordance with the professional code of ethics and applicable laws and regulations.

In carrying out their duties, curators are often involved in stressful situations, especially when they have to make difficult decisions regarding the debtor's assets. Therefore, the right to immunity is very important to provide protection to curators so that they can carry out their duties without fear of unreasonable lawsuits. Without the right to immunity, curators can lose focus in carrying out their duties to settle bankrupt assets because they have to deal with civil lawsuits filed by parties who do not act in good faith.<sup>18</sup> In the bankruptcy and suspension of debt payment obligations (PKPU) process, there are three types of assignments for curators,<sup>19</sup> namely:

- 1) A temporary curator appointed to supervise the management of the debtor's assets before the debtor is declared bankrupt, with the aim of preventing actions that could harm the debtor's assets. The temporary curator is responsible for managing the business and protecting the debtor's assets from actions that could harm creditors.
- 2) administrators appointed in the context of PKPU are tasked with supervising the administration of PKPU, including announcing the PKPU process, calling creditor meetings, and supervising the debtor's business activities. Administrators must be independent, have special expertise, and be responsible for errors or negligence that cause losses to the debtor's assets.
- 3) The curator is appointed after the debtor is declared bankrupt. Since the declaration of bankruptcy, the curator takes over the management and control rights over all of the debtor's assets, which are included in the bankruptcy estate,

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<sup>17</sup> Yahman and Nurtin Tarigan. *Peran Advokat Dalam Sistem Hukum Nasional*. Jakarta, Kencana, 2019, hlm. 78.

<sup>18</sup> Ruslina, Elli, et al. "General Confiscation Versus Criminal Confiscation in Regard to Curators Authority and Responsibility in Bankruptcy Settlement Process." *Sociological Jurisprudence Journal*, Vol. 3, No. 2, 2020, pp. 112–16, <https://doi.org/10.22225/scj.3.2.1803.112-116>.

<sup>19</sup> Sjahdeini, Sutan Remy. *Sejarah, Asas, dan Teori Hukum Kepailitan*. Jakarta, Prenadamedia Group, 2016, p. 628.



to settle them in accordance with applicable provisions.

In practice, the profession of curator is on par with advocates and notaries in terms of the importance of the tasks they carry out. Therefore, the regulation of immunity rights for curators needs to be prioritized in legal reform efforts in Indonesia. Just as advocates are protected by law, curators must also receive adequate legal protection so that they can carry out the task of settling bankrupt estates effectively, without being hampered by the threat of disproportionate lawsuits. The duties of the curator that should be protected by the right to immunity include the management and disposal of bankruptcy assets in accordance with legal provisions, the sale of assets to pay off the debtor's obligations to creditors, the implementation of decisions that have been approved by the supervisory judge, and the security and management of debtor assets to protect creditor rights. The protection of these duties provides legal certainty for the curator to complete the bankruptcy process efficiently without obstacles caused by unfounded claims.<sup>20</sup>

In the context of bankruptcy settlement, the curator plays an important role in managing and settling the debtor's assets to pay creditors. However, the curator's immunity rights, which are interpreted as legal immunity from civil or criminal claims when carrying out their duties, have not been expressly regulated in bankruptcy law in Indonesia.<sup>21</sup> In its implementation, many curators are of the opinion that they do not have immunity rights, even though in carrying out their duties they are faced with the risk of civil lawsuits by various interested parties.<sup>22</sup> This makes the curator vulnerable to civil lawsuits if the parties who feel aggrieved file a lawsuit against the curator's actions which are considered wrong or not in accordance with procedures.<sup>23</sup>

The curator's responsibility in the process of settling bankrupt assets can be requested personally. This is based on the provisions of Article 72 of the Bankruptcy Law and PKPU which states that the curator is responsible for errors or negligence that cause

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<sup>20</sup> Interview with Curator Muhammad Arifuddin, Member of the Indonesian Receivers and Administrators Association (AKPI) Batch 21, March 10, 2024

<sup>21</sup> Farras, Maulana and Elfrida R. Gultom. "Gugatan lain-lain Oleh Kreditur Kepada Debitor Pasca Berakhirnya Kepailitan." *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang*, Vol. 6, No. 2, 2023, p. 227, <https://doi.org/10.33474/yur.v6i2.19700>.

<sup>22</sup> Thabrani, Machsun. "Tanggung Jawab Direksi Perseroan Terbatas Yang Dinyatakan Pailit." *Jurnal Hukum Ius Qula Iustum*, Vol. 9, No. 19, 2002, pp. 20–28, <https://doi.org/10.20885/iustum.vol9.iss19.art2>.

<sup>23</sup> Ranovianto, Aditya Rizal and Merline Eva Lyanthi, "Tanggung Jawab Perdata Atas Tindakan Lalai Kurator Dalam Kepengurusan Harta Pailit (Boedel Pailit)." *Journal Publicuho*, Vol 7. No.3, 2024, pp. 1054–64, <https://doi.org/10.35817/publicuho.v7i3.457>.



losses to bankrupt assets. This means that there is no legal protection that regulates the right of immunity for curators, unlike the advocate profession which is regulated in the Advocate Law. Therefore, every curator who makes an error or negligence in carrying out his duties can be held accountable in the form of compensation by the creditor or debtor. In addition, the concept of the curator's responsibility in the settlement of the bankrupt estate also follows the theory of legal responsibility put forward by Hans Kelsen and Abdulkadir Muhammad. This responsibility includes three forms: responsibility due to unlawful acts committed intentionally, responsibility due to negligence, and absolute responsibility without regard to error.<sup>24</sup> If the curator makes a mistake or negligence that harms the bankrupt estate or a third party, then the curator is personally responsible for the loss.

In practice, curators often face civil lawsuits when settling bankrupt estates. If the curator's actions are deemed to exceed the authority granted by law, the curator must be personally liable for the losses incurred. On the other hand, if the curator's actions are carried out in accordance with the authority granted by law and in good faith, then the losses incurred cannot be charged to the curator personally, but to the bankrupt estate/boedel.<sup>25</sup> In the Indonesian positive legal system, a curator can be sued civilly based on Article 1365 of the Civil Code, which regulates unlawful acts/tort. This article provides a legal basis for aggrieved parties to file a lawsuit if the curator is deemed to have acted unlawfully or deviated from his duties and obligations in the management of bankruptcy assets. Such as the tort lawsuit filed at the Central Jakarta District Court with case number 36/Pdt.Sus-Other Lawsuits/2023/PN Niaga Jkt.Pst. The case of PT Kagum Guna Usaha Maju's lawsuit against the curator team of PT Kagum Karya Husada regarding the control of seven land certificates in the bankruptcy estate process shows the importance of the curator's immunity rights. Given that PT Kagum Guna Usaha Maju claimed ownership of the land based on the binding sale and purchase agreement (PPJB) with Hendry Husada (in bankruptcy), the receivership team included the land as a bankruptcy asset. The curators acted in accordance with the authority granted by the court, which gives them

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<sup>24</sup> Muhamad, Abdulkadir. *Hukum Perusahaan Indonesia*. Bandung, Citra Aditya Bakti, 2010, p. 648.

<sup>25</sup> Kurniawan, Aan Rizalni, et al. "Hak Imunitas Kurator Dalam Eksekusi Harta Debitor Pailit." *Disiplin Jurnal Ilmu Hukum*, Vol. 27, No.1, 2021, p.68, <https://doi.org/10.46839/disiplin.v27i1.24>,

legal protection (immunity) from civil lawsuits as long as the actions taken are in accordance with the law in the context of asset disposal.

In the court's decision, this lawsuit was rejected because PT Kagum Guna Usaha Maju (Plaintiff) could not prove that it was a good faith purchaser. The right to curatorial immunity protects the curator from civil liability for actions taken in carrying out his duties in accordance with the law, thus ensuring a smooth process of disposing of the bankruptcy estate. In this case, the actions of the receivership team in taking possession of the assets were deemed legitimate and not unlawful, as they followed the applicable legal procedures. This decision emphasises the importance of proving good faith by parties claiming assets outside the bankruptcy estate and reinforces the principle that receivers are protected from civil claims if acting within the scope of their legitimate duties.

Lawsuits filed in court over the performance of the curator have the effect of delaying the administration process, and the curator even has to increase his personal expenses to deal with the claims filed against him. Equally important is the immaterial issue of security and comfort in carrying out the curator's profession, and this immaterial impact can also occur to the curator's family and co-workers. Therefore, it is important to regulate the immunity rights for curators so that they can carry out their duties in settling bankrupt estates without having to worry about the risk of civil lawsuits. Clear regulations regarding these immunity rights will provide legal certainty for curators and ensure that they can carry out their duties professionally and without unreasonable legal pressure. Legal reforms that regulate immunity rights for curators will greatly assist in strengthening the bankruptcy legal system in Indonesia, as well as protecting curators from disproportionate demands in carrying out their duties.

## **2.2 The Implementation of Curator's Immunity Rights and Its Impact on Curator's Duty.**

Recognition of the curator's immunity rights is not only important for the curators, but also for creditors, debtors, and the commercial justice system as a whole. To carry out their responsibilities as a supposedly independent profession, curators face many

challenges during the bankruptcy process.<sup>26</sup> The curator must be free to perform his/her duties in accordance with the curator's professional standards, the curator's professional code of ethics, and the Bankruptcy and PKPU Law. Other obstacles may include non-cooperation from creditors and bankrupt debtors, or physical or psychological abuse.<sup>27</sup> The receivership profession has a strong basis for legal protection under Indonesian law. There are three fundamental reasons why the profession is recognised, including:<sup>28</sup>

- 1) the curator uses knowledge acquired through long education, not just logical instinct.
- 2) curators have specialised skills, not just knowledge.
- 3) curators adhere to a certain ethos and morals in their work, which is closely related to ethics.

These three reasons are sufficient grounds to provide legal protection for curators by granting immunity rights. Legal protection for curators in carrying out their duties is a manifestation of the protection of the curator's rights and also the rights of the parties involved in the bankruptcy and PKPU process. In Salmond's theory of legal protection, the law aims to integrate and coordinate various interests in society by limiting them, because in the traffic of interests, the protection of certain interests can only be done by means of interests on the other side.<sup>29</sup> Furthermore, Philipus M. Hadjon asserted that legal protection is a subjective condition that shows that a number of subjects must immediately obtain resources to ensure the existence of legal subjects guaranteed and protected by law, so that their strength is organised in the economic and political decision-making process, especially in terms of resource distribution, both individually and structurally. This statement is also agreed by Satjipto Raharjo, legal protection is to provide protection for human rights (HAM) that are harmed by others and that protection is given to the

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<sup>26</sup> Rokhma, Fadila Ilaina dan Made Warka, "Kewenangan Kurator Dalam Pembersihan Boedel Pailit Debitur Yang Masih Dalam Sengketa." *Bureaucracy Journal*, Vol. 3, No. 3, 2023, p. 2788, <https://doi.org/10.53363/bureau.v3i3.363>.

<sup>27</sup> Pratama, Aditya and Parulian Paidi Artonang, *Tanggung Jawab dan Perlindungan Hukum Terhadap Independensi Kurator Terkait Ancaman Pidana Memasukan Keterangan Palsu Dalam Pembersihan Harta Pailit (Studi Kasus PT. Kymco Lippo Motor Indonesia)*, Skripsi Fakultas Hukum Universitas Indonesia, 2014, p. 13, <https://lontar.ui.ac.id/detail?id=20387620>.

<sup>28</sup> Muchsin. *Perlindungan dan Kepastian Hukum bagi Investor Indonesia*. Surakarta, Alumni, 2003, p. 14.

<sup>29</sup> Rizkia, Nanda Dwi. *Politik Hukum Kerjasama Penelitian Asing*. Bandung, Penerbit P.T. ALUMNI, 2021, p. 54.

community so that they can enjoy all the rights granted by law.<sup>30</sup> These various statements emphasise that the position of the curator in performing the task of administration in good faith must be legally protected in order to avoid various things that weaken the curator so that he cannot carry out his duties properly.

By granting immunity rights to the curator, the bankruptcy settlement process can run more smoothly and effectively, without being disrupted by the litigation process that can slow down the process of settling the bankrupt's assets.<sup>31</sup> Ultimately, granting these immunity rights will help achieve the desired justice, certainty, and legal benefits in the bankruptcy system in Indonesia. The urgency of regulating immunity rights for curators is a discourse offered in this article. This discourse was born based on the doctrine that explains that the Curator has immunity rights, this was conveyed by one of the bankruptcy law experts, Sutan Remy Sjahdeini, firmly in his opinion regarding the relationship between the Curator and the court, stating that:<sup>32</sup>

- 1) Interference by a third party in the implementation of the curator's duties constitutes contempt of court, because the curator is appointed by the commercial court and carries out his duties in the interests of the court.
- 2) The curator cannot be sued for having carried out statutory obligations.
- 3) The curator can only be sued if he does not carry out his statutory obligations.

The same thing was also stated by Putra Prakasa Hase, who works as a curator, that:

*"Because of the position of the curator as a representative of the court, the characteristics of the Judicial power are inherent which may not be intervened, sued, or even criminalized. Based on Article 3 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, it states that, All interference in judicial affairs by other parties outside the Judicial power is prohibited, except as referred to in the 1945 Constitution of the Republic of Indonesia."*

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<sup>30</sup> Raharjo, Satjipto. *Ilmu Hukum*. Bandung, Citra Aditya Bakti, 2000, p. 30.

<sup>31</sup> Saputra, Irfan Eka, *Perspektif Hak Imunitas Kurator Saat Pengurusan dan Pemberesan Harta Pailit*, Thesis UPNVJ, Jakarta, 2017, pp. 7-8, <http://repository.upnvj.ac.id/id/eprint/4652>.

<sup>32</sup> Sjahdeini, Sutan Remy. *Hukum Kepailitan: Memahami Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan*. Jakarta, Pustaka Utama Grafiti, 2010, p. 78.

To obtain immunity rights, legal actions carried out by the Curator must be based on the principle of good faith, if there is an agreement made during the settlement of the bankrupt estate only for the benefit of increasing the value of the bankrupt estate so that creditors feel satisfied and no one feels disadvantaged. Good faith can be measured by the way the settlement of the bankrupt estate carried out by the curator has been in accordance with the procedures and methods determined by the Bankruptcy Law and PKPU. The element of good faith is only required in terms of "implementation" of an agreement, not in the "making" of an agreement. Because the element of "good faith" in terms of making an agreement can already be covered by the element of "legal cause" from Article 1320 of the Civil Code.<sup>33</sup>

In the context of the theory of legal certainty, the right to immunity for curators is a fundamental aspect that needs to be strengthened in legal regulations in Indonesia. According to Gustav Radbruch, legal certainty is one of the three objectives of law that must be achieved, in addition to justice and benefit.<sup>34</sup> Legal certainty requires clear, stable, and predictable rules, so that individuals can know their rights and obligations in various situations. In this case, curators as legal implementers in the bankruptcy process must be protected by rules that provide certainty in carrying out their duties. In the theory of legal benefit put forward by Jeremy Bentham, the law must function to achieve "the greatest happiness for the greatest number," or the greatest happiness for the greatest number of people.<sup>35</sup> Granting immunity rights to curators who act in good faith in carrying out the duties of managing and settling bankrupt estates is in line with the theory of legal benefit, because it aims to ensure that curators can carry out their duties without fear of unreasonable legal threats, which will ultimately benefit all parties involved in the bankruptcy process.

The granting of professional immunity rights to a curator who acts in good faith in carrying out the management and/or settlement of a bankrupt estate can be done in three ways, namely:

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<sup>33</sup> Fuady, Munir. *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis)*. Bandung, Citra Aditya Bakti, 2001, p. 81.

<sup>34</sup> Setiawan., Agus. "Penalaran hukum yang mampu mewujudkan tujuan hukum secara proporsional." *Jurnal Hukum Mimbar Justitia*, Vol. 3, No. 2, 2017, p. 210, <https://doi.org/10.35194/jhmi.v3i2.257>.

<sup>35</sup> Pratiwi, Endang, et al. "Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum Atau Metode Pengujian Produk Hukum?." *Jurnal Konstitusi*, Vol. 19, No. 2, 2022, p. 275, <https://doi.org/10.31078/jk1922>.

### 2.2.1 Revision of the Bankruptcy and Suspension of Debt Payment Obligations Laws.

This Revision is necessary because there are no provisions that can provide legal protection for curators.<sup>36</sup> The Bankruptcy and PKPU Laws only favor the interests of the bankrupt estate, as stipulated in Article 72 of the KPKPU Law, with the formulation "The curator is responsible for errors. His negligence in carrying out the management and/or settlement duties that cause losses to the bankrupt estate". On the other hand, there is no immunity for curators who act in good faith in carrying out the management and/or settlement of bankrupt estates. Therefore, it is necessary to add a regulation with the formulation "curators cannot be sued either civilly or criminally in carrying out their professional duties in good faith in carrying out the management and/or settlement duties of bankrupt estates. This provision is important to provide a sense of security for curators who act in good faith, while the concept of good faith must also have its limits determined so that it is easier to implement.

### 2.2.2 Formation of a Law on the Curator Profession.

The creation of a special law for Curators that is systematic and comprehensive provides Legal Protection (immunity) for Curators.<sup>37</sup> It is necessary to create a Law on the Curator Profession which regulates the legal protection of the curator profession that is not listed in the Bankruptcy and PKPU Laws. Until now, the requirements to become a curator are not regulated in regulations that are equivalent to laws, but only by Ministerial Regulations. Currently, the procedures and requirements for registration of Curators are further regulated in the Regulation of the Minister of Law and Human Rights Number 18 of 2013 concerning the Requirements and Procedures for Registration of Curators and Administrators. The legal protection (immunity) of professions that act in good faith in carrying out the management and/or settlement of bankrupt estates will be more systematic and comprehensive.

### 2.2.3 Establishment of a Joint Ethics Council

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<sup>36</sup> Yalid. "Persyaratan dan Prospek Serta Gagasan Imunitas Terhadap Kurator yang Beritikad Baik." *Jurnal Hukum Respublika*, Vol. 16, No. 1, p. 51, <https://doi.org/10.31849/respublica.v16i1.1425>.

<sup>37</sup> Sugiyatmo, Agus and Elfrida Ratnawati. "Perlindungan Hukum dan Batasan Hak Imunitas Advokat dan Kurator." *Ensiklopedia of Journal*, Vol. 6, No. 4, 2024, p. 317, <https://doi.org/10.33559/eoj.v6i4.2458>.

The Joint Ethics Council is a measure to determine whether a Curator has good intentions or not. Because whether a Curator has good intentions or not is open to subjective interpretation by both the Curator and the debtor and creditors concerned. The establishment of the Joint Ethics Council can be used as a means to examine curators who are suspected of not having good intentions in carrying out settlement duties that cause losses to the bankrupt estate. The relationship between immunity and the Joint Ethics Council is that the concept is that the measure to determine whether a curator has good intentions or not in good intentions in carrying out settlement of bankrupt assets is determined by this institution. In addition to this institution being given the function to determine the measure of a curator who has good intentions or not in good intentions in carrying out settlement of bankrupt assets, this institution also functions as a tool to examine curators who are suspected of committing ethical violations. The code of ethics will guide a curator not to deviate from his duties, if a curator violates the code of ethics, the curator will be reported to the honorary body. Later, this body will try the violating curator. If the curator is proven to have violated the code of ethics, he will receive a punishment or sanction. The sanctions themselves are in the form of a warning to the revocation of the license as a curator. In addition, the Supervisory Board also functions as an institution that provides legal protection to the curator. This is important given the number of civil lawsuits faced by curators in carrying out their duties, as described in several studies related to curator immunity.

The drafting of the regulation on the immunity rights of curators is an effort to realise protection and justice for the law enforcement profession. John Rawls, a philosopher famous for his theory of justice, stated that justice is ‘justice as fairness,’ in which everyone has equal rights to the same basic freedoms, and social and economic inequalities should be regulated in such a way that they benefit the most disadvantaged.<sup>38</sup>

In this regard, the regulation of immunity rights for curators can be seen as an attempt to ensure that curators can perform their duties without having to face unfair legal

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<sup>38</sup> Solikin, Nur. “The Construction of Family Law in the Compilation of Islamic Law in Indonesia: A Review of John Rawls’s Concept of Justice and Jasser Auda’s Maqashid al-Shari’a.” *Ulumuna: Jurnal Sekolah Tinggi Agama Islam Negeri Mataram*, Vol. 27, No. 1, 2023, p. 320, <https://doi.org/10.20414/ujis.v27i1.708>.



risks. In order for the regulation of receivers' immunity rights to fulfil the elements of legal justice, several principles must be applied:

- 1) the principle of equality before the law must be guaranteed. This means that receivers should receive the same legal protection as other legal professionals, such as advocates and notaries, who have obtained immunity rights in carrying out their duties.
- 2) the principle of proportionality must be applied. The curator's immunity rights should be granted proportionally, i.e. only to the extent of actions taken in an official capacity and in accordance with his duties and responsibilities as a curator. Actions taken outside of that capacity, or that violate the law should not receive immunity protection.
- 3) the principles of transparency and accountability must be applied. Although receivers have the right to immunity, they must still be accountable for their actions and be willing to be audited and evaluated by authorised institutions. This is important to ensure that the right to immunity is not abused and remains within the corridors of applicable law.

Through efforts to revise the Bankruptcy Law and PKPU, the creation of a systematic special law regarding the curator profession, and the establishment of a Joint Ethics Council, the immunity rights for curators who act in good faith will be better guaranteed. This is in line with the principle of legal benefit which aims to achieve the greatest welfare for all parties involved. The creation of a special law will clarify the rights and obligations of curators, reduce the potential for conflict, and ensure the existence of comprehensive regulations to support the implementation of curator duties. The establishment of a Joint Ethics Council whose function is to determine the limits of good faith will also add an essential layer of legal protection. All of these steps will not only strengthen legal certainty, but also increase efficiency and fairness in the bankruptcy process, provide significant benefits to creditors, debtors, and all stakeholders, and ensure that the legal system runs with optimal integrity and effectiveness.

### **III. CONCLUSION**

The right of immunity for curators in the context of settling bankrupt estates is very important to protect curators from civil lawsuits that may arise while they are

carrying out their duties. Although other legal professions, such as advocates and notaries, are already protected by immunity rights under applicable laws, curators have not received the same legal protection. As a result, curators are still vulnerable to civil lawsuits, especially when their actions are considered to be inconsistent with their authority or cause losses to third parties. In the Indonesian positive legal system, curators are responsible for errors or negligence that cause losses to bankrupt estates, as regulated in Article 72 of the Bankruptcy and PKPU Laws. This shows that curators do not have clear immunity protection, so that they can be held personally liable. Therefore, clearer regulations are needed regarding the curator's immunity rights so that they can carry out their duties of settling bankrupt estates without fear of facing unwarranted lawsuits. Legal reforms that regulate immunity rights for curators will provide legal certainty and equal protection to other legal professions. In addition, granting immunity rights to curators will strengthen the bankruptcy system in Indonesia, ensuring that the process of settling bankrupt assets can run smoothly, effectively and fairly, and provide justice and legal benefits for all parties involved in the bankruptcy process.

## **BIBLIOGRAPHY**

### **Books**

- Aprita, Serlika. *Etika Profesi Kurator*. Jember, Pustaka Abadi, 2019.
- Efendi, Jonaedi, et al. *Kamus Istilah Hukum Populer*. Jakarta, Prenada Media Group, 2016.
- Fuady, Munir. *Filsafat dan Teori Hukum Postmodern*. Bandung, PT Citra Aditya Bakti, 2005.
- Fuady, Munir. *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis)*. Bandung, Citra Aditya Bakti, 2001.
- Hamidi, Jazim, et al. *Membedah Teori-Teori Hukum Kontemporer*. Malang, UB Press, 2013.
- Christiawan, Rio. *Hukum Kepailitan & Penundaan Kewajiban Pembayaran Utang*. Jakarta, Raja Grafindo Persada, 2020.
- Muhamad, Abdulkadir. *Hukum Perusahaan Indonesia*. Bandung, Citra Aditya Bakti, 2010.

- Muchsin. *Perlindungan dan Kepastian Hukum bagi Investor Indonesia*. Surakarta, Alumni, 2003.
- Raharjo, Satjipto. *Ilmu Hukum*. Bandung, Citra Aditya Bakti, 2000.
- Rizkia, Nanda Dwi. *Politik Hukum Kerjasama Penelitian Asing*. Bandung, Penerbit P.T. ALUMNI, 2021.
- Sjahdeini, Sutan Remy. *Hukum Kepailitan: Memahami Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan*. Jakarta, Pustaka Utama Grafiti, 2010.
- Sjahdeini, Sutan Remy. *Sejarah, Asas, dan Teori Hukum Kepailitan*. Jakarta, Prenadamedia Group, 2016.
- Subhan, M Hadi. *Hukum Kepailitan: Prinsip, Norma, dan Praktik di Peradilan*. Jakarta, Kencana Prenadamedia Group, 2014.
- Yahman and Nurtin Tarigan. *Peran Advokat Dalam Sistem Hukum Nasional*. Jakarta, Kencana, 2019.

### **Interview**

Interview with Curator Muhammad Arifuddin, Member of the Indonesian Receivers and Administrators Association (AKPI) Batch 21, March 10, 2024

### **Journals**

- Farras, Maulana and Elfrida R. Gultom. "Gugatan lain-lain Oleh Kreditur Kepada Debitor Pasca Berakhirnya Kepailitan." *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang*, Vol. 6, No. 2, 2023, p. 227, <https://doi.org/10.33474/yur.v6i2.19700>.
- Hafidzi, Anwar. "Eksistensi Advokat Sebagai Profesi Terhormat (Officium Nobile) Dalam Sistem Negara Hukum Di Indonesia." *Khazanah: Jurnal Studi Islam Dan Humaniora*, Vol. 12. No. 2, 2015, <https://doi.org/10.18592/khazanah.v13i1.517>.
- Hartini, Rahayu. "Curator's Legal Efforts in Executing State-Owned Enterprise Assets in Bankruptcy." *AMCA Journal of Community Development*, Vol. 1, No. 2, 2021, pp. 27–30, <https://doi.org/10.51773/ajcd.v1i2.65>.
- Kurniawan, Aan Rizalni, et al. "Hak Imunitas Kurator Dalam Eksekusi Harta Debitor Pailit." *Disiplin Jurnal Ilmu Hukum*, Vol. 27, No.1, 2021, p.68, <https://doi.org/10.46839/disiplin.v27i1.24>.

- Novi, Fransiska Putri Novi and Suryono. "Implementasi Hak Imunitas Advokat dalam Praktek Peradilan Pidana." *Indonesian Journal of Law and Justice*, Vol. 1 No. 3, 2024, p. 5, <https://doi.org/10.47134/ijlj.v1i3.2104>.
- Pratiwi, Endang, et al. "Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum Atau Metode Pengujian Produk Hukum?." *Jurnal Konstitusi*, Vol. 19, No. 2, 2022, p. 275, <https://doi.org/10.31078/jk1922>.
- Raissa, Amanda, et al. "Kelemahan Kurator Dalam Pemberesan Harta Pailit." *Jurnal Hukum Magnum Opus*, Vol. 3, No. 2, 2020, p. 215, <http://doi.org/10.30996/jhmo.v3i2.3442>.
- Ranovianto, Aditya Rizal and Merline Eva Lyanthi, "Tanggung Jawab Perdata Atas Tindakan Lalai Kurator Dalam Kepengurusan Harta Pailit (Boedel Pailit)." *Journal Publicuho*, Vol 7. No.3, 2024, pp. 1054–64, <https://doi.org/10.35817/publicuho.v7i3.457>.
- Rokhma, Fadila Ilaina dan Made Warka, "Kewenangan Kurator Dalam Pemberesan Boedel Pailit Debitur Yang Masih Dalam Sengketa." *Bureaucracy Journal*, Vol. 3, No. 3, 2023, p. 2788, <https://doi.org/10.53363/bureau.v3i3.363>.
- Ruslina, Elli, et al. "General Confiscation Versus Criminal Confiscation in Regard to Curators Authority and Responsibility in Bankruptcy Settlement Process." *Sociological Jurisprudence Journal*, Vol. 3, No. 2, 2020, pp. 112–16, <https://doi.org/10.22225/scj.3.2.1803.112-116>.
- Setiawan., Agus. "Penalaran hukum yang mampu mewujudkan tujuan hukum secara proporsional." *Jurnal Hukum Mimbar Justitia*, Vol. 3, No. 2, 2017, p. 210, <https://doi.org/10.35194/jhnmj.v3i2.257>.
- Silalahi, Rumelda and Onan Purba, "Peran Dan Wewenang Kurator Dalam Kepailitan Perseroan Terbatas." *Jurnal Retentum*, Vol. 2 No. 2, 2020, <http://dx.doi.org/10.46930/retentum.v2i2.710>.
- Singal, Nicky Yehezkiel. "Kajian Hukum Tanggung Jawab Kurator Dalam Penyelesaian Perkara Kepailitan Pasca Putusan Pengadilan Niaga." *Lex Privatum*, Vol. 10, No. 1, 2022, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/38087>.
- Sugiyatmo, Agus and Elfrida Ratnawati. "Perlindungan Hukum dan Batasan Hak Imunitas Advokat dan Kurator." *Ensiklopedia of Journal*, Vol. 6, No. 4, 2024, p. 317, <https://doi.org/10.33559/eoj.v6i4.2458>.

- Sukardi, Didi. "The Legal Responsibility Of Debtor To Payment Curators In Bankruptcy Situation." *Jurnal Pembaharuan Hukum*, Vol. 8, No. 2, 2021, p. 142, <http://dx.doi.org/10.26532/jph.v8i2.15905>.
- Sukma, Cantika Ayuri, et al. "Kedudukan Kurator Dalam Pemberesan Harta Pailit Sesuai Undang-Undang No.37 Tahun 2004." *Judakum: Jurnal Dedikasi Hukum*, Vol. 2, No. 2, 2023, p. 220, <http://103.241.192.17/~jurnalunidha/index.php/JDH/issue/view/53>.
- Thabrani, Machsun. "Tanggung Jawab Direksi Perseroan Terbatas Yang Dinyatakan Pailit." *Jurnal Hukum Ius Qula Iustum*, Vol. 9, No. 19, 2002, pp. 20–28, <https://doi.org/10.20885/iustum.vol9.iss19.art2>.
- Yalid. "Persyaratan dan Prospek Serta Gagasan Imunitas Terhadap Kurator yang Beritikad Baik." *Jurnal Hukum Respublika*, Vol. 16, No. 1, p. 51, <https://doi.org/10.31849/respublica.v16i1.1425>.

### **Thesis or Dissertation**

- Pratama, Aditya and Parulian Paidi Aritonang, *Tanggung Jawab dan Perlindungan Hukum Terhadap Independensi Kurator Terkait Ancaman Pidana Memasukan Keterangan Palsu Dalam Pemberesan Harta Pailit (Studi Kasus PT. Kymco Lippo Motor Indonesia)*, Skripsi Fakultas Hukum Universitas Indonesia, 2014, p. 13, <https://lontar.ui.ac.id/detail?id=20387620>.
- Saputra, Irfan Eka, *Perspektif Hak Imunitas Kurator Saat Pengurusan dan Pemberesan Harta Pailit*, Thesis UPNVJ, Jakarta, 2017, pp. 7-8, <http://repository.upnvj.ac.id/id/eprint/4652>.

### **Law and Regulations**

Law Number 28 of 2014 concerning Copyright

### **Online Resources**

- Oktavira, Bernadetha Aurelia. "Tugas Kurator dan Hakim Pengawas dalam Kepailitan." *Hukum Online*, <https://www.hukumonline.com/klinik/a/tugas-kurator-dan-hakim-pengawas-dalam-kepailitan-cl738/>