
PROBLEMS MANAGEMENT OF BANKRUPT ASSETS BY THE CURATOR AFTER THE EFFECTIVE EFFECTIVE COURT DECISION

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ABSTRACT; *The management of bankrupt assets that the court has given authority to the curator and supervisory judge has difficulties and problems such as the difficulty of conducting auctions and selling assets from bankrupt assets and it is also exacerbated by the bankruptcy mafia game in playing with prices during auctions. Using the normative juridical research method, the authors found that problems had indeed occurred and there had been no harmonization of rules and not firm enough rules regarding the independence of curators and also how the management of bankruptcy assets could run more smoothly in order to create justice for the creditors of the debtor.*

Keywords: Curator; Bankruptcy Estate; Bankruptcy Mafia.

INTRODUCTION

Bankruptcy is a form or condition in which all assets of a person or legal entity are in the control of another person, including the right to use their assets. This is stated in article 24 paragraph (1) of Law number 37 of 2004 concerning bankruptcy or is called the Bankruptcy Law.¹ Bankruptcy occurs when the debtor has two or more debts and has matured so that it is decided by the competent court that the debtor is bankrupt. Basically, bankruptcy is included in the realm of civil law or specifically included in commercial law. Because in the world of commerce, if the debtor is unable to pay his debt to the creditor (difficult economic situation or forceful circumstances) then a way is prepared or can be called an emergency exit to solve the problem and is known as "bankruptcy" and "delay in payment".

In bankruptcy, there is also a curator, according to Article 1 point 5 of the bankruptcy law, which means "a curator is an estate or an individual appointed by the court to administer and dispose of the bankrupt debtor's assets under the supervision of a supervisory judge in accordance with this law". In Article 1 point 1 of the Bankruptcy Law, it is explained that the meaning of Bankruptcy is a general confiscation of all the assets of the Bankrupt Debtor, the management and settlement of which is carried out by the Curator under the supervision of the Supervisory Judge as stipulated in this law. Curator is referred to as a profession because curator is included in the legal profession which is a noble profession or *Officium Nobile*². The curator profession is one of the new legal professions because the legal professions that we are familiar with are Judges, Prosecutors, Police, and Notaries. In order to become the basis for a curator's work, it is necessary to have special rules governing the curator's profession in a separate law, such as an advocate which is regulated in Law no. 18 of 2003 concerning Advocates³.

The stage of selling bankruptcy assets is very important in bankruptcy because it determines how much and when the liquidation and repayment of debts will be received by creditors. According to the Bankruptcy Law, the sale process is carried out in public through an auction so that one of the goals of bankruptcy can be realized, namely to avoid fraud committed by debtors and creditors. The fraud is like the debtor trying to give profit only to one or a few creditors. Article 1 point 5 of

¹ Luthvi Febryka Nola, "Mafia Kepailitan Dalam Penjualan Harta Pailit (Kepailitan Mafia in Sales of Pailit Treasure)," *Journal Kajian* 23, no. 3 (2018): 211–23, <https://jurnal.dpr.go.id/index.php/kajian/article/download/1883/891>.

² Raden Besse Kartoningrat, "Fungsi Etika Profesi Bagi Kurator Dalam Menjalankan Tugas," *Perspektif* 21, no. 2 (2016): 113, <https://doi.org/10.30742/perspektif.v21i2.186>.

³ Kartoningrat.

the Bankruptcy Law states that there are 2 types of curators, namely the Probate Court and individuals who are appointed by the Court. In practice, curators other than BHP are called private curators⁴.

However, the Bankruptcy Law does not rule out the possibility of bankruptcy assets being sold privately if the sale process in public is not completed. The sale of bankruptcy assets is quite prone to lawsuits from parties who are dissatisfied with the process of selling bankruptcy assets. Several curators have faced charges and ended up being sentenced, such as the two curators of PT Sarana Perdana Indoglobal (PT SPI) who were sentenced to 3 years in prison for committing the crime of embezzlement by not handing over the proceeds from the sale of PT SPI's bankruptcy assets in full. In fact, in the PT Skycamping Indonesia (PT SCI) case, the curator was caught red-handed by the KPK while bribing a supervisory judge. The irresponsible actions of a number of unscrupulous curators and supervisory judges have been "smell" for a long time. So that since 2010 the term bankruptcy mafia has developed. Even though the term bankruptcy mafia is not contained in the KBBI, it is a term commonly used in bankruptcy circles.

The process of managing bankruptcy assets is not as easy as imagined after the court's decision. The curator who manages bankruptcy assets requires the necessary approaches and steps to immediately liquidate the debtor's assets. However, the practice on the playing field of the mafia in expropriating debtors' assets has become a new mode of crime. This study aims to find the problems that exist when managing bankruptcy assets in the field and understand how loopholes are used by irresponsible people to enter the bankruptcy mafia

PROBLEM

Based on the background mentioned above, the authors conducted a research narrowing as follows:

1. What is the procedure for resolving the management of the debtor's assets by the curator?
2. How is the bankruptcy estate mafia in Indonesia and how do they dominate the bankrupt assets market?

RESEARCH METHODS

By using normative juridical research methods, the studies and research conducted by the author wish to review how the existing normative accommodates all aspects of bankruptcy estate settlement. With primary legal materials such as laws and regulations as well as secondary legal materials such as theories, journals, articles, and doctrines from bankruptcy law experts, the authors used this qualitative research as a source.

DISCUSSION

The procedure for settling the liquidation of the debtor's assets by the curator

Article 1 Regulation of the Minister of Finance No. 304/KMK 01/2002 concerning Instructions for Implementation of Auctions, issued on 30 May 2006 states that: "Auction is the sale of goods open to the public with written and/or oral price offers increasing or decreasing to reach the highest price preceded by auction announcement⁵. In the case of implementing the bankruptcy decision, the bankruptcy assets will be settled, which in general will be auctioned for the assets included in the bankruptcy model. In the event that the auction for bankruptcy assets is generally almost the same as a general auction, namely:

1. Letter of application for auction
2. Research by the Office of the State Treasury and Auctions
3. Auction Determination Letter.
4. Auction Announcement.
5. Deposit of security deposit.

⁴ Febryka Nola, "Mafia Kepailitan Dalam Penjualan Harta Pailit (Kepailitan Mafia in Sales of Pailit Treasure)."

⁵ Depri Liber Sonata, "Permasalahan Pelaksanaan Lelang Eksekusi Putusan Pengadilan Dalam Perkara Perdata Dalam Praktik," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 6, no. 2 (2015), <https://doi.org/10.25041/fiatjustisia.v6no2.329>.

6. Auction.
7. Minutes of auction.

The process of selling property in public begins with an announcement made by the seller. In the process of selling bankruptcy assets, it means that the curator acts as the seller. The announcement of the auction is a must as an embodiment of the principle of transparency and if it is not carried out, then the auction can be sued and can be canceled because it is considered legally flawed. Bankruptcy assets are part of an execution auction which must include a minimum price of goods (limit value). The limit value for auction execution is determined by the curator as the seller and is responsible for setting the limit value. Based on the Regulation of the Minister of Finance of the Republic of Indonesia No. 27 / PMK.06/2016 concerning Auction Implementation Guidelines, in determining the limit value the seller must pay attention to the assessment of the appraiser. After being announced, the Auction will be held according to the time and place specified in the announcement. It is obligatory to be attended by bidders, bidders, and auction guides and to be carried out in the presence of the auction official.⁶

Selling in public, which requires evaluation, assessment and announcement, makes the selling process very expensive and of course affects the bankruptcy estate. Plus the first auction process failed, of course the auction process must be repeated again and the costs must be issued again. Moreover, the Bankruptcy Law does not provide a limit to the number of times a sale can be made in public. This condition also has the potential to increase costs. The cost of selling in public will become a very crucial problem if bankruptcy assets in the form of money do not exist. Costs incurred will be handled by the curator first and if the curator is BHP, then the budget used is the state budget. The high cost of the auction process is indeed one of the factors affecting law enforcement against Article 185 paragraph (1) of the Bankruptcy Law concerning the obligation to sell in public. The budget factor is part of the facilities and infrastructure factor which, according to Soerjono Soekanto, influences law enforcement.⁷

In addition to the auction mechanism, the curator can also sell bankruptcy assets underhanded. One example is the bankruptcy decision of PT Jaya Nur Sukses where the supervisory judge gives permission to the bankruptcy curator to sell by auction or privately. When the sale of bankrupt boedel by the curator is carried out privately, the curator requires the PPAT to draw up a deed of waiver. The mechanism for selling immovable assets will comply with the provisions of laws and regulations regarding the transfer of rights to land and buildings. The deed of sale and purchase issued must also come from an authorized official or in this case a Notary⁸.

It should be noted again, that the provisions of Article 185 of the Bankruptcy Law, the provision for the curator to sell bankruptcy assets privately must be preceded by an auction process first. The auction is carried out at the beginning as the first step in selling bankruptcy assets. Then if there are difficulties and difficulties in the auction, then private sales can be carried out by the curator.

New mode of crime related to the bankruptcy mafia that occurred in Indonesia

An auction process can be followed by everyone and can also be accessed or won by everyone. The problem that arises here is that there is unfair competition and it seems that the auction process is being carried out by unscrupulous persons, both from the auctioneer officials and from the bidders themselves. The World Bank defines collusion or collusion that often occurs or is carried out during auctions, namely as follows:

1. Bid suppression

Is one of the businesses in which several people who participate in the auction hold each other back and allow or have to win someone over so that they can control the bankrupt assets of

⁶ Sonata.

⁷ Nadia Priscilia, "Persekongkolan Lelang Boedel Pailit Pt Anugerah Tapin Persada Di Provinsi Kalimantan Selatan" (Universitas Airlangga, 2013), <http://repository.unair.ac.id/13444/>.

⁸ M. Yasser Al Mursyid, "Akta Peralihan Harta Pailit Berupa Benda Tetap Yang Dijual Tanpa Lelang Oleh Kurator," *Jurnal Officium Notarium* 1, no. 2 (2021): 230–40, <https://doi.org/10.20885/jon.vol1.iss2.art3>.

the debtor. This was done by several participants who at first seemed to be bidding on each other, but in the end they were asked to refrain or even withdraw from the auction.

2. Complementary bidding

This form of bidding is almost the same as that which makes a person win an auction and the winner bids far above, but with special conditions for the seller to fulfill these conditions.

3. Bid rotation

In contrast to complementary bidding, this bid rotation has the characteristic that they conspire to win all the items being auctioned by offering the lowest price. They spread out over every auction to place the lowest possible bid so that the seller's desired or expected price is never reached.

4. Sub-contractors

The model for this conspiracy is that when a person wins an auction for an asset, his assets will be divided among his partners, which will later destroy the business of the debtor so that they will take all of the debtor's assets.

In 2010 when the bankruptcy case occurred that hit several large hotels in Bali, there were several modes that were used by the bankruptcy mafia, one of which was manipulating transactions or agreements as happened in the PT DRI bankruptcy case. In the case of PT DRI, the curator made peace unilaterally with the debtor even though peace should have occurred between the creditor and the debtor. The peace agreement also contains clauses that are slightly controversial, including freeing the curator from all lawsuits for all his actions related to the PKPU process, bankruptcy and liquidation of PT DRI. Whereas until now there are many indications of legal violations committed by curators such as selling assets at unfair prices, selling assets that are not included in bankruptcy assets and embezzlement of assets in their control. This agreement clearly contradicts Article 72 and Article 234 paragraph (4) of the Bankruptcy Law which states that the curator is responsible for all his mistakes. The agreement was canceled by the Supreme Court's cassation decision.

Another mode is bribery, as in the OTT KPK case against judge Syarifuddin Umar, who is a supervisory judge from PT SCI. Syarifuddin was caught red-handed when he received a bribe from curator Pugh Wirawan. The bribe was made after Syarifuddin gave his approval for the change of bankrupt boedel assets in the form of land with a building use rights certificate (SHGB) which became non-bankrupt assets without a prior court decision. These assets were eventually sold but were not included in the bankruptcy estate.

The auction process can also take the form of a method used by the bankruptcy mafia, namely by arranging for the auction price of bankruptcy assets to be very low, as in the case of the Bali Kuta Residence (BKR) bankruptcy case. In this case, assets valued at IDR 1.7 trillion but only IDR 182 billion in bankruptcy. The mode of selling bankruptcy assets can also be done by increasing the auction price so that the bankruptcy assets do not sell well and eventually have to be sold privately. Underhand sales would certainly be easier to do. Another mode is by violating auction procedures, auction announcements that are not carried out according to procedures or the specifications of the goods at the auction are not the same as the goods received by the buyer.

The curator is responsible for his mistakes or negligence in carrying out management and/or settlement duties that cause losses to the bankrupt assets. To determine what kind of errors and omissions should be borne by the curator, a standard of assessment issued by an association is required. It should also be emphasized that the new curator's responsibility can arise if the mistake, whether intentional or negligent, contains an element of intent or carelessness which is carried out without clear consideration. In addition, the Bankruptcy Law also does not discuss what non-independent actions can cause a curator to be punished. The

Bankruptcy Law only states that criminal sanctions can be given when it is proven that they are not independent⁹.

In dealing with bankruptcy cases recently, many bankruptcy cases have ended in mutual reporting and mutual accusations between debtors, creditors and curators. In fact, it is not uncommon for legal issues brought to court to produce conflicting decisions even though the cases are almost the same. This can happen because among law enforcement officials there is no common point of view in viewing and solving a problem. So that there is no wrong opinion that is developing in society that law enforcement institutions are being used by people who want to muddy the goals of law enforcement which are getting further away from the principles of justice and legal certainty. Meanwhile, the criminal sanction in Article 234 paragraph (2) of the Bankruptcy Law only stipulates that if it is proven that they are not independent, they will be subject to criminal sanctions in accordance with statutory regulations. When viewed from the article, it is also not explained the reference to the legislation in question. This is because the articles only mention the word 'not independent', while there is no benchmark for independence intended to be sentenced to a sentence.

CONCLUSION

The announcement of the auction is a must as an embodiment of the principle of transparency and if it is not carried out, then the auction can be sued and can be canceled because it is considered legally flawed. Bankruptcy assets are part of an execution auction which must include a minimum price of goods (limit value). The limit value for auction execution is determined by the curator as the seller and is responsible for setting the limit value. Based on the Regulation of the Minister of Finance of the Republic of Indonesia No. 27 / PMK.06/2016 concerning Auction Implementation Guidelines, in determining the limit value the seller must pay attention to the assessment of the appraiser.

In addition to the auction mechanism, the curator can also sell bankruptcy assets underhanded. One example is the bankruptcy decision of PT Jaya Nur Sukses where the supervisory judge gives permission to the bankruptcy curator to sell by auction or privately. When the sale of bankrupt boedel by the curator is carried out privately, the curator requires the PPAT to draw up a deed of waiver. The mechanism for selling immovable assets will comply with the provisions of laws and regulations regarding the transfer of rights to land and buildings. The deed of sale and purchase issued must also come from an authorized official or in this case a Notary. It should be noted again, that the provisions of Article 185 of the Bankruptcy Law, the provision for the curator to sell bankruptcy assets privately must be preceded by an auction process first.

In 2010, when there were bankruptcy cases that affected several large hotels in Bali, there were several modes used by the bankruptcy mafia, one of which was manipulating transactions or agreements, as happened in the PT DRI bankruptcy case. In the case of PT DRI, the curator made peace unilaterally with the debtor even though peace should have occurred between the creditor and the debtor. The auction process can also take the form of a method used by the bankruptcy mafia, namely by arranging so that the auction price of bankruptcy assets is very low or goods can be made to appear to be very high so that in the end they do not sell and turn to underhand mechanisms.

⁹ Sriti Hesti Astiti, "The Criminal Responsibility Of Curator Under The Principle Of Independency According To The Bankruptcy Law," *Jurnal Hukum Dan Peradilan* 5 Nomor 2, no. 37 (2016): 277–98, <https://www.google.co.id/search?q=PERTANGGUNGJAWABAN+PIDANA+KURATOR+BERDASARKAN+PRINSIP+INDEPENDENSI+MENURUT+HUKUM+KEPAILITAN+THE&oq=PERTANGGUNGJAWABAN+PIDANA+KURATOR+BERDASARKAN+PRINSIP+INDEPENDENSI+MENURUT+HUKUM+KEPAILITAN+THE&aqs=chrome..69i57.1547j0j1>.

REFERENCES

- Astiti, Sriti Hesti. "The Criminal Responsibility Of Curator Under The Principle Of Independency According To The Bankruptcy Law." *Jurnal Hukum Dan Peradilan* 5 Nomor 2, no. 37 (2016): 277–98. <https://www.google.co.id/search?q=PERTANGGUNGJAWABAN+PIDANA+KURATOR+BERDASARKAN+PRINSIP+INDEPENDENSI+MENURUT+HUKUM+KEPAILITAN+THE&oq=PERTANGGUNGJAWABAN+PIDANA+KURATOR+BERDASARKAN+PRINSIP+INDEPENDENSI+MENURUT+HUKUM+KEPAILITAN+THE&aqs=chrome..69i57.1547j0j1>.
- Febryka Nola, Luthvi. "Mafia Kepailitan Dalam Penjualan Harta Pailit (Kepailitan Mafia in Sales of Pailit Treasure)." *Journal Kajian* 23, no. 3 (2018): 211–23. <https://jurnal.dpr.go.id/index.php/kajian/article/download/1883/891>.
- Kartoningrat, Raden Besse. "Fungsi Etika Profesi Bagi Kurator Dalam Menjalankan Tugas." *Perspektif* 21, no. 2 (2016): 113. <https://doi.org/10.30742/perspektif.v21i2.186>.
- Mursyid, M. Yasser Al. "Akta Peralihan Harta Pailit Berupa Benda Tetap Yang Dijual Tanpa Lelang Oleh Kurator." *Jurnal Officium Notarium* 1, no. 2 (2021): 230–40. <https://doi.org/10.20885/jon.vol1.iss2.art3>.
- Priscilia, Nadia. "Persekongkolan Lelang Boedel Pailit Pt Anugerah Tapin Persada Di Provinsi Kalimantan Selatan." Universitas Airlangga, 2013. <http://repository.unair.ac.id/13444/>.
- Sonata, Depri Liber. "Permasalahan Pelaksanaan Lelang Eksekusi Putusan Pengadilan Dalam Perkara Perdata Dalam Praktik." *FIAT JUSTISIA: Jurnal Ilmu Hukum* 6, no. 2 (2015). <https://doi.org/10.25041/fiatjustisia.v6no2.329>.