

**INTERPRETATION OF ARTICLE 31 PARAGRAPH (1) OF LAW NO. 37
OF 2004 ON THE AUTHORITY OF CURATORS IN MANAGING
BANKRUPT ASSETS THAT ARE OBSTRUCTED BY SEPARATE
CREDITORS**

(A Study Of Curator Of Malang City)

THESIS

BY: INTAN ISNAENI

SIN 200202110159



SHARIA ECONOMIC LAW DEPARTMENT

SHARIA FACULTY

**ISLAMIC STATE UNIVERSITY OF MAULANA MALIK IBRAHIM
MALANG**

2025

**INTERPRETATION OF ARTICLE 31 PARAGRAPH (1) OF LAW NO. 37
OF 2004 ON THE AUTHORITY OF CURATORS IN MANAGING
BANKRUPT ASSETS THAT ARE OBSTRUCTED BY SEPARATE
CREDITORS**

(A Study Of Curator Of Malang City)

THESIS

BY: INTAN ISNAENI

SIN 200202110159



SHARIA ECONOMIC LAW DEPARTMENT

SHARIA FACULTY

**ISLAMIC STATE UNIVERSITY OF MAULANA MALIK IBRAHIM
MALANG**

2025

STATEMENT OF THE AUTHENTICITY

In the name of Allah SWT,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

**IMPLICATIONS OF ARTICLE 31 PARAGRAPH (1) OF THE
BANKRUPTCY AND DEBT PAYMENT DEFERRAL LAW ON THE
AUTHORITY OF THE CURATOR IN THE MANAGEMENT OF
BANKRUPT PROPERTY (A STUDY OF THE CURATOR OF MALANG
CITY)**

Is truly a writer's original work that can be legally justified. If this thesis proven to result in duplication or plagiarism from another scientific work, it is precondition of degree will be stated legally invalid.

Malang, 4th of September 2025

Writer



Intan Isnaeni

SIN 200202110159

APPROVAL SHEET

After reading and Correcting thesis of Intan Isnaeni, Student ID 200202110159,
Department of Sharia Economic Law, Syariah Faculty of The State Islamic
University Maulana Malik Ibrahim Malang entitled:

**IMPLICATIONS OF ARTICLE 31 PARAGRAPH (1) OF THE
BANKRUPTCY AND DEBT PAYMENT DEFERRAL LAW ON THE
AUTHORITY OF THE CURATOR IN THE MANAGEMENT OF
BANKRUPT PROPERTY (A STUDY OF THE CURATOR OF MALANG
CITY)**

The supervisor stated that this thesis has not the scientific requirements to be
proposed and to be examined on the Assembly Board of Examiners.

Malang, 4th of September 2025

Acknowledged by

**The Head Department of
Sharia Economic Law**



Dwi-Hidavatul Firdaus, M.Si

198212252015031002

Supervisor,



Dr. Suwandi, M.H.

196104152000031001



KEMENTERIAN AGAMA
UNIVERSITAS ISLAM NEGERI MAULANA MALIK IBRAHIM MALANG
FAKULTAS SYARIAH
Jl. Gajayana 50 Malang Telp. (0341) 551354 Fax. (0341) 572533
Website: <http://syariag.uin-malang.ac.id>

CONSULTATION PROOF

Name : Intan Isnaeni
Student Number : 200202110159
Department : Syariah Economic Law
Supervisor : Dr. Suwandi, M.H.
Thesis Title : Implications Of Article 31 (1) Of The Bankruptcy And Debt Payment
Deferral Law On The Authority Of The Curator In The Management Of
Bankrupt Property (A Study Of The Curator Of Malang City)

No	Day/Date	Subject of Consultation	Signature
1	Friday/August 9, 2024	Thesis Title Submission	
2	Thursday/January 30, 2025	Proposal	
3	Friday/January 31, 2025	Proposal Revision	
4	Thursday/February 9, 2025	ACC Proposal	
5	Saturday/April 12, 2025	Revision of Chapter I	
6	Thursday/May 22, 2025	Revision of Chapter II	
7	Monday/July 21, 2025	Revision of Chapter III	
8	Friday/July 25, 2025	Revision of Chapter IV	
9	Thursday/September 3, 2025	Revision of Chapter V	
10	Friday/September 4, 2025	ACC Thesis	

Malang, 4th of July 2025

Acknowledge by:

Hend Department of Sharia Economic Law,

Dwi Hidayatul Firdaus, M.Si

NIP 198212252015031002

LEGIMITATION SHEET

The Assembly Board of Thesis Examiners of Intan Isnaeni (SIN 200202110159), student of Sharia Economic Law Department, Sharia Faculty of The State Islamic University of Maulana Malik Ibrahim Malang entitled:

**INTERPRETATION OF ARTICLE 31 PARAGRAPH (1) OF LAW NO. 37
OF 2004 ON THE AUTHORITY OF CURATORS IN MANAGING
BANKRUPT ASSETS THAT ARE OBSTRUCTED BY SEPARATE
CREDITORS (A STUDY OF CURATOR OF MALANG CITY)**

Have passed with the following grades: A

Board of Examiners:

1. Dr. Khoirul Hidayah, M.H.

NIP 197805242009122003

()

Chairman

2. Dr. Suwandi, M.H.

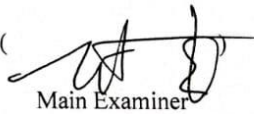
NIP 196104152000031001

()

Secretary

3. Dr. Musataklima, S.HI., M.S.I.

NIP 198304202023211012

()

Main Examiner

Malang, 2nd October 2025



Umi Sumbulah, M.Ag.

108261998032002

MOTTO

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا ۚ لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا اكْتَسَبَتْ ۗ

Allah tidak membebani seseorang melainkan sesuai dengan kesanggupannya. Dia mendapat (pahala) dari kebajikan yang dikerjakannya dan dia mendapat (siksa) dari (kejahatan) yang diperbuatnya.

Allah does not burden anyone except according to his ability. He will be rewarded for the good he does and punished for the evil he does.

(QS. AL-BAQARAH AYAT 286)

ACKNOWLEDGMENT

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Alhamdulillahirabbil'alamin, have given His rahmat and servan ,so we can finish this thesis entitled **“Interpretation Of Article 31 Paragraph (1) Of Law No. 37 Of 2004 On The Authority Of Curators In Managing Bankrupt Assets That Are Obstructed By Separate Creditors (A Study Of The Curator Of Malang City)”**. Peace be Upon into The Rasulullah Prophet Muhammad SAW who has taught us guidance (uswatun hasanah) to do activity correctly in our life. By following Him, may we belong to those who believe and get their intercession on the last day of the end. Amien. From all the teaching, advice, guidance, and helps of service for us to finish this thesis, then with all humility the writer will expresses the gratitude which is unequaled to:

1. Prof. Dr. Hj. Ilfi Nur Dianan, M.Si., CAHRM, CRMP , as the Rector of The State Islamic University Maulana Malik Ibrahim of Malang.
2. Prof. Dr. Hj. Umi Sumbulah M.Ag., as the Dean of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
3. Dwi Hidayatul Firdaus, M.Si, as the Head of Sharia Economic Law Department of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang
4. H. Faishal Agil Al Munawar, Lc., M.Hum., as supervisor lecturer of the writer during his study at Sharia Economic Law Department of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang..
5. Dr. Suwandi, M.H., as my thesis supervisor. The writer thanks for his spending time to guide, direct, and motivate to finish writing this thesis.The writer hopes that he and his family will be blessed by Allah.
6. All lecturers at Syariah Faculty of the State Islamic University of Maulana Malik Ibrahim Malang who have provided learning to all of us. With sincere intentions, may all of their charity be part of worship to get the pleasure of Allah SWT.

7. Staff of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang. The writer would like to thank you for all participation and all assistance in completing thesis
8. Maliki, S.HI., S.H., M.H., as an informant in this research who has been willing to share knowledge with the writer, explained and answerd all the questions that the writer asking for. The writer hope that he, his family, and all his staff will be blessed by Allah SWT.
9. The author's beloved parent, Ibu Yenuar Purmulatsih and Bapak Wajedi who always prayed for the author's every step, always became the author's main motivation in achieving the family's goals and hopes. Hopefully by completing this thesis, the author can continue to take step towards the family's ideals and hopes even better.
10. Indah Ariesta, S.Ked, a sister figure who the author respects. Thank you for all the support and help during the author's lectures. Thank you for your sacrificed for the family, hopefully after this the author can repay all the kindness and bring a better life to the family.
11. Akhza Fadhila Ishdiqana, S.H, Suci Yaqiluh Nurzеха, S.H, Najwa Hawa Syabeh, Sulthonul Idhom, S.H, who have helped, supported, and accompanied the author in the process of completing this thesis.
12. Last but not least, I want to thank me, for not giving up, for believe that I can finish what I started. Thank you for your resilience, for your courage to take steps even when they felt uncertain. Thank you for weathering the storms and welcoming each morning with hope. And thank you for not blaming my self for not being able to follow the timeline I had in mind. Thank you for myself for just being me at all times.

With the completion of this thesis report, the hope that knowledge which we have gained during our studies can provide the benefits of life in the world and the hereafter. As a human who has never escaped fault, the author is very hopeful for the forgiveness, criticism and suggestions from all parties for future improvement efforts.

Malang, 4th of September 2025

Intan Isnaeni

SIN 200202110159

TRANSLITERATION GUIDANCE

In writing scientific papers, the use of foreign terms is often inevitable. In general, according to the General Guidelines for Indonesian Spelling, foreign words are written (printed) in italics. In the context of Arabic, there are special transliteration guidelines that apply internationally. The following table presents the transliteration guidelines as a reference for writing scientific papers.

Arabic – Indonesian transliteration of the Faculty of Sharia UIN Maulana Malik Ibrahim Malang is guided by the Library of Congress (LC) model of the United States as follows:

Arabic	Indonesia	Arabic	Indonesia
أ	ʾ	ط	ṭ
ب	b	ظ	ẓ
ت	t	ع	ʿ
ث	th	غ	gh
ج	j	ف	f
ح	ḥ	ق	q
خ	kh	ك	k
د	d	ل	l
ذ	dh	م	m
ر	r	ن	n
ز	z	و	w
س	s	هـ	h
ش	sh	ء	ʾ
ص	ṣ	ي	y
ض	ḍ		

To indicate long vowel sounds (madd), the method is to write horizontal stripes above the letters, such as ā, ī and ū. (أ, ي, و). Arabic double vowels are

transliterated by combining the two letters "ay" and "aw" such as layyinah, lawwāmah. Words ending in tā' marbūṭah and functioning as an adjective or muḍaf ilayh are transliterated with "ah", while those functioning as muḍaf are transliterated with "at".

TABLE OF CONTENT

STATEMENT OF THE AUTHENTICITY	ii
APPROVAL SHEET	iii
CONSULTATION PROOF	iv
PENGESAHAN SKRIPSI	v
MOTTO	vi
ACKNOWLEDGMENT	vii
TRANSLITERATION GUIDANCE	x
TABLE OF CONTENT	xii
ABSTRAK	xiv
ABSTRACT	xviii
ملخص البحث.....	xviii
CHAPTER I.....	1
INTRODUCTION.....	1
A. Background	1
B. Formulation of the Problem	5
C. Research Objectives	5
D. Benefits of Research	6
E. Operational Definitions.....	6
F. Systematic Discussion.....	8
CHAPTER II	9
LITERATURE REVIEW	9
A. Previous Research	9
B. Theoretical Framework	18

CHAPTER III	27
RESEARCH METHOD	27
A. Type of Research.....	27
B. Research Approach.....	27
C. Research Location.....	27
D. Data Sources.....	28
E. Data Collection Techniques	28
F. Data Processing.....	29
CHAPTER IV.....	30
DATA PRESENTATION AND ANALYSIS	30
A. Data Presentation	30
B. Data Analysis	33
CHAPTER V	65
CONCLUSION.....	65
A. Conclusion	65
B. Recommendations	66
BIBLIOGRAPHY	67
APPENDIXES	71
A. INTERVIEW GUIDELINE	71
B. INTERVIEW DOCUMENTATION.....	72
CURICULUM VITAE (CV).....	73

TABLES

TABLES	13
Previous Research	13

ABSTRAK

Intan Isnaeni, 200202110159, 2025, Interpretasi Pasal 31 Ayat (1) Undang-Undang No. 37 Tahun 2004 Terhadap Kewenangan Kurator Dalam Pengurusan Harta Pailit Yang Terkendala Dengan Kreditur Separatis (Studi Pada Kurator Kota Malang), Skripsi, Program Studi Hukum Ekonomi Syariah, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Dr. Suwandi, M.H.

Kata Kunci: Kurator; Harta Pailit; Kreditur Separatis

Kurator sebagai pihak yang berwenang mengurus dan membereskan harta debitor pailit, dalam praktiknya tidak jarang menimbulkan perbedaan pandangan, khususnya terkait dengan penerapan Pasal 31 ayat (1) Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan PKPU. Ketentuan ini memiliki arti penting karena menjadi dasar hukum bagi kurator untuk mengambil langkah hukum atau tindakan faktual guna mengelola, menjual, dan membagikan aset debitor pailit kepada para kreditor.

Penelitian ini bertujuan untuk mendalami bagaimana curator mengimplementasikan dan mentafsirkan Pasal 31 ayat (1) Undang-Undang Kepailitan dan PKPU dalam praktek mengurus dan membereskan harta debitor pailit serta upaya penyelesaian yang dihadapi curator saat dihadapi dengan masalah kreditur yang tidak bisa bersikap kooperatif dengan aturan yang dapat mengakibatkan terbatasnya kewenangan curator untuk melaksanakan tugasnya.

Penelitian ini menggunakan metode yuridis empiris dan pendekatan kualitatif. Penelitian ini berlokasi di Kota Malang dengan perolehan data primer melalui wawancara dengan Kurator yang lingkup kerjanya di wilayah Kota Malang. Pengolahan data dilakukan secara kualitatif dengan analisis deduktif untuk bahan hukum dan deskriptif untuk data wawancara, guna menjawab permasalahan yang diteliti.

Berdasarkan hasil penelitian, didapati bahwa Kurator dengan wilayah kerja di Kota Malang tidak merasakan adanya pembatasan terhadap kewenangannya dalam mengurus dan membereskan harta pailit seperti yang dirasakan oleh Kurator dengan wilayah kerja di Jakarta akibat dari tidak tunduknya kreditur separatis yang menggunakan penjelasan Pasal 31 ayat 1 a quo sebagai pembenaran atas perilakunya. Dari penelitian ini, didapati bahwa sebagai penegak hukum, penting untuk memahami norma dalam mengimplementasikan aturan setiap pasal sehingga hasil dari penegakan UU Kepailitan dan PKPU dapat terlaksana dengan baik.

ABSTRACT

Intan Isnaeni, 200202110159, 2025, Interpretation Of Article 31 Paragraph (1) Of Law No. 37 Of 2004 On The Authority Of Curators In Managing Bankrupt Assets That Are Obstructed By Separate Creditors (A Study Of The Curator Of Malang City), Thesis, Sharia Economic Law Study Program, Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang. Supervisor: Dr. Suwandi, M.H.

Keywords: Curator; Bankruptcy Assets; Seperates Creditors

Curators, as the parties authorized to manage and settle the assets of bankrupt debtors, often encounter differences of opinion in practice, particularly in relation to the application of Article 31 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Deferral of Debt Payment Obligations. This provision is significant because it forms the legal basis for the curator to take legal steps or factual actions to manage, sell, and distribute the assets of the bankrupt debtor to creditors.

This study aims to explore how curators implement and interpret Article 31 paragraph (1) of the Bankruptcy and Deferral of Debt Payment Obligations Law in the practice of managing and settling the assets of bankrupt debtors, as well as the efforts made by curators when faced with creditors who are not cooperative with the rules, which can limit the curator's authority to carry out their duties.

This study uses an empirical juridical method and a qualitative approach. This study is located in Malang City with primary data obtained through interviews with curators whose scope of work is in the Malang City area. Data processing is carried out qualitatively with deductive analysis for legal materials and descriptive analysis for interview data, in order to answer the research questions.

Based on the results of the study, it was found that curators whose work area is in Malang City do not feel that there are restrictions on their authority in managing and settling bankruptcy assets, unlike curators whose work area is in Jakarta, due to the non-compliance of separate creditors who use the explanation in

Article 31 paragraph 1 a quo as justification for their behavior. From this study, it was found that as law enforcers, it is important to understand the norms in implementing the rules of each article so that the results of the enforcement of the Bankruptcy Law and PKPU can be carried out properly.

ملخص البحث

إنتان إسناني، ١٥٩ ١٠ ١١ ٢٠ ٢٠ ٢٠ ، ٢٠ ٢٠ ٢٠ ، تفسير الفقرة ٣١ من (١) من القانون رقم ٣٧ لعام ٢٠٠٤ بشأن سلطة القضاة في إدارة الأصول المفلسة التي تعطلها دعاوى الدائنين المنفصلة (دراسة عن قاضي مدينة مالانج)، أطروحة، برنامج دراسة القانون الاقتصادي الشرعي، كلية الشريعة، جامعة مالانج الإسلامية الحكومية مولانا مالك إبراهيم. الإسلامية الحكومية مولانا مالك الشريعة، جامعة مالانج الإسلامية الحكومية مولانا مالك إبراهيم. الدكتور سواندي، م. هـ

الكلمات المفتاحية: الوصي؛ أصول الإفلاس؛ الإف

غالبًا ما يواجه الأوصياء، باعتبارهم الأطراف المخولة بإدارة وتصفية أصول المدينين المفلسين، اختلافات في الآراء في الممارسة العملية، لا سيما فيما يتعلق بتطبيق الفقرة (١) من المادة ٣١ من القانون رقم ٣٧ لعام ٢٠٠٤ بشأن الإفلاس وتأجيل التزامات سداد الديون. وتعد هذه المادة مهمة لأنها تشكل الأساس القانوني الذي يستند إليه الوصي في اتخاذ الإجراءات القانونية أو الإجراءات الفعلية لإدارة أصول المدين المفلس وبيعها وتوزيعها على الدائنين.

تهدف هذه الدراسة إلى استكشاف كيفية قيام الأوصياء بتنفيذ وتفسير الفقرة (١) من المادة ٣١ من قانون الإفلاس وتأجيل التزامات سداد الديون في ممارسة إدارة وتصفية أصول المدينين المفلسين فضلاً عن الجهود التي يبذلها الأوصياء عند مواجهة الدائنين غير المتعاونين مع القواعد، مما قد يحد من سلطة الوصي في أداء واجباته.

تستخدم هذه الدراسة طريقة قانونية تجريبية ونهجاً نوعياً. أجريت هذه الدراسة في مدينة مالانج حيث تم الحصول على البيانات الأولية من خلال مقابلات مع أمناء الحراسة الذين يعملون في منطقة مدينة مالانج. تتم معالجة البيانات بشكل نوعي باستخدام التحليل الاستنتاجي للمواد القانونية

.والتحليل الوصفي لبيانات المقابلات، من أجل الإجابة على أسئلة البحث

استنادًا إلى نتائج الدراسة، تبين أن أمناء الحراسة الذين يعملون في مدينة مالانج لا يشعرون بوجود قيود على سلطتهم في إدارة وتسوية أصول الإفلاس، على عكس أمناء الحراسة الذين يعملون في جاكرتا، بسبب عدم امتثال الدائنين المنفصلين الذين يستخدمون التفسير الوارد في الفقرة ١ من المادة ٣١ كذريعة لتبرير سلوكهم. من هذه الدراسة، تبين أنه من المهم، بصفته منفذي القانون، فهم المعايير في تنفيذ قواعد كل مادة حتى يمكن تنفيذ نتائج إنفاذ قانون الإفلاس وتأجيل التزامات سداد الديون

.بشكل صحيح

CHAPTER I

INTRODUCTION

A. Background

In conducting their business, business actors will enter into debt agreements. These debt agreements are common between creditors and debtors as business actors. However, it is not uncommon for these debt agreements to cause disputes between debtors who are negligent and unable to pay their debts to creditors. One of the efforts to resolve these unpaid debts is through legal instruments in the form of filing for bankruptcy and postponement of debt payment obligations requested by the debtor or creditor to the Commercial Court.

The legal basis for Bankruptcy and Postponement of Debt Payment Obligations in Indonesia is comprehensively regulated in Law Number 37 of 2004. This law was enacted in response to the large number of bad debts after the 1998 monetary crisis, to provide legal certainty and a more effective mechanism for settling debts between debtors and creditors. The Bankruptcy and Postponement Of Debt Payment Obligations Law regulates the requirements, procedures, and formalities for filing for bankruptcy and Postponement Of Debt Payment Obligations, including the principle of fair and proportional distribution of the debtor's assets to all creditors based on the "pari passu pro rata parte" principle.¹ In addition, this regulation also emphasizes the protection of workers' rights and regulates the priority of payment of outstanding wages over other creditor claims.

One of the important roles in the regulation of Bankruptcy and Postponement Of Debt Payment Obligations cases is the role of the curator, who is authorized by the court to manage and settle the bankrupt estate in the

¹ Joko Sriwadodo, M.S Tumanggor. *"Perkembangan Hukum Kepailitan dan PKPU di Indonesia"*. (Kalimantan: Kepel Press, 2024): 13.

interests of the debtor and creditors. The administration carried out by the curator means recording the bankrupt assets, finding and maintaining their value, securing and inventorying them; in addition, it also means conducting creditor meetings; taking legal action in court; continuing and terminating the debtor's legal relationships; preparing reports on the state of bankruptcy; transferring assets to increase the bankrupt assets; matching and verifying debts; settlement matters; and continuing and terminating businesses. In managing the bankrupt estate, the trustee must ensure that the items to be seized can be identified, managed, and maintained or developed in value so that they can be sold and the proceeds distributed to creditors.²

In managing the bankrupt estate, the trustee must protect the assets of the bankrupt debtor and endeavor to maintain the value of the bankrupt estate. Meanwhile, the liquidation of the bankrupt estate involves the sale of the bankrupt estate; distribution of the bankrupt estate; termination of bankruptcy; and auction. In carrying out their duties, according to Article 69 paragraph (2) of the Bankruptcy and Postponement Of Debt Payment Obligations.

1. The trustee is not required to obtain approval from or notify the debtor or any of the debtor's organs in advance, even if such approval or notification is required in circumstances outside of bankruptcy;
2. May borrow from third parties, only for the purpose of increasing the value of the bankruptcy estate.

To carry out their duties and authorities, a curator must sort out the authorities granted by the Law. These authorities include the authority to perform duties without the approval of agencies or other parties and the authority to perform duties after obtaining approval from other parties, such as

² Alfin Sulaiman, "*Hak Imunitas Profesi Kurator dan Pengurus*". Hukum Online, 22 April 2014, diakses 20 April 2025, <https://www.hukumonline.com/berita/a/hak-imunitas-profesi-kurator-dan-pengurus-lt53560215cad4f/>

the supervising judge.³ This means that whatever the curator does will be considered legal.

In practice, the implementation of the Bankruptcy Law and Postponement Of Debt Payment Obligations still experiences inconsistencies with the application of the curator's authority. For example, the explanation of Article 31 Paragraph (1) creates tension between the curator's duty to maximize the value of the bankrupt estate and the restrictions on asset execution. The filing of a judicial review of Article 31 Paragraph (1) by the Curator with Case Decision No. 11/PUU-XXI/2023 is clear evidence of the inconsistency between the provisions in the law and its application in the field. Article 31 Paragraph (1) states:

"A bankruptcy declaration ruling shall result in the immediate cessation of all court rulings regarding any part of the Debtor's assets that had been initiated prior to the bankruptcy, and from that point on, no ruling may be enforced, including or also by seizing the Debtor."

From the provisions of Article 31 paragraph (1) above, it can be concluded that if the court has issued a bankruptcy ruling, all previous court rulings related to any part of the debtor's assets must be stopped immediately and no ruling (whatever the ruling may be) may be enforced. The Explanation of Article 31 paragraph (1) a quo provides an explanation that reads:

"Without prejudice to the provisions of Articles 56, 57, and 58, this provision does not apply to Creditors as referred to in Article 55."

That from the wording of the Explanation of Article 31 paragraph (1) a quo, it can be concluded that the provisions of Article 31 a quo do not apply to creditors as regulated in Article 55. That the excluded creditors as referred to in letter d are regulated in the provisions of Article 55 paragraph (1), which reads:

"With due regard to the provisions referred to in Articles 56, 57, and 58, every Creditor holding a pledge, fiduciary guarantee, encumbrance,

³ Singal, N. Y., Rumimpunu, F., & Tampongangoy, G. H. "Kajian Hukum Tanggung Jawab Kurator Dalam Penyelesaian Perkara Kepailitan Pasca Putusan Pengadilan Niaga. *Jurnal Lex Privatum*" Vol. X No. 1(2022): 229-239

mortgage, or other security interest over property may exercise their rights as if no bankruptcy had occurred."

Although creditors holding pledges, fiduciary guarantees, encumbrances, mortgages, or other security interests over property (hereinafter referred to as Separate Creditors) are exempted from the provisions of Article 31 paragraph (1) a quo (which means that they may still exercise their rights even though a bankruptcy decree has been issued), however, to carry out such enforcement, they must still refer to Articles 56, 57, 58, and 59. Unfortunately, the provisions of Article 55 paragraph (1) and the Explanation of Article 31 paragraph (1) do not include Article 59 as a part that must be taken into consideration. In fact, Article 59 cannot stand alone but is an integral part of a series that is inseparable from Articles 56, 57, and 58.

The Petitioners, who are the Trustees, believe that Articles 56, 57, 58, and 59 form an inseparable series (cumulative in nature) because these articles regulate the requirements and procedures for execution in the event of a bankruptcy ruling. Article 59 regulates the granting of only 2 (two) months for creditors or third parties to execute if they have been declared insolvent. If within that period of 2 (two) months the Separate Creditor or third party is still unable to execute or sell, the Curator must demand that the collateral be handed over to the Separate Creditor or third party to be sold at auction.

Article 57 of the Bankruptcy and Postponement Of Debt Payment Obligations explains that Separate Creditors can immediately execute without having to wait for a 90 (ninety) day suspension of execution in the event of insolvency (the debtor is unable to pay). However, based on the provisions of Article 59, the execution in the event of insolvency is only given a period of 2 (two) months. If within a period of 2 (two) months the assets have not been executed, the petitioners as Curators must demand the handover of these assets for subsequent sale through auction.

Because the provisions of Article 59 are not included as part of the reference explained in the explanation of Article 31 paragraph (1) and are not

regulated in Article 55 paragraph (1), this has the potential to cause constitutional losses to the Petitioners who work as Trustees. This is because the Trustees do not have a legal basis to request separate creditors or third parties who have failed to carry out the execution order in a state of insolvency to surrender their assets that have exceeded 2 (two) months as stipulated in the provisions of Article 59.

This legal uncertainty has resulted in injustice for the Petitioners and can be declared a violation of their constitutional rights as guaranteed in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states:

"Every person shall have the right to recognition, guarantee, protection, and certainty of fair law and equal treatment before the law."

Based on the above description, it is important to understand how the curators in Malang City understand and apply the provisions of Article 31 paragraph (1) in practice, as well as what challenges they face in dealing with these perceived limitations on their authority.

B. Problem Formulation

Based on the background described above, the problems in this study are as follows:

1. How does the interpretation of Article 31 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and Postponement Of Debt Payment Obligations affect the authority of curators in settling the assets of bankrupt debtors?
2. How do curators overcome obstacles in managing and liquidating the assets of bankrupt debtors?

C. Research Objectives

Based on the research questions outlined above, this study aims to:

1. To determine whether Article 31 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and Postponement Of Debt Payment Obligations affects the curator's authority in settling the assets of a bankrupt debtor.
2. To determine how the curator overcomes obstacles that arise in managing and settling the assets of bankrupt debtors.

D. Benefits of Research

1. Theoretical Benefits

This study is expected to contribute to the development of legal science, particularly in the field of bankruptcy law. The analysis conducted in this research can be used as an academic reference for other researchers who are interested in exploring issues related to the authority of the curator in executing bankruptcy proceedings. In addition, this research can enrich the legal literature on the implementation of Law No. 37 of 2004 if discrepancies are found between the norms and the reality of practice in the field.

2. Practical Benefits

The results of this study are expected to serve as a guide for legal practitioners, particularly curators, in handling and settling bankruptcy cases. This research is also expected to help business actors experiencing bankruptcy and creditors who want to obtain their rights to debt payments to understand the limits of the curator's authority more precisely and prevent potential legal conflicts in the future. In addition, this research can also provide input for policy makers in evaluating and refining the norms in the Law regarding clarity and certainty related to the authority of the curator.

E. Operational Definitions

To make it easier for readers to understand the content of this study, the author will describe the operational definitions of the variables contained in the research title, as follows:

1. Curator

Based on the provisions of Article 1 paragraph 5 of Law Number 37 of 2004 concerning Bankruptcy and Postponement Of Debt Payment Obligations, a curator is an estate office or individual appointed by the court to manage and settle the assets of a bankrupt debtor under the supervision of a supervisory judge.⁴ The purpose of administration here is to record, locate, maintain value, secure, and settle assets by selling them through auction. The curator is appointed by the court with the main vision of maximizing the value or quality of the bankrupt assets. Although appointed by the court, the appointment of a curator can still be proposed by the bankruptcy petitioner. The trustee must act in the best interests of the creditors, but the trustee must also consider the interests of the bankrupt debtor; these interests must not be ignored entirely. The curator will maximize efforts to avoid adding to the burden of the bankrupt estate so that the value of the assets for creditors does not decrease. In carrying out their duties, the curator will be supervised by a Supervising Judge, who is a judge appointed in the bankruptcy decision and is responsible to the supervising judge.

2. Bankrupt Estate

Bankrupt assets are all the wealth owned by the debtor at the time the court makes the bankruptcy decision, as well as everything acquired during the bankruptcy process. This wealth includes all movable and immovable property owned and managed by the debtor. After that, the curator, under the supervision of the supervisory judge, will manage and decide on the use of these assets to pay debts to creditors.

3. Separate Creditors

Separate creditors are parties who hold property rights granted by the debtor, such as liens, mortgages, pledges, fiduciary rights, and other forms of property rights. These creditors have the right to execute the collateral if the debtor is unable to fulfill their obligations or defaults, as stipulated in Article 55 of the Bankruptcy and Postponement Of Debt Payment Obligations.

⁴ Serlika Aprita, Rio Rio Adhitya. *Etika Profesi Kurator* (Jember: Pustaka Abadi, 2017), 68

F. Systematic Discussion

To make the discussion of this research more focused, the following is the structure of the writing:

CHAPTER I INTRODUCTION, this chapter consists of the background of the problem, problem formulation, research objectives and benefits, conceptual definitions, and finally the writing structure

CHAPTER II LITERATURE REVIEW, the second chapter contains a literature review as an analytical tool to analyze the defined problem formulation. The literature review includes previous studies and theoretical frameworks/foundations. Previous studies include several studies by previous researchers that are relevant to this study and have similarities and differences with this study. Meanwhile, the theoretical framework describes the theories that form the basis for drawing conclusions related to the object of this study.

CHAPTER III RESEARCH METHODOLOGY, Chapter three discusses the research methodology, which consists of the type of research, data sources, research location, data collection techniques, and data analysis.

CHAPTER IV RESEARCH RESULTS AND DISCUSSION, the fourth chapter discusses and analyzes the data obtained from interviews, literature, and documentation, which is then analyzed through primary and secondary data to answer the research questions as stated above.

CHAPTER V CONCLUSION, Chapter Five, the conclusion, consists of conclusions and recommendations. The conclusions are based on the answers to the research questions, while the recommendations are compiled as input or suggestions for solving the problems.

CHAPTER II

LITERATURE REVIEW

A. Previous Research

First, a journal article by Ahmad Dwi Mulyatno published in 2022, entitled *The Authority of Curators to Manage Bankrupt Limited Liability Companies*. This study focuses on the authority and responsibilities of curators in managing the bankrupt assets of a limited liability company. The method used in this study was normative with the technique of collecting legal materials using a literature study. The results of this study indicate that the authority of the curator in a limited liability company in bankruptcy is a transfer of authority to the curator, which was previously the authority of the Board of Directors, only in relation to the management and/or settlement of the assets of the limited liability company in bankruptcy. The authority possessed by the curator in the bankruptcy of a limited liability company arises from the duties mandated by law. The use of this authority is immediately followed by the respective responsibilities for the exercise of that authority. The exercise of authority that is not in accordance with legal provisions and causes losses to the company will result in legal consequences for the curator personally.⁵ .

Second, a journal article by Prayoga Hindrawan, Sunarmi, Budiman Ginting, and Dedi Harianto published in 2023, entitled *The Responsibility of Trustees in Applying the Pari Passu Prorata Parte Principle in the Management and Settlement of Bankruptcy Assets*. This study focuses on analyzing the responsibility of curators in applying the *pari passu prorata parte* principle to the distribution of bankruptcy assets based on Decision Number 16/Pdt.Sus-PKPU/2019/ PN.Niaga.Mdn, because the *pari passu* principle is an important guideline for authorized and responsible curators who manage the bankruptcy estate and settle the debtor's bankruptcy estate under the supervision of a

⁵ Ahmad Dwi Mulyatno. "Kewenangan Kurator Untuk Mengurus Perseroan Terbatas Pailit" Jurnal Hukum, Pendidikan & Sosial Keagamaan (1) 2, 2022: 167

supervisory judge with the aim of using the proceeds from the sale to pay the bankrupt debtor's debts to creditors proportionally. The method used in this study is a descriptive analytical normative legal research method. The results of this study indicate that the curator has carried out his responsibilities in accordance with Law No. 37/2004 and the Curator Professional Standards in applying the *pari passu prorata parte* principle to the distribution of bankruptcy assets based on Decision Number 16/Pdt.Sus-PKPU/2019/PN.Niaga. This was done by classifying the position of creditors in bankruptcy into Separate Creditors, Preferential Creditors, and Concurrent Creditors in accordance with the proportion of each creditor without giving priority to one over another.⁶

Third, a journal article by Cantika Ayuril Sukma, Helfir Citra, and Desi Sommaliagustina published in 2023, entitled *The Position of the Curator in the Settlement of Bankruptcy Assets in accordance with Law No. 37 of 2004 (Case Study of Decision Number: 4/Pdt.Sus-Pailit/2020/Pn.Niaga Sby)*. This study focuses on the legal position of the curator after a bankruptcy decision by the commercial court, as well as the challenges faced in the administration of bankruptcy assets. The results of this study found that the Bankruptcy Law and Bankruptcy And Postponement Of Debt Payment Obligations (Bankruptcy Code) grant the administrator the authority to carry out their responsibilities efficiently and effectively, whereby the curator has the right to carry out their duties from the date of bankruptcy and take over the case by requesting the court to stop all legal actions of the bankrupt debtor.

Fourth, a journal article by R. Besse Kartoningrat, Peter M. Marzuki, M. Hadi Shubhan published in 2021, entitled *Principles of Independence and Accountability of Curators in the Management and Settlement of Bankrupt Assets (.)*. The focus of this study is on the principles and concepts of bankruptcy curator responsibility and the curator's responsibility for the risk of loss in the

⁶ Hindrawan, P., Sunarmi, S., Ginting, B., & Harianto, D. *Tanggung Jawab Kurator dalam Menerapkan Asas Pari Passu Prorata Parte dalam Pengurusan dan Pembersan Harta Pailit . Locus Journal of Academic Literature Review*, Volume 2 Issue 8(2023): 720. <https://doi.org/10.56128/ljoalr.v2i8.223>

management and liquidation of bankruptcy assets. This research uses a normative legal research method with a legal and conceptual approach. The results of this study are that the curator's responsibility in the management and settlement of bankruptcy assets includes the obligation to secure, record, and sell bankruptcy assets carefully and in accordance with procedures. The trustee is responsible for losses arising from negligence or errors while performing these duties, including personal responsibility and capacity as a trustee.⁷ In addition, the trustee must immediately rescue and secure the bankrupt estate after receiving notification and take the necessary steps to maintain the value of the estate.

Fifth, research by Muhammad Alif Mudzakir published in 2023, entitled *The Duties and Roles of Trustees in the Bankruptcy Process (Case Study in Case No. 11/Pdt.Sus-Pailit/2020/PN.Smg Jo No. 11/Pdt.Sus-PKPU/2019/PN.Smg)*. This research focuses on the duties and roles of curators in the bankruptcy process in accordance with Law No. 37 of 2004 through a case study of bankruptcy cases in the city of Semarang. This research uses a normative juridical method, in which the author conducts research on legislation as well as case examples and their verdicts. The results of this study found that the duties and roles of the curator in resolving bankruptcy are to announce the bankruptcy decision and hold creditor meetings to secure the bankruptcy assets, even though in bankruptcy practice, it is often found that the bankrupt debtor is uncooperative by hiding their assets. The curator also plays a role in organizing Creditor Meetings. Creditor Meetings are intended to inform Creditors, Bankrupt Debtors, and Supervisory Judges about the progress of the management and settlement of bankruptcy assets carried out by the Curator.⁸

⁷ R. Besse Kartoningrat, Peter M. Marzuki, M. Hadi Shubhan. *Prinsip Independensi dan Pertanggung Jawaban Kurator Dalam Pengurusan dan Pembersihan Harta Pailit*. RechtIdee, Vol. 16 No. 1(2021): 59

⁸ Muhammad Alif Mudzakir. "*Tugas Dan Peran Kurator Dalam Proses Kepailitan (Studi Kasus Dalam Perkara No. 11/Pdt.Sus-Pailit/2020/PN.Smg Jo No. 11/Pdt.Sus-PKPU/2019/PN.Smg)*" (Undergraduated thesis, Universitas Islam Sultan Agung, 2023)

Sixth, a journal article by Moh Saleh published in 2024, entitled "*The Curator as Executor in the Settlement of Bankruptcy Cases.*" This study focuses on analyzing the role, duties, authority, and responsibilities of the curator in resolving bankruptcy disputes, as well as the importance of the curator's role in the process of settling the debts of bankrupt debtors. The method used is normative legal research with a conceptual and regulatory approach. The results of this study show that curators have a strategic role in the process of settling bankrupt debts. Curators are responsible for managing and settling the debts of bankrupt debtors, including managing bankrupt assets, selling debtor assets with the permission of the supervisory judge, and carrying out their duties effectively to achieve optimal debt settlement. In addition, the trustee also plays a role in verifying the debtor's obligations, recording assets, and taking legal actions such as filing claims to cancel the debtor's legal actions and demanding the surrender of the proceeds from the sale of collateral.⁹

Seventh, research by Rizka Varhana Anis published in 2024 entitled *Legal Analysis of the Curator's Responsibilities in the Management of Bankrupt Assets*. This study focuses on the curator's responsibility in managing and settling the assets of bankrupt debtors from the time they are appointed as professionals in managing the bankruptcy assets until the creditors obtain their rights and shares in proportion to their respective shares without removing or transferring their responsibilities. The research method used in this study is a descriptive analysis method. The results of this study show that the process of replacing the curator is the most important. The process involves writing to the commercial court at the Makassar district court, in accordance with the bankruptcy case number, to request the supervising judge to replace the curator and write down the name of the replacement curator. The replacement curator must continue the process of managing and settling the bankrupt estate that has been carried out by the previous curator in accordance with Law Number 37 of

⁹ Moh. Saleh. *Kurator Sebagai Eksekutor dalam Penyelesaian Kasus Kepailitan*. Jurnal Kompilasi Hukum Volume 9 No. 1(2024): 45

2004 concerning Bankruptcy and Bankruptcy And Postponement Of Debt Payment Obligations.¹⁰

Eighth, research by Asra Darma Putra published in 2021 entitled *Judicial Review of the Management and Settlement of Bankruptcy Assets by Trustees in the Settlement of Bankruptcy Cases Based on Law Number 37 of 2004*. This study focuses on how the administration and liquidation of bankruptcy assets by curators in the settlement of bankruptcy cases is based on Law Number 37 of 2004, as well as the obstacles faced by curators in the administration and liquidation of bankruptcy assets. The method used in this research is normative legal research. The results of this study show that the assets of a bankrupt company are managed by a trustee appointed by a judge and supervised by a supervisory judge. Every three months, the trustee must report to the supervisory judge on all actions taken with regard to the company's assets. The trustee acts in the interests of the bankrupt company. The management of the assets of a company that has been declared bankrupt also faces several problems, including difficulties in recording administration, asset documents, or company assets. Furthermore, the low selling price of company assets can reduce the price, and the curator may commit fraud against the company that has been declared bankrupt.

To clarify the similarities and differences between previous research and this study, as well as the novelty offered, the following table is attached:

No	Researcher Name	Research Title	Similarities	Differences
1.	Ahmad Dwi Mulyatno (Politeknik	The Authority of the Curator to Manage a Limited	Discussion regarding the authority of the	The focus of the research lies in the fact that Ahmad's

¹⁰ Rizka Varhana Anis. "Analisis Yuridis Tanggung Jawab Kurator Dalam Pengurusan Harta Pailit" (Universitas Alauddin Makassar, 2024): 59

	API Yogyakarta, 2023)	Liability Company Limited Bankruptcy	curator in managing bankruptcy assets	research focuses on the curator's authority as a whole, while this research focuses on the authority that is reduced due to limited legal provisions.
2.	Prayogo Hindrawan, Sunarmi, Budiman Ginting, Dedi Harianto (University of North Sumatra, 2023)	The Curator's Responsibility in Applying the Pari Passu Prorata Parte Principle in the Management and Settlement of Bankrupt Assets	Discussion regarding the curator's responsibility in handling and managing bankruptcy assets fairly and in accordance with the " " principle, proportionate to each creditor's share.	The difference in this study by Prayoga et al. is that it delves deeper into the curator's efforts to manage the distribution of bankrupt assets fairly in accordance with the " " principle, and how the curator upholds their responsibilities when their authority to act fairly is limited.
3.	Cantika Ayuril	The Position of the Curator in the	Discussion on the role of the	The difference between Cantika's

	Sukma, Helfira Citra, Desi Sommaliagus tina (Dharma Andalas University, 2023)	Settlement of Bankruptcy Assets in Accordance with Law No. 37 of 2004 (Case Study of Judgment No. 4/Pdt.Sus- Pailit/2020/Pn.Ni aga Sby)	curator in the liquidation of bankrupt assets	research and this research lies in the case study; Cantika's research uses a bankruptcy case, while this research focuses on testing the material provisions of the Law.
4.	R. Besse Kartoningrat, Peter M. Marzuki, M. Hadi Shubhan (Airlangga University, 2021)	The Principles of Independence and Accountability of the Trustee in the Administration and Settlement of Bankruptcy Assets	A discussion of the principles of adopted by curators.	The research by R. Besse et al. focuses on an in- depth discussion of the philosophy of curator accountability in the context of bankruptcy, including moral, ethical, and independence principles that form the basis for the performance of curator duties. Meanwhile, this study focuses on

5.	Muhammad Alif Mudzakir (Sultan Agung Islamic University, 2023)	The Duties and Roles of Curators in the Bankruptcy Process Case Study in Case No. 11/Pdt.Sus-Pailit/2020/Pn.Smg Jo No.11/Pdt.Sus-Postponement of debt payment obligations/2019/Pn.Smg.	Discussion on the duties and roles of a curator in handling bankruptcy cases	In Alif's research, the focus is on assessing the role of the curator in handling bankruptcy cases in bankruptcy proceedings. Meanwhile, this study will examine the obstacles faced by the curator in executing bankruptcy assets that are controlled by creditors ().
6.	Moh. Saleh (Mataram University, 2024)	The Curator as Executor in the Settlement of Bankruptcy Cases	Discussion related to the curator as a mediator who assists in the execution of bankruptcy assets	This study elaborates in detail on the practice of bankruptcy asset execution as regulated in Law No. 37 of 2004 and its implementation in the field
7.	Rizka Varhana Anis (Alauddin University)	Legal Analysis of the Curator's Responsibility in the Management	Highlighting the importance of the curator's role in	This study examines whether the regulations regarding the

	Makassar, 2024)	of Bankruptcy Assets	managing and settling bankruptcy debts and the legal actions taken by the curator.	responsibilities and authorities of a curator are fully implemented in accordance with the Bankruptcy Law and POSTPONEMEN T OF DEBT PAYMENT OBLIGATIONS.
8.	Asra Darma Putra (UIN Sultan Syarif Kasim Riau, 2021)	A Legal Review of the Management and Settlement of Bankrupt Assets by Curators in the Settlement of Bankruptcy Cases Based on Law Number 37 of 2004	Discussion on the administration and settlement of bankruptcy cases	This study focuses on the effectiveness of the Law in providing legal certainty () to the curator in managing the liquidation of bankruptcy assets.

Based on several studies that have been presented previously, it can be seen that there has been no research that specifically highlights the urgency of discussing Article 31 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Bankruptcy And Postponement Of Debt Payment Obligations in relation to the limitation of the curator's authority. In fact, this provision has an important position because it is directly related to the curator's scope of action in carrying out the task of managing and settling the assets of bankrupt

debtors. The ambiguity and limitations of studies on this article have the potential to cause differences in interpretation, both among academics, legal practitioners, and law enforcement officials, which can have implications for the effectiveness of the curator's work in the field. This condition is even more relevant to be studied in the context of Malang City, considering that bankruptcy practices in this area show their own dynamics that are different from other areas, particularly in relation to the extent to which curators feel that there are limitations on their authority in carrying out the legal functions mandated to them.

B. Theoretical Framework

1. Bankruptcy Law

a. Definition of Bankruptcy

Bankruptcy is a general seizure of all the debtor's assets and everything obtained during bankruptcy, which is managed and settled by a curator under the supervision of a Supervisory Judge. Bankruptcy is a situation where the debtor is unable to pay their debts to one or more creditors ().¹¹ This inability to pay is due to the debtor experiencing financial difficulties from their business activities. If the debtor realizes that they are unable to pay their obligations that are due, then filing *a voluntary petition for self bankruptcy* becomes a possible step. If evidence is then found that the debtor is indeed unable to pay their debts that are due and collectible (*involuntary petition for self bankruptcy*), then the court can declare the debtor bankrupt.

The main purpose of bankruptcy is to distribute the debtor's assets among creditors by the Curator. Bankruptcy is intended to avoid separate seizures or separate executions by creditors and replace them with joint seizures so that the debtor's assets can be distributed to all

¹¹ M. Hadi Shubhan. “*Hukum Kepailitan (Prinsip, Norma dan Praktik di Peradilan)*”, (Surabaya: Prenada Media Group, 2007), 2

creditors in accordance with their respective rights, because bankruptcy exists to guarantee creditors their rights to the assets of the bankrupt debtor.¹²

There are several factors that necessitate regulations related to bankruptcy and the postponement of debt payment obligations, namely to avoid:

- 1) Disputes between creditors over the debtor's assets, if they are claimed at the same time.
- 2) Sale by creditors holding collateral rights or separate creditors who sell the debtor's property without considering the interests of the debtor and other creditors.
- 3) Fraud by certain creditors that causes losses to other creditors.
- 4) Fraud by debtors to abscond with their assets to evade their responsibilities to creditors.

Based on the provisions of bankruptcy law in Indonesia, the parties that can be declared bankrupt are not limited to one type of legal entity, but include various forms of legal entities that have debt payment obligations. These parties include individuals, sole proprietorships, limited liability companies, and other legal entities such as cooperatives, foundations, or state and regional-owned enterprises. This shows that bankruptcy law is inclusive of various entities that carry out economic activities and have the potential to incur debt relationships with creditors.

A debtor can only be declared bankrupt if it has been decided by a judge or court. According to Article 2 paragraph (1) of the Bankruptcy and Bankruptcy And Postponement Of Debt Payment Obligations, a debtor who has two or more creditors and does not pay off at least one

¹² Imran Nating “*Peran dan Tanggung Jawab Kurator Dalam Pengurusan dan Pembersihan Harta Pailit*” (Jakarta: RajaGrafindo Persada, 2004), 6.

debt that is due and collectible will be considered bankrupt.¹³ Furthermore, Article 8 paragraph (4) of the Bankruptcy and Bankruptcy And Postponement Of Debt Payment Obligations states that a petition for a declaration of bankruptcy can only be accepted if the facts or circumstances regarding the debtor's debt are proven in a simple manner. The simple proof referred to is:

- 1) The existence of a debt that has fallen due
- 2) Having two or more creditors

b. Bankruptcy Procedures

The requirements for filing for bankruptcy against a debtor are regulated in Law No. 37 of 2004 concerning Bankruptcy and Bankruptcy And Postponement Of Debt Payment Obligations, namely in Article 2 paragraph (1), which states that:

"A debtor who has two or more creditors and fails to pay at least one debt that has fallen due and is collectible shall be declared bankrupt by a decision of the competent court, as referred to in Article 2, either upon his own petition or upon the request of one or more of his creditors."

Those who may file for bankruptcy are:

- 1) The debtor themselves;
- 2) One or more creditors;
- 3) The Attorney General's Office in the public interest;
- 4) Bank Indonesia if the debtor is a bank; and
- 5) The Capital Market Supervisory Agency or BAPEPAM if the debtor is a securities company.

After the petition is submitted to the clerk of the Commercial Court, it must be registered, and within a maximum of one working day

¹³ Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan PKPU Pasal 2 ayat (1)

after the date of registration, the clerk must submit the petition to the chief judge of the Commercial Court to set a hearing date.

The court will summon the bankrupt debtor to attend the hearing after the registration is complete. The summons must be made no later than 7 days before the first examination hearing; the Commercial Court's decision must be made no later than 60 days from the date the petition for bankruptcy was registered. As referred to in Article 8 paragraph (7) of the Law:

"Decisions in bankruptcy cases can, in principle, be enforced immediately even if an appeal has been filed against them."¹⁴

The procedures for bankruptcy proceedings are basically the same as those for ordinary civil proceedings, however, the trial process in bankruptcy is carried out in the shortest possible time. Meanwhile, the legal remedies regulated in bankruptcy law are different from those in ordinary civil proceedings. In bankruptcy proceedings, the legal remedies known are cassation and review, and there is no appeal.¹⁵

2. The Theory of Legal Certainty

The theory of legal certainty is one of the objectives of law, and it can be said that legal certainty is part of the effort to achieve justice. Legal certainty itself has a tangible form, namely the implementation and enforcement of the law against an act, regardless of who the individual is. Through legal certainty, everyone is able to predict what they will experience if they commit a certain legal act.

Legal certainty guarantees that a person can behave in accordance with the provisions of the applicable law and vice versa. Without legal certainty, an individual cannot have a standard for behaving. In line with this objective, Gustav Radbruch also explained that legal certainty is one of the objectives of the law itself.

¹⁴ Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan PKPU Pasal 8 ayat (7)

¹⁵ M. Hadi Shubhan. "*Hukum Kepailitan (Prinsip, Norma dan Praktik di Peradilan)*", 127

Gustav Radbruch explains¹⁶ that in his theory of legal certainty, there are four fundamental things that have a close relationship with the meaning of legal certainty itself, namely as follows:

- a. Law is a positive thing, meaning that positive law is legislation.
- b. Law is based on facts, meaning that law is made based on reality.
- c. The facts contained or listed in the law must be formulated in a clear manner, so as to avoid errors in meaning or interpretation and to be easily implemented.
- d. Positive law should not be easily changed.

Gustav Radbruch's opinion on legal certainty is based on his view that legal certainty means legal certainty itself. Gustav Radbruch argues that legal certainty is one of the products of law or, more specifically, a product of legislation.

Based on Gustav Radbruch's opinion on legal certainty, law is a positive thing that is capable of regulating the interests of every human being in society and must always be obeyed even if the positive law is considered unfair. Furthermore, legal certainty is a definite state, provision, or stipulation.

Essentially, the law must be certain and fair. That is, a certain law is a guideline for behavior, and a fair law is a guideline for behavior that must support a certain order and be considered reasonable. Only by being certain and fair can the law be implemented in accordance with its function.

From Gustav's explanation of the theory of legal certainty, it can be concluded that legal certainty means that there must be clarity, no room for multiple interpretations of the law, no contradictions between regulations, and that the regulations must be enforceable. This is because if the regulations are contradictory, the law will become a source of doubt. Legal certainty itself can be a legal tool for a country that has clarity and can

¹⁶ Satjipto Rahardjo. *"Ilmu Hukum"* (Bandung: Citra Aditya Bakti, 2012), 19

guarantee the rights and obligations of every citizen in accordance with the culture that exists in that society.

The law that is in force and has been established by the authorities and authorities in this case the government, must be firm in society, contain openness so that the community can understand the meaning of the regulations or legal provisions that have been established by these authorities.

In the context of this study, the theory of legal certainty is relevant to analyze the issues in this study, where Article 31 paragraph (1) of Law No. 37 of 2004 is considered to have the potential to cause constitutional harm to the petitioners who work as curators. This condition of legal uncertainty has resulted in injustice for the Petitioners, which can be declared a violation of the constitutional rights of the Petitioners as guaranteed in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

3. Theory of Legal Systems

In observing and assessing a legal system that applies to society, it is necessary to discuss *law*, which is a set of written or unwritten rules concerning right and wrong behavior, rights and obligations. Regarding this matter, Lawrence M. Friedman, a professor of law and historian from the United States, stated that success or failure in law enforcement is highly dependent on three main components of the legal system. The legal system itself is understood as a series of interrelated elements and aspects that form a complete unity within the legal framework. Lawrence M. Friedman argues that the effectiveness and success of law enforcement depends on three elements of the legal system, namely:¹⁷

a. Legal Structure

¹⁷ Lawrence M. Friedman, The. Legal System: A Sosial Science Perspektive” (Bandung: Nusa Media, 2009): 7

The structure of the legal system consists of the following elements: the number and size of courts, their jurisdiction (including the types of cases they are authorized to hear), and the procedures for appealing from one court to another. Structure also refers to how the legislative body is organized, what the president can and cannot do, the procedures followed by the police, and so on.¹⁸

The legal structure is the entire legal system, which consists of the law-making apparatus, the law-enforcement apparatus, and the law-enforcement apparatus. The legal structure has several functions, namely:

- 1) Lawmaking
- 2) Cultivation and dissemination of law
- 3) Law enforcement
- 4) Legal administration

Even if a law has been drafted and enacted by an authorized institution, it will not have any real impact if the institutions within the legal system do not carry out their roles and duties properly. Without optimal implementation of legal functions, laws will only remain ideal concepts that are never actually applied in society.

In this context, the legal structure has a strategic role that includes the process of law formation, dissemination of legal information, law enforcement, and the administration of law for legal subjects. Among all these functions, the dissemination of law is crucial, because laws and regulations must first be communicated to the public so that they can be understood. Through this understanding, it is hoped that a collective awareness will arise among the public to obey the applicable laws.

b. Legal substance

¹⁸ Lawrence M. Friedman, *The Legal System: A Social Science Perspective*, 24

Legal substance is understood as the content or material of the law itself, which includes rules, norms, principles, and policies that serve as guidelines in regulating public behavior. In other words, legal substance is the content that determines what is and is not permissible, as well as the legal consequences of an action. In addition to written regulations, the substance of law also includes basic legal principles and court decisions that interpret the law.

The substance of law serves to provide legal certainty, justice, and benefits in society. It forms the basis for the legal structure (law enforcement apparatus) to act and is also a measure for assessing the behavior of citizens. If the substance of law is unclear, overlapping, or does not provide strict sanctions, then the law will be difficult to enforce even if the legal structure and legal culture of society have been established. Therefore, the quality of the substance of law greatly determines the effectiveness of a legal system, because it contains norms that are binding on all parties.

c. Legal Culture

The elements of legal culture in the workings of the law include ideas, views, patterns of behavior, and ways of thinking within a community regarding the law and related issues.¹⁹ There are two possibilities in the formation of legal culture. First, legal culture can arise from the interaction between legal structure and legal substance. Second, legal culture develops within the community itself to form certain customs that ultimately give rise to patterns of legal structure and legal substance.²⁰ Based on the subjects that shape it, Friedman distinguishes legal culture into two types. First, external legal culture, which involves the wider community in general.

¹⁹ Marzuki Lubis, "Peranan Budaya Hukum Dalam Perspektif Pembangunan Hukum Nasional," *Penegakan Hukum* 1, No. 1 (2014): 16–37.

²⁰ Lawrence M Friedman, "The Concept of the Self in Legal Culture," *Cleveland State Law Review* 38, no. 4 (1990): 34

Second, internal legal culture, which is the culture that grows within law enforcement officials. These two types of legal culture are interrelated. If external legal culture functions well, then internal legal culture will adjust, because law enforcement officials are essentially part of the community itself. According to the Legal System Theory proposed by Lawrence M. Friedman, the legal system consists of three main elements, namely legal structure, legal substance, and legal culture, all of which have a common goal of ensuring that the law can be applied effectively and achieve the desired results. Each of these components must function according to its role, because only with the proper implementation of each element can the objectives of the law be achieved. This objective is in line with the purpose of disseminating the law as explained in the Explanation of Article 88 of Law Number 12 of 2011 concerning the Formation of Legislation, namely so that the public can understand and provide feedback or input on the legislation that has been enacted.²¹

Law as a means of social change or social engineering is essentially a reflection of the ideas that are to be realized through the law itself. In order for the function of law as a tool for change towards a better direction to be achieved, it requires not only the existence of legal norms or regulations, but also the certainty that these norms can be applied in practice, namely through effective law enforcement. Therefore, the effectiveness of the law does not solely depend on legislation, but also on the performance of the bureaucracy that implements it.²²

²¹ Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan

²² Soerjono Soekanto. "Faktor-Faktor Hukum" (Jakarta: Raja Grafindo, 2008), 38

CHAPTER III

RESEARCH METHOD

A. Type of Research

This research is empirical legal research²³, which is legal research that analyzes the application of law in reality to individuals, groups, communities, and legal institutions in society with a focus on the behavior of individuals, communities, organizations, or legal institutions in relation to the application or enforcement of law. This study analyzes the application of Article 31 paragraph (1) of Law Number 37 of 2004 in reality with regard to the authority of the curator in executing bankruptcy cases.

B. Research Approach

The approach used in this research is *the Social Legal Approach*. The sociological approach to law is an approach that analyzes the reactions and interactions that occur when the normative system works within society. In addition, there is also a sociological approach to law. This approach is constructed as a form of social behavior that is consistent, institutionalized, and socially legitimized.²⁴

C. Research Location

The researcher chose JK. Tritjahjana Law Office as the research location, which is an Indonesian curator and legal administrator advocacy and legal consultation firm located at Jl. WR. Supratman, Kompleks Ruko WR. Supratman C1 / Kav.2, Rampal Celaket, Kec. Klojen, Malang City. The reason for conducting the research at JK. Tritjahjana Law Office in Malang City is because JK. Tritjahjana Law Office is a law firm that provides advocacy and consulting services by curators in the field of Bankruptcy and Postponement of Debt Payment Obligations. This focus is highly relevant to the substance of the

²³ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020), 96.

²⁴ Dewata, Mukti Fajar Nur, dan Yulianto Achmad. *Dualisme Penelitian Hukum Normatif dan Empiris*. (Yogyakarta: Pustaka Pelajar, 2010): 47-49.

research, which discusses the authority of curators in managing bankrupt assets based on Article 31(1) of the Bankruptcy Law.

D. Data Sources

Data sources in this research refer to the data obtained by the researcher from informants. In this study, the data sources are curators in the East Java region.

1. Primary Data

Primary data sources are data sources that are collected directly by researchers from their original sources related to the issues to be discussed. The primary data sources in this study are sources obtained directly from field research in the form of knowledge and experience of individual curators working in the Malang City area. In addition, the primary sources of this study were obtained from the results of case decision No. 11/PUU-XXI/2023.

2. Secondary Data

Secondary legal sources are legal materials sourced from textbooks because textbooks contain the basic principles of legal science and the classical views of highly qualified scholars.²⁵ In this study, the data sources used are those that can provide explanations related to primary legal sources and reinforce the legal issues contained in primary legal sources, namely scientific books related to Bankruptcy and POSTPONEMENT OF DEBT PAYMENT OBLIGATIONS, legal journals, and related articles.

E. Data Collection Techniques

The data collection technique used in this study was through interviews, namely by asking a number of open-ended questions to sources who were directly relevant to the research object, namely curators practicing in the city of Malang. The interviews were conducted in depth in order to obtain accurate primary data in accordance with the needs of the analysis of Article 31

²⁵ Peter Mahmud M. "Penelitian Hukum". (Jakarta: Kencana, 2011), 142

paragraph (1) of the Bankruptcy and Bankruptcy And Postponement Of Debt Payment Obligations. After the data was obtained, the next stage was the editing process, which involved checking the completeness and clarity of the data that had been collected. followed by classification based on specific themes or legal issues that emerged from the interviews; then verification, which is reviewing the validity and consistency of the data with relevant legal theories and provisions; and finally, conclusions are drawn as a form of preliminary conclusions before further analysis in the discussion chapter. These stages are carried out systematically to ensure the validity and relevance of the data to the research questions.

F. Data Processing

The data sources collected in this study will be processed and analyzed using qualitative analysis methods. This analysis is carried out by discussing and interpreting the data obtained based on relevant theoretical foundations, so as to describe the relationship between theory and empirical facts. The results of the analysis are then presented descriptively to provide a clear, systematic, and focused overview of the legal issues under study.

CHAPTER IV

DATA PRESENTATION AND ANALYSIS

A. Data Presentation

In this study, the researcher conducted an interview with a curator in Malang City who has direct experience in handling bankruptcy cases. The interview was intended to obtain an empirical picture of the dynamics of the curator's duties, particularly in relation to his authority in the process of managing and settling the assets of bankrupt debtors. The presentation of data from these interviews is expected to provide field facts relevant to the application of Article 31 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Postponement Of Debt Payment Obligations. Thus, the analysis presented is not only normative-theoretical, but also reflects the reality of practice in the field, especially regarding the extent to which these provisions have implications for the authority of curators in carrying out their legal functions.

Informant:

Name	: Maliki, S.HI., S.H., M.H.
Position	: Attorney, Curator, & Administrator of Indonesia
Years of Experience	: Approximately 12 years
Number of Cases Handled Bankruptcy	: 40 cases

1. Curator's Authority in Bankruptcy Asset Management

Maliki: "Regulated in Article 69 of the Bankruptcy and Postponement Of Debt Payment Obligations, the administration and settlement of bankruptcy estates involves considerable authority in the settlement, starting from the inventory of assets (Articles 99-100 of the Bankruptcy

and Postponement Of Debt Payment Obligations Law), data verification process (Articles 115-120 Articles 99-100 of the Bankruptcy Law and Postponement Of Debt Payment Obligations including settlement efforts (pure bankruptcy petition) (Articles 144-159 Articles 99-100 of the Bankruptcy and Postponement Of Debt Payment Obligations and if the debtor is insolvent (Articles 178, 99-100 of the Bankruptcy and Postponement Of Debt Payment Obligations), the curator is obliged to carry out liquidation (Article 185, Articles 99-100 of the Bankruptcy and Postponement Of Debt Payment Obligations).

The trustee's statement confirms that the trustee's authority in the management and liquidation of the bankrupt estate is clearly regulated in Article 69 of the Bankruptcy Law and Postponement Of Debt Payment Obligations. This authority covers various important stages, starting from the inventory of assets as regulated in Articles 99-100 to inventory all bankrupt assets, followed by the verification of creditors' claims in accordance with Articles 115-120 to ensure the validity and amount of the claims submitted, as well as facilitating settlement efforts in pure bankruptcy cases as regulated in Articles 144-159. If a settlement cannot be reached and the debtor is insolvent as referred to in Articles 178, the trustee is obliged to carry out liquidation based on Article 185, namely selling the bankrupt estate's assets and distributing the proceeds to creditors in accordance with the provisions of the law.

2. Application of Article 31 Paragraph (1) of the Bankruptcy Law and Postponement Of Debt Payment Obligations in the Management of Bankruptcy Assets by the Trustee

***Maliki:** "The application of Article 31 paragraph (1) of the Bankruptcy Law and Postponement Of Debt Payment Obligations should not be interpreted by looking at only one paragraph of the entire article. Article 31 of the Bankruptcy and Debt Payment Suspension Law consists of three paragraphs, and the meaning of the first to third paragraphs must be understood in the context of the specific application of bankruptcy*

and Postponement Of Debt Payment Obligations as well as the general application of the law."

The curator's statement shows caution in interpreting Article 31 of the Bankruptcy and Postponement Of Debt Payment Obligations. According to him, paragraph (1) cannot be understood independently because its position is closely related to paragraphs (2) and (3). If only paragraph (1) is referred to, it would appear that the curator's authority in managing the bankrupt estate is limited. However, if interpreted comprehensively, the three paragraphs form a complementary system of norms that does not diminish the curator's role in carrying out his duties.

From a practical perspective, a partial interpretation has the potential to cause differences of opinion between the curator and related parties, such as the supervisory judge and creditors, which can hinder the smooth running of the bankruptcy process. Therefore, a systematic understanding of Article 31 of the Bankruptcy And Debt Payment Deferment Law is important so as not to cause multiple interpretations in its application. Curators in the field, such as in Malang City, emphasize that understanding the article in its entirety actually provides legal certainty and supports the smooth running of their duties in managing and settling bankruptcy assets.

3. Challenges or Obstacles in the Administration and Settlement of the Debtor's Assets

Maliki: *"The application of Article 59 for curators is not an obstacle for curators because it is a norm and must be implemented, because in the context of bankruptcy asset liquidation, separate creditors holding collateral are not affected by the bankruptcy, as the rights of separate creditors have already been secured in advance based on the Law on Security Rights and creditors holding collateral are granted their rights as stipulated in Article 59 paragraph (1) of the Law - Bankruptcy Law And Deferment Of Debt Payment Obligations and its explanation which is bound by paragraphs (2) and (3) and even in paragraph (3) along*

with its explanation on separate creditors' receivables will definitely get their rights even if it is from the liquidation value of the collateral. In practice, many separate creditors do not understand the implementation of the provisions of Article 59 due to various casuistic issues.

This statement confirms that the existence of Article 59 of the Bankruptcy and Postponement of Debt Payment Obligations Law is not an obstacle for the trustee because this norm must be implemented in accordance with applicable legal provisions. In the context of bankruptcy asset settlement, separate creditors holding collateral are positioned as if they are outside of bankruptcy, because they still obtain their rights first based on the principles stipulated in the Mortgage Law and reaffirmed in Article 59. This reflects the strong legal protection for separate creditors, whose receivables are guaranteed to be repaid from the proceeds of the liquidation of the collateral. However, in practice, problems often arise because some separate creditors do not fully understand the mechanism for implementing this norm, giving rise to casuistic issues that must be addressed by the trustee.

B. Data Analysis

1. Interpretation of Article 31 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy And Postponement Of Debt Payment Obligations Regarding the Authority of the Curator in the Settlement of Bankrupt Assets

In practice, the curator, as the party authorized to manage and settle the assets of an insolvent debtor, often gives rise to differences of opinion, particularly regarding the application of Article 31 paragraph (1) of Law No. 37 of 2004 on Bankruptcy and Postponement Of Debt Payment Obligations. Article 31 paragraph (1) is the main basis that gives the curator the authority to take actions to liquidate bankruptcy assets. This provision is important because it is the legal basis for the curator to take legal steps or factual

actions to manage, sell, and distribute the assets of the bankrupt debtor to creditors.

In practice, the liquidation of bankruptcy assets is not only an administrative activity but also requires careful interpretation and application of the law, especially when dealing with assets that have a special legal status, such as collateral.²⁶

Article 31 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and Postponement Of Debt Payment Obligations states that:

"A bankruptcy declaration ruling results in all court rulings regarding any part of the debtor's assets that had been initiated prior to the bankruptcy being terminated immediately, and from that point on, no ruling can be enforced, including or also by seizing the debtor."

From the provisions of Article 31 paragraph (1) above, it can be concluded that if the Court has issued a bankruptcy decree, all previous court decisions relating to any part of the debtor's assets must be stopped immediately and no decision (whatever the decision) may be enforced.

General seizure applies by law, because once a bankruptcy decision has been handed down, no further action is required to carry out the seizure; rather, a general seizure of all the assets of the bankrupt debtor is automatically attached by law. Thus, general seizure of bankrupt assets does not require any special steps, as is the case with civil seizure. The existence of general seizure means that the bankrupt estate is suspended from all forms of transactions and other legal acts until the estate is managed by the trustee. This means that all rights of the debtor to manage their assets are revoked; in other words, the debtor loses the authority to perform legal acts

²⁶ Gede Parta Wijaya dan Diah Ratna. *Pengurusan Dan Pembersan Harta Pailit: Bentuk Kewenangan Dan Perlindungan Kurator*. Jurnal Kertha Semaya, Vol. 11 No. 8(2023): 3-4. : <https://doi.org/10.24843/KS.2023.v11.i08.p10>

(volkomen handelingsbevoegd). In this case, it is the duty and authority of the curator to manage and settle the bankrupt estate as collateral for the creditors' debts and to distribute it to the creditors in accordance with their status (concurrent creditors, preference creditors, or separate creditors).

The difference in views on the application of Article 31 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Postponement Of Debt Payment Obligations arose because of varying interpretations of the extent to which the curator's authority can be exercised without being limited by the provisions of the law. This is evident when comparing the opinion of the trustee who filed a judicial review with the Constitutional Court in Constitutional Court Decision No. 11/PUU-XXI/2023 with the results of interviews with trustees in Malang City. This comparison shows a clash of ideas, where some curators feel that their authority is limited by this article, while others, especially in Malang City, do not feel that there are significant restrictions in the performance of their duties.

First of all, we must understand why curators in Jakarta feel that the explanation of Article 31 paragraph (1) can cause constitutional harm to curators in exercising their authority. To find out, it is necessary to present the data analyzed by the author, which consists of the facts of the case and the judges' considerations.

The explanation of Article 31 paragraph (1) *a quo* provides an explanation that reads:

"Without prejudice to the provisions of Articles 56, 57, and 58, this provision does not apply to Creditors as referred to in Article 55."

From this explanation, it can be concluded that the provisions of Article 31 *a quo* do not apply to creditors as regulated in Article 55. Creditors who are exempted in the provisions of Article 55 paragraph (1) are as follows:

"With due regard to the provisions referred to in Articles 56, 57, and 58, every creditor holding a pledge, fiduciary guarantee, lien,

mortgage, or other security interest in property may exercise their rights as if no bankruptcy had occurred."

Creditors referred to in the provisions of Article 55 paragraph (1) are called Separate Creditors. In bankruptcy law, not all creditors have the same position. The differences between creditors are determined by the type of debt, including the following:²⁷

1. Separate claims are claims with specific collateral as regulated in Article 1133 of the Civil Code (e.g., liens, pledges, fiduciary rights).
2. Claims with general preferential rights are claims related to bankruptcy assets as regulated in Article 1149 of the Civil Code
3. Claims with special preferential rights are claims related to specific bankruptcy assets, as regulated in Article 1139 of the Civil Code
4. Concurrent claims, which are claims paid on a pro rata basis, are regulated in Articles 1131-1132 of the Civil Code
5. Special privileged claims, such as tax claims (Article 1137 of the Civil Code)

The above description shows the classification of creditors in bankruptcy law, including:

1. Separate creditors are parties who hold property rights granted by the debtor, such as liens, mortgages, pledges, fiduciary rights, and other forms of property rights. These creditors have the right to execute the pledged property if the debtor is unable to fulfill their obligations or defaults, as regulated in Article 55 of the Bankruptcy Law and Postponement Of Debt Payment Obligations.
2. Preferential creditors are creditors who, based on the provisions of Article 1134 of the Civil Code, have the right to be given priority in debt repayment, because their receivables are specifically regulated by law as preferred receivables. However, this privilege only applies if the

²⁷ Arus Akbar Silondae. "*Pokok-pokok Hukum Bisnis*". (Jakarta: Salemba Empat, 2011), 68

seized assets are insufficient to repay all debts, because preferential rights do not automatically grant direct power over certain objects. A creditor who has preferential rights also cannot claim seized objects if they do not have valid enforcement power (executory title).

3. Concurrent creditors are those who do not have collateral rights, do not obtain special rights from the law, and whose claims have not been recognized or are still conditional. Creditors in this category receive repayment of their receivables from the proceeds of the sale or auction of the bankrupt's assets, but only after the rights of separate and preferential creditors have been satisfied first, and the amount of repayment received is adjusted according to their respective positions or status in the bankruptcy process.²⁸

Separate creditors have the privilege of being able to exercise their rights even though there has been a bankruptcy ruling. However, to carry out the execution, they must still refer to Articles 56, 57, and 58.

In the submission of a judicial review of Article 31 paragraph (1) with Case No. 11/PUU-XXI/2023 filed by the curator, contained in , a request was made to include Article 59 as a part that must be taken into account in executing the rights of separate creditors as regulated in the provisions of Article 55 paragraph (1). The curator who filed this judicial review believes that Articles 56, 57, 58, and 59 are an inseparable series (cumulative in nature) because *these* articles regulate the requirements and procedures for execution in the event of a bankruptcy ruling. The series of requirements and procedures for execution in accordance with Articles 56 to 59 are as follows:²⁹

²⁸ Fatih Fauzan, Rizal Rustam. “Ekseskusi Jaminan Berdasarkan Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang”. (Jurnal Ilmu Hukum “The Juris” Vol VI No. 2: 2022), 268

1. Article 56 regulates the suspension of execution for 90 (ninety) days in the event of a bankruptcy ruling. The essence of the provisions of Article 56 a quo is that if there is a Bankruptcy Ruling, all executions must be suspended for 90 (ninety) days from the date the bankruptcy ruling is pronounced.³⁰ The purpose of the suspension of execution is explained in the Explanation of Article 56 paragraph (1), namely to:
 - a. Increasing the likelihood of reaching a settlement; and
 - b. Increase the possibility of optimizing the bankruptcy assets or to enable the trustee to perform his duties optimally. The complete Explanation of Article 56 paragraph (1) reads as follows:

The main purpose of the suspension referred to in this provision is to increase the chances of reaching a settlement agreement, maximize the value of the bankruptcy estate, and provide the trustee with the opportunity to perform his duties as well as possible. During the suspension period, it is not permitted to file a lawsuit related to debt collection in court, and both the Creditor and third parties are prohibited from executing or filing a petition for seizure of collateral.

2. Article 57 regulates further provisions, whereby the 90 (ninety) day suspension of execution may be terminated early, particularly if the creditor is insolvent.³¹ This article also states that creditors have the right to submit a request to the trustee to consider revoking the suspension of execution, or to submit a request to change the terms of the suspension of execution. If the request is not granted by the trustee, the creditor may submit the request to the supervisory judge. Furthermore, the supervisory judge will issue a decision after conducting an examination within a maximum period of 10 (ten) days.
3. Article 58 regulates the decision issued by the Supervisory Judge on the creditor's petition as referred to in Article 57. The decision of the

³⁰ Pasal 56 Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan dan PKPU

³¹ Pasal 57 Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan dan PKPU

Supervisory Judge may be in the form of revocation of the suspension for one or more creditors, and/or determination of the suspension period, and/or determination of certain collateral that may be executed by the creditor.³² If the Supervisory Judge refuses to revoke or adjust the suspension provisions, he or she must order the Trustee to provide protection deemed appropriate to safeguard the interests of the applicant. Creditors, third parties, and the trustee may file an objection to the Supervisory Judge's decision with the Court within a maximum period of 5 (five) days from the date the decision is read out, and the Court is obliged to resolve the objection within a maximum period of 10 (ten) days from the date the objection is received. No legal remedies, including requests for review, are available against the Court's decision () resulting from such objections.

4. Article 59 stipulates that creditors or third parties are only given a period of 2 (two) months to execute after being declared insolvent. If within that period of 2 (two) months the Separate Creditor or third party fails to execute or sell the collateral, the Curator is obliged to request that the collateral be handed over to the Separate Creditor or third party to be sold through an auction process.³³

Because the provisions in Article 59 are not included as part of the references outlined in the Explanation of Article 31 paragraph (1), and are also not listed in the provisions of Article 55 paragraph (1), this could potentially cause constitutional losses for the Petitioners who work as Trustees. This is because the Curator does not have a clear legal basis to request separate creditors or third parties, who have failed to carry out execution during the insolvency period, to surrender collateral assets whose execution has exceeded the 2 (two) month time limit as stipulated in Article 59.

³² Pasal 58 Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan dan PKPU

³³ Pasal 59 Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan dan PKPU

This constitutional loss is actual and can be found in the case of Bankruptcy Decree Number: 01/Pdt.Sus-Pailit/2022/PN.Niaga.Jkt.Pst, against Andy Hioe on April 7, 2022. Meanwhile, the execution order had been issued earlier on March 15, 2022, with Order No. 78/Pdt.Eks/RL/2021. The state of insolvency of the Bankrupt Debtor was declared on June 6, 2022, even though the 90-day suspension period had not yet been reached; Therefore, the insolvency period for creditors (in this case, Bank Mas) only has a time limit of 2 (two) months from the date the bankrupt debtor was declared insolvent to carry out the execution order, which is no later than the deadline on August 6, 2022. However, in fact, Bank Mas, despite having exceeded the 2-month deadline for execution since June 6, 2022, namely August 6, 2022, still refused to hand over the assets to the Curator. And finally, the execution was still carried out by Bank Mas, even though it had exceeded the deadline for exercising its rights.

Bank Mas argued that the provisions of Article 59 did not apply, based on the Explanation of Article 31 paragraph (1) and Article 55 paragraph (1), because Article 59 was not included as a reference, so they did not need to comply with the two-month time limit. Based on this case, it is evident that the omission of Article 59 as a reference in the Explanation of Article 31 paragraph (1) and Article 55 paragraph (1) has resulted in legal uncertainty. This legal uncertainty results in injustice for the Curator, which can be declared a violation of the Curator's constitutional rights guaranteed in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states:

"Every person shall have the right to recognition, guarantee, protection, and certainty of fair law and equal treatment before the law."

The legal considerations in Constitutional Court Decision No. 11/PUU-XXI/2023 are as follows:³⁴

³⁴ Direktorat Putusan et al., Putusan Mahkamah Konstitusi No. 11/PUU-XXI/2023

First, the decision explains that the norm contained in the article in question is very clear and explicit, so it does not require further interpretation that would give rise to multiple interpretations and other interpretations. However, the Explanation of the Article provides further explanation that is actually different and narrows the norms contained in Article 31 paragraph (1) itself. In fact, the Explanation of the Article is not an explanation but a new norm that should not be done because it contradicts the principle of consistency of Law Number 12 of 2011 concerning the Formation of Legislation.

Second, the exception applied in the Explanation of the Article in question creates legal uncertainty, where on the one hand, the provisions of Article 31 paragraph (1) emphasize that a bankruptcy ruling can terminate all previous court decisions without exception, but on the other hand, the Explanation to Article 31 paragraph (1) exempts creditors holding rights of pledge, vidusia guarantees, rights of lien, mortgages, or rights of security over other property.

Third, the Petitioners argue that the explanation in question should not be regarded as an explanation because it does not elaborate on words, phrases, sentences or equivalents of foreign words/terms contained in Article 31 paragraph (1), but rather creates a new norm that results in double standards. Therefore, the petitioners, who are curators by profession, feel that the explanation of Article 31 paragraph (1) of Law Number 37 of 2004 causes constitutional harm to their position as curators, both potentially and actually.

The result of the judge's decision on the petition for a judicial review of Article 31 paragraph (1) of Law No. 37 of 2004 was that it was inadmissible. This was because the petition was deemed unclear/obscure and unusual according to the standards of Article 10 paragraph (2) of PMK 2/2021. However, the Constitutional Court's recognition of the legal standing of the curator signals that, theoretically, disputes between separate

creditors and the curator's authority are *justiciable* in the Constitutional Court. If resubmitted with the appropriate petition, the material issue can be examined.

However, in practice, the view regarding the potential violation of the curator's constitutional rights is not fully agreed upon by all parties. Interviews with curators in the Malang area show a different perspective, where the Malang City Curator assesses that this condition does not necessarily threaten constitutional rights as stated by the Jakarta City Curator.

Mr. Maliki, as the Malang City Trustee, argued that:

"The application of Article 31 paragraph (1) of the Bankruptcy and Postponement Of Debt Payment Obligations should not be interpreted by looking at only one paragraph of the entire article. Article 31 of the Bankruptcy and Debt Payment Postponement Law contains three paragraphs, and the meaning of the first to third paragraphs must be understood in the context of its specific application related to bankruptcy and Postponement Of Debt Payment Obligations, as well as its general application."

Article 31 of Law No. 37 of 2004 reads:

- (1) A bankruptcy declaration results in all court decisions regarding any part of the debtor's assets that were initiated prior to bankruptcy being immediately suspended, and from that point on, no decision may be enforced, including or also involving the seizure of the debtor's assets.
- (2) All seizures that have been carried out are null and void, and if necessary, the Supervisory Judge must order their cancellation.
- (3) Without prejudice to the provisions of Article 93, a Debtor who is in custody must be released immediately after the bankruptcy declaration is pronounced.

The interconnection between the three paragraphs above must be taken into account. The purpose of Article 31 paragraphs (1), (2) and (3) is

reconciliation. Peace is the right of the debtor to submit a peace plan as referred to in Articles 150 and 151 of Law Number 37 2004 Bankruptcy and Suspension of Debt Payment , which also explains that the peace plan includes an offer to pay part or all of the debt to creditors.

A settlement plan is a legal document containing an offer to reschedule the debtor's debts to creditors in a manner that has been agreed upon in advance. This stage is important because it is at this stage of insolvency that the fate of the bankrupt debtor is determined, particularly with regard to the right of execution of the bankrupt debtor's collateral to the bankrupt creditor. Will the bankrupt debtor's assets be completely divided up to cover the debt and/or will the bankrupt debtor still be able to breathe with the acceptance of a settlement plan or debt restructuring? In the settlement plan, several proposals can be submitted by the debtor, including:³⁵

1. Extending the due date;
2. Waiving penalties;
3. Reducing the interest rate;
4. Principal reduction;
5. Converting debts into shares;
6. Issuance of convertible debt instruments (either optional or mandatory);
7. Call option on debt; and/or
8. A combination of the above.

The proposed settlement plan submitted by the bankrupt debtor is discussed by the concurrent creditors. The concurrent creditors then vote to decide whether to accept or reject the settlement plan proposed by the

³⁵ Rizky Dwinanto, "Waktu 'Tepat' Mengajukan Rencana Perdamaian dalam Kepailitan dan PKPU" Hukum Online, 13 November 2019, diakses pada 23 Juni 2023, <https://www.hukumonline.com/klinik/a/waktu-tepat-mengajukan-rencana-perdamaian-dalam-kepailitan-dan-pkpu-lt5dcbca5b1defb/>

bankrupt debtor. Conversely, there are creditors who are not allowed to participate in voting on the proposed settlement as stipulated in Article 149 of Law No. 37 of 2004 concerning Bankruptcy and Postponement Of Debt Payment Obligations. Creditors who are not allowed to participate in the vote are creditors who hold collateral belonging to the bankrupt debtor, known as separate creditors, namely:³⁶

1. Pledge holders;
2. Creditors holding fiduciary collateral;
3. Creditors holding a lien;
4. Mortgage holders;
5. Creditors holding other security rights;
6. Creditors with disputed preferential rights;

Creditors with preferential rights may participate in voting and become concurrent creditors if they have previously waived their rights as holders of collateral whose repayment takes precedence over the debts of the bankrupt debtor.

Therefore, the meaning of Article 59 differs from the application of Articles 56, 57, and 58 as explained in Article 31 paragraph (1), if the initial purpose of the case is pure bankruptcy or insolvency. This is because bankruptcy cases must first go through a settlement proposal. Meanwhile, the authority to conduct a settlement lies with the concurrent creditors, in accordance with the provisions of Articles 150 and 151 of Law No. 37 of 2004. Separate creditors do not have the authority to vote on the settlement plan because, regardless of whether there is bankruptcy, the property rights of separate creditors are guaranteed by Law No. 37 of 2004 in accordance with the value of their collateral.

A law cannot stand alone; they form a single entity. Every norm in the Bankruptcy and Postponement Of Debt Payment Obligations has a legal

³⁶ Acep Rohendi. "Perdamaian Dalam Kepailitan Sebagai Upaya Penyelesaian Utang Piutang Antara Debitur Dengan Para Kreditur". *Selisik*, no 2 Vol 6(2020): 64

connection that complements the bankruptcy and Postponement Of Debt Payment Obligations system itself and cannot be interpreted individually. Therefore, according to Mr. Maliki, the examination of the explanation of Article 31 of the Bankruptcy and Debt Suspension Law paragraph (1) does not limit his authority as a Curator in resolving bankruptcy cases.

Maliki: "The Bankruptcy and Debt Suspension Law No. 37 of 2004 is a specialization of the general application of Articles 1131 and 1132 of the Civil Code. This means that in the Bankruptcy and Debt Payment Obligation Postponement Law, there are substantive laws and procedures that also uphold these substantive laws, and if they are not included in the Bankruptcy and Debt Payment Obligation Postponement Law, then the generally applicable laws also apply. Every norm in the Bankruptcy and Postponement of Debt Payment Obligations Law has a complementary legal relationship with the bankruptcy and Postponement Of Debt Payment Obligations system itself and cannot be interpreted individually.

The Bankruptcy and Debt Payment Postponement Law No. 37 of 2004 is a specialization of the general application of Articles 1131 and 1132 of the Civil Code. Article 1131 of the Civil Code stipulates: "All property of the debtor, whether movable or immovable, whether existing or to be acquired in the future, shall be liable for all personal obligations." The provisions in this article affirm the basic principle that every debtor has full responsibility for the debts that are their obligation. This responsibility covers all assets owned, both movable and immovable, including assets owned at present and those to be acquired in the future.³⁷ This reflects the principle of legal responsibility for debts, which is not only normative but also ethical as a form of prudence in borrowing activities. Thus, every debtor is required to have awareness and good faith in fulfilling their financial obligations to creditors.

This principle of responsibility has a dual function, namely as a reminder for debtors not to neglect their obligations, as well as a form of

³⁷ Gunawan Widjaja dan Ahmad Yani. "*Seri Hukum Bisnis: Kepailitan*". (Jakarta: Raja Grafindo Persada, 2002), 1

legal protection for creditors. Creditors who have provided loans, usually in the form of money or other forms of financing, are entitled to a guarantee that their right to receive repayment will be fulfilled. In this context, the law exists to maintain a balance between the rights and obligations of both parties and to create legal certainty for creditors so that they are not harmed by the negligence or bad faith of debtors.

With these provisions in place, debtors should understand that the decision to take out a loan has real legal consequences. If they are negligent or fail to fulfill their debt repayment obligations at the specified time, all of their assets, both those they already own and those they will own in the future, are potentially subject to seizure as collateral for repayment. This seizure process may ultimately be followed by the auctioning of assets to pay off debts to creditors. Therefore, legal awareness and moral responsibility are important foundations for maintaining a relationship of trust between debtors and creditors in civil and bankruptcy law systems.

The provisions of Article 1132 of the Civil Code stipulate: "the property becomes joint collateral for all creditors, and the proceeds from the sale of the property are distributed to the creditors according to balance, that is, according to the amount of each creditor's claim, unless there are valid reasons for giving priority to certain creditors." This provision contains several points in relation to debts and receivables, namely:

1. The collateral applies to all creditors.
2. If the debtor fails to fulfill their obligations, the collateral will be sold.
3. The proceeds from the sale are distributed to the creditors based on the size of their claims (the principle of proportionality or *pondspondsgewijs*).
4. There are creditors who are given priority in receiving their share (preferential creditors and separate creditors).

This means that in the Bankruptcy and Postponement of Debt Payment Obligations, there are substantive laws and procedures that also uphold these substantive laws, and if they are not included in the Bankruptcy and Postponement of Debt Payment Obligations, then the generally applicable laws also apply. Every norm in the Bankruptcy and Postponement of Debt Payment Obligations has a complementary legal relationship with the bankruptcy and suspension of debt payment obligations system itself and cannot be interpreted individually. A common example in Article 8 paragraph (4) of the Bankruptcy and Postponement of Debt Payment Obligations in legal proceedings is simple proof of collectible and due debts as in Article 2 paragraph (1) of the Bankruptcy and Postponement of Debt Payment Obligations in conjunction with Article 1 number 6 of the Bankruptcy and Debt Payment Obligation Postponement Law. Many other matters related to legal logic in our bankruptcy law system in the Bankruptcy and Debt Payment Obligation Postponement Law are interrelated and intertwined as a single legal system.³⁸

Therefore, the curator's authority will not be reduced and the curator's authority will continue to operate in accordance with the principles of general seizure and collective management of bankruptcy assets. The curator still has the authority to supervise, manage, and settle the assets of the bankrupt debtor, including in the case of postponement of execution by separate creditors during the *stay* period.

During the stay period, separate creditors and preferential creditors do not have any authority to settle during the 90-day period as stipulated in Article 55 paragraph (1) of Law No. 37 of 2004. Based on Article 59 Paragraph (1) of Law No. 37 of 2004, the right of execution of separate creditors and the time period for separate creditors as holders of property rights to execute their own collateral as stipulated in Article 55 of Law–Law No. 37 of 2004 concerning bankruptcy and the Postponement of Debt

³⁸ Maliki, wawancara, (Malang, Mei 19, 2025)

Payment Obligations, become unenforceable and the period for the execution of property rights becomes shorter. Since the debtor is declared insolvent, the separate creditor has 2 months or 60 (sixty) days to auction the bankrupt debtor's assets.³⁹

In the institution of bankruptcy, there are two schools of thought regarding the theory of justice. These two theories are utilitarianism, as proposed by Jeremy Bentham and later reinforced by John Stuart Mill, and justice as fairness, as developed by John Rawls.

The *pari passu pro rata parte* principle contained in Article 1131 of the Civil Code, which is further elaborated in the Bankruptcy Law and Postponement Of Debt Payment Obligations, is a manifestation of the influence of the utilitarian school of thought, which emphasizes that bankruptcy is intended for the benefit of all creditors without exception. John Stuart Mill, through his theory of utilitarianism, emphasized that the formulation of laws should result in rules that reflect justice for all individuals. Based on this principle, a law is considered good if it is able to bring happiness to the majority of society (the greatest happiness for the greatest number).

In line with utilitarianism theory, the personal interests of creditors in their receivables are set aside through a bankruptcy mechanism that prioritizes the collective interests of all creditors, whether separate, preferential, or concurrent. The existence of the Bankruptcy Law and Postponement Of Debt Payment Obligations provides protection for creditors to obtain repayment of their receivables from debtors.

At the settlement stage, the bankrupt estate is distributed to creditors in proportion to their respective rights. The distribution of the bankrupt estate based on the portion that creditors are entitled to receive is a form of

³⁹ Yusuf Nursaid, Annalisa Y. "Akibat Hukum Kreditur Separatis Atas Penetapan Masa Insolvensi Yang Berlaku Surut Dalam Proses Kepailitan". *Jurnal Ilmiah Ilmu Hukum*(2020): 646

justice as stated by John Rawls. According to Rawls, justice must guarantee the fulfillment of every individual's rights. John Rawls' theory of justice is a theory of justice that guarantees the interests of all parties fairly. This is reflected in Article 1132 of the Civil Code, which states that every creditor is entitled to the fulfillment of their claims from the entire assets of the bankrupt debtor in the event of bankruptcy.

Article 31 paragraph (1) of Law No. 37 of 2004 emphasizes that since the bankruptcy verdict was pronounced, all court decisions against the debtor who was declared bankrupt are no longer valid and the authority is transferred to the curator. Thus, the curator is obliged to immediately take over the management and supervision of the bankrupt assets to protect the interests of creditors. This implementation means that the trustee must immediately inventory and secure all of the debtor's assets that are subject to bankruptcy and stop any legal actions taken by the debtor that could harm the value of the bankruptcy estate.

To carry out their duties, the trustee must utilize the authority granted by Article 31 paragraph (1), namely to manage, administer, and settle the bankrupt estate with full responsibility and professionalism. This includes the right to release collateral by paying the lesser of the market price of the item and the amount of the secured debt. The trustee is also required to coordinate with the supervising judge and creditors to ensure that the administration process is transparent and accountable, and that the results of the liquidation can be enjoyed by all in accordance with the creditors' priorities.

The provisions in Law Number 37 of 2004 are sufficient in providing legal certainty for trustees, especially in terms of the execution of bankruptcy asset liquidation and bankruptcy estate management. This law establishes the authority of the curator as the party responsible for the administration and liquidation of bankruptcy assets since the bankruptcy

verdict was pronounced, as stated in Articles 15 and 69.⁴⁰ The curator is given the right and obligation to control and manage all of the debtor's assets for the proportional benefit of all creditors. In addition, trustees are also legally protected in carrying out their functions through supervision by the Supervisory Judge and the existence of legal mechanisms in the event of objections from related parties. With this relatively clear legal framework, the position of trustees as technical implementers of the bankruptcy process is given sufficient legitimacy and legal protection, enabling them to work professionally and fairly.

This comparison shows a clash of perspectives between trustees who feel that their rights and authorities are being infringed upon and those who do not experience any obstacles in practice. Curators who file for judicial review see this issue as a normative problem that requires constitutional correction through the Constitutional Court, while curators in Malang City place more emphasis on practice, where obstacles can be resolved through systematic interpretation and commercial court practice. These differences in experience show that the effectiveness of a legal norm is not always uniform in every region, but is influenced by the scope of the case, the intensity of the conflict with the creditors' committee, and the culture of legal practice in the local court environment.

Maliki: *"Although at this time it is necessary to revise several articles related to the concept of theory and its application, both by creditors, administrators/curators and judges, both adjudicators and supervisory judges. However, all of this depends on the good intentions of each of the bankruptcy stakeholders themselves or the moral ethics in enforcing the law in the Indonesian bankruptcy law system. Return all interpretations of legal norms to each individual with all forms of institutionalization, but once again, with good faith and moral spirit, the results of enforcing the Bankruptcy and Debt Payment Obligation Postponement Law itself will also be good."*

⁴⁰ Maliki, wawancara, (Malang, May 19, 2025)

Thus, this difference in perspective can serve as the basis for concluding that the application of Article 31(1) of the Bankruptcy Law is contextual. The same norm can cause constitutional problems in certain practices, but is still considered adequate in other contexts. This also emphasizes the importance of empirical research to complement normative analysis, because the experience of curators in the field can show how the law actually works and whether the objective of legal certainty is truly achieved.

2. Overcoming Obstacles in the Process of Managing and Settling the Assets of Bankrupt Debtors by Trustees

In carrying out their duties, trustees have so many things to do and such great responsibilities, which can certainly become even more complicated because it is not uncommon for trustees to face obstacles from parties who do not want bankruptcy. From the explanation and complaints related to the judicial review of one of the articles in Law No. 37 of 2004 in the previous sub-chapter, obstacles in the administration and settlement of bankrupt debtors' assets can be summarized into two (2) points, namely:

1. Interpretation of Regulations

The first obstacle lies in the interpretation of regulations or legal norms. Law No. 37 of 2004 concerning Bankruptcy and Postponement Of Debt Payment Obligations has provided a legal basis regarding the rights of separate creditors as stipulated in Article 55 and the authority of the curator after a period of two months (stipulated in Article 59), but these provisions still leave loopholes in their implementation. The regulation does not provide detailed interpretation regarding the technical mechanism by which the curator can compel separate creditors to surrender collateral if they are uncooperative. The lack of harmonization between these regulations has led to multiple interpretations, resulting in a tug-of-war between the curator, creditors, and other state institutions, thereby hindering the process of liquidating

bankruptcy assets and preventing it from running quickly and effectively as intended by bankruptcy law.

2. Creditors

The behavior of separate creditors who do not comply with legal provisions. Normatively, after a period of two months, separate creditors are required to surrender their collateral to the curator for auction. However, in practice, there are creditors who refuse for various reasons, such as feeling that they have absolute rights to the collateral, a lack of understanding of their legal obligations, or an interest in holding back the execution value until a higher price is obtained. This uncooperative attitude directly hinders the process of settling bankruptcy assets, because without the surrender of collateral, the trustee cannot carry out an auction to increase the bankruptcy estate. As a result, the process of paying debts to other creditors is hampered, and the main objective of bankruptcy, which is fair distribution to all creditors, cannot be immediately achieved.

One of the main tasks of the trustee is to manage and liquidate the bankrupt debtor's assets for subsequent distribution to creditors in accordance with the *pari passu prorata parte* principle. The principle of *pari passu pro rata parte* is also an important guideline to be applied by the trustee, who has the authority and responsibility to manage and liquidate the bankrupt debtor's assets under the supervision of the supervisory judge, with the main objective of using the proceeds from the sale of these assets to pay all the bankrupt debtor's debts proportionally and in accordance with the creditor structure. Thus, the curator can also justify the implementation as stipulated in Articles 1131 and 1132 of the Civil Code to ensure the

classification of the bankrupt debtor's assets for its creditors in accordance with the *pari passu pro rata parte* principle.⁴¹

Each bankruptcy case has different characteristics. Although the provisions in the Bankruptcy Law and Postponement Of Debt Payment Obligations clearly and explicitly regulate the mechanism for managing and settling bankruptcy assets, in practice, each bankruptcy case has its own characteristics that cannot be generalized. These differences are greatly influenced by the type of business of the debtor declared bankrupt, for example, companies in the mining, shipping, umrah and hajj travel services, and other types of businesses. Each business sector has specific regulations, asset structures, and legal relationships with creditors and third parties that differ from one another, so that the settlement steps taken by the curator also adjust to these conditions. Therefore, bankruptcy cannot be viewed solely as the rigid application of norms, but rather as a complex process involving many stakeholders with diverse interests. It is this complexity that often requires the administrator to employ specific strategies to ensure that the settlement proceeds effectively in accordance with applicable laws while taking into account the characteristics of the debtor's business.

In handling bankruptcy cases, obstacles may arise when dealing with creditors, particularly secured creditors, i.e., separate creditors. Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations grants separate creditors the special right to execute their own collateral. Article 59 paragraph (1) stipulates that separate creditors must exercise their right of execution no later than 2 (two) months after the commencement of bankruptcy. If the right of execution is not exercised within that period, then in accordance with Article 59 paragraph (2), the right is transferred to the

⁴¹ Prayogo Hindrawan, Sunarmi, Budiman Ginting, Dedi Harianto. Tanggung Jawab Kurator dalam Menerapkan Asas *Pari Passu Prorata Parte* dalam Pengurusan dan Pemberesan Harta Pailit. Locus Journal of Academic Literature Review: Volume 2 Issue 8(2023): 722

curator, who is then obliged to sell the collateral to be included in the bankruptcy estate.

In reality, obstacles have been encountered in the form of creditors' refusal or non-compliance to surrender collateral to the trustee after the two-month deadline, as experienced by the Jakarta City Trustee. Creditors argue that separate creditors are not subject to legal provisions, particularly the provisions of Article 59 paragraph (2), which stipulates that after the period referred to in paragraph (1) has passed, because this provision is considered to burden the position of separate creditors as holders of enforcement rights who must be given priority. A period of two months is a relatively short time frame to conduct a good sale transaction, especially for collateral with a high value, because it is necessary to find a prospective buyer who can be expected to offer a price that is not only profitable for the holder of the security rights but also for the debtor itself. If the period expires and the curator demands the surrender of this collateral, it means reducing the rights of separate creditors to exercise their enforcement rights themselves. This is what causes problems for the curator's separate creditors in the process of settling bankruptcy assets, because assets that should be auctioned immediately to meet the interests of all creditors are actually hampered by the attitude of separate creditors who do not comply.

Maliki: "In the past, it would have been difficult for Separate Creditors to do this because the content of Article 59 paragraph (1) of the Bankruptcy and Postponement Of Debt Payment Obligations was quite short, with a period of only 2 (two) months, whereas the process from the start of the auction to the actual auction takes more than that. However, now the tendency among separate creditors, especially banks, is to conduct auctions themselves in accordance with the regulations, but this also depends on the value of the collateral. It is still roughly 50:50 whether separate creditors can conduct auctions themselves now."

The two-month period given to separate creditors is indeed relatively short. In practice, this period is often not commensurate with the complexity of the process required to sell collateral, especially if done through an

auction mechanism. The auction process itself requires a series of administrative steps, ranging from the announcement of the auction, the assessment of the value of the collateral, to the determination of the winner, all of which take a considerable amount of time. This situation causes separate creditors to often encounter obstacles in exercising their rights of execution, so that the objective of obtaining repayment of their receivables from the proceeds of the sale of collateral cannot be optimally achieved within that limited time frame.

The difference between the auction process conducted by separate creditors and the auction conducted by the curator lies in the mechanism and management of the proceeds. If separate creditors conduct the auction themselves, the proceeds from the sale of the collateral are used directly to repay the creditors' receivables, and if there is any excess value, the remaining proceeds are handed over to the curator to be returned to the bankruptcy estate. Meanwhile, if the auction is conducted by the curator after the separate creditor is unable to execute within two months, the value of the collateral will tend to decrease and all proceeds from the auction will first go to the bankruptcy estate, then be allocated according to the distribution rules in the Bankruptcy Law.

In this mechanism, the curator is still obliged to prioritize the rights of separate creditors over their collateral, but the process is under a collective settlement system supervised by a supervisory judge. In this way, auctions conducted by the curator not only guarantee the interests of separate creditors, but also maintain the principle of collective justice for other creditors through a regulated bankruptcy system.

Due to the relatively short time frame, in practice, many separate creditors fail to conduct their own auctions and must surrender their collateral to be auctioned by the curator. Currently, most separate creditors have the flexibility to conduct their own auctions by utilizing alternative mechanisms such as AYDA (Seized Collateral). Through this mechanism,

separate creditors can take over collateral objects as repayment of their receivables without having to immediately release them on the market. As a consequence, the auction or realization of collateral value may be delayed for up to a year, as creditors have the option to hold the collateral before reselling it. However, this situation also poses a risk, namely that the taken-over collateral is automatically recorded as an asset of the separate creditor.

The curator can address the short two-week period for separate creditors to secure their collateral by ensuring that the execution of rights is carried out in accordance with the law, because the Bankruptcy Law only stipulates a suspension period (grace period) for the execution rights of separate creditors, without removing those rights. The trustee must comply with this time limit, which provides an opportunity for separate creditors to secure their collateral after the 90-day suspension period ends and to carry out enforcement within a maximum of two months from the date of insolvency.

Normatively, this provision provides certainty that there should be no stagnation in the process of settling bankruptcy assets. However, in practice, creditors often have different interpretations. Some creditors consider that their enforcement rights remain attached even after the deadline has passed, so they are reluctant to surrender the collateral to the curator.

After interviewing the curator in Malang, Mr. Maliki, he argued that this obstacle is caused more by creditor compliance than by weaknesses in the norms. In other words, the law has provided fairly strict rules, but their implementation in the field depends on the willingness of creditors to comply with these provisions.

Maliki: "The application of Article 59 for curators is not an obstacle for curators because it is a norm and must be enforced, because in the context of bankruptcy asset liquidation, separate creditors holding collateral are not considered to be in bankruptcy, as the rights of separate creditors have already been secured in advance

based on the Law on Security Rights and creditors holding collateral are granted their rights as stipulated in Article 59 paragraph (1) of the Law - Bankruptcy and Debt Payment Obligation Postponement Law and its explanation, which is bound by paragraphs (2) and (3) and even in paragraph (3) along with its explanation, that separate creditors' receivables will definitely receive their rights even if it is from the liquidation value of the collateral. In practice, many separate creditors do not understand the implementation of the provisions of Article 59 with various casuistic problems."

There are several steps that the curator can take to overcome the obstacles posed by non-compliant creditors, including:

1. Formal Legal Action in the Commercial Court

If the separate creditor fails to sell the collateral within a maximum period of 2 (two) months from the date of insolvency, the curator must demand that the separate creditor surrender the collateral used to secure the debt. This is confirmed by Article 59 paragraph (2) of Law No. 37 of 2004, which reads:

"After the period referred to in paragraph (1) has passed, the curator must demand the surrender of the collateral for subsequent sale in accordance with the manner referred to in Article 185, without prejudice to the rights of the creditor holding such rights over the proceeds of the sale of the collateral."

The curator's claim to the separate creditor as above consists of two (2) things:

- a) A demand for the physical surrender of assets, both movable and immovable property
- b) A demand for the surrender of assets in a juridical sense, namely the surrender of proof of ownership of the property (such as: proof of ownership of a vehicle, motor vehicle registration certificate,

title deed, building use rights certificate, title deed for a unit in a flat, and so on).⁴²

In addition, if the mechanism is through the Commercial Court, the curator may file other lawsuits in accordance with Article 3 paragraph 1, which reads:

"Decisions on petitions for bankruptcy and other matters related to and/or regulated in this Law shall be decided by the Court whose jurisdiction covers the area where the Debtor is domiciled."

2. Negotiation and Mediation

Before resorting to litigation, which can be time-consuming and costly, the curator may take a persuasive approach through intensive communication with separate creditors. Through negotiation and mediation, the curator seeks an amicable solution that benefits both parties, maintains good relations, and minimizes the potential for conflict. This approach reflects a professional attitude and concern for the smooth running of the bankruptcy process.

3. Optimizing the Role of the Supervising Judge

The supervisory judge has a central role in supervising and controlling the bankruptcy process. The trustee needs to coordinate closely with the supervisory judge so that the supervisory role can be carried out optimally. Supervisory judges have broad authority, including giving orders to non-compliant creditors and issuing instructions related to the management and settlement of bankruptcy assets. Thus, the role of the supervisory judge is a powerful instrument in supporting the trustee in facing legal and administrative obstacles.

4. Application of the Principle of Common Interest

The trustee must emphasize the principle that bankruptcy is not merely a matter of interest to one separate creditor, but is in the common

⁴² H. Aries Jnifianto, Andika Wijaya. "Kompetensi Profesi Kurator dan Pengurus". Jakarta: Sinar Grafika(2018): 90

interest of all creditors in a proportional and fair manner. The settlement of collateral issues must take into account the balance of rights and obligations between the parties so that all creditors are protected. By promoting this principle, the trustee demonstrates a commitment to fairness and efficiency in the bankruptcy asset liquidation process.

After the trustee has taken persuasive and repressive measures to overcome obstacles posed by separate creditors, the bankruptcy estate settlement process can resume in accordance with applicable laws. The transfer of collateral to the trustee allows for an immediate auction so that the proceeds can be included in the bankruptcy estate and distributed to creditors proportionally. Thus, the interests of all creditors, whether separate, preferential, or concurrent, can be protected in a balanced manner. This condition also shows that the active role of the curator, supported by the commercial court and the compliance of creditors, is crucial to the success of the bankruptcy process in achieving its main objectives, namely providing justice, certainty, and benefits for all parties involved.

3. Bankruptcy in Islamic Law

Bankruptcy in the perspective of Islamic law is known as *Taflis*, which comes from the word *Iflaas*, meaning to have no assets, while a person who is declared bankrupt is called *Muflis* and the judge's decision declaring a person bankrupt is called *Taflis*. Fiqh scholars also define *Taflis* as a judge's decision prohibiting a person from taking action against their assets.⁴³

M. Hasbi Ash-Shiddieqy explains that *Taflis* or *Iflas* is a condition where a person's debts exceed their assets, making them unable to pay off all their obligations. The judge has the authority to prohibit a person who has been declared *Muflis* from taking action against their assets, so as not to

⁴³ M Ali Hasan, *Berbagai Macam Transaksi Dalam Islam (Fiqh Muamalah)*, (Jakarta: PT Raja Grafindo Persada, 2003). Hlm. 195-196

harm their creditors. The judge's prohibition on *Muflis* in managing their assets is referred to as *Hajr* or *Hijr*.⁴⁴

According to Wahbah Azzuhaili, the definition of *Taflis* or bankruptcy in terms of language (*lughawi*) is a term for someone who is bankrupt, and is generally understood as someone who has no assets at all. Meanwhile, in legal terms (*syar'i*), *Taflis* is defined as a judge's decision declaring a debtor bankrupt, thereby prohibiting them from using or spending their assets, and requiring the appointment of an administrator to manage those assets in order to pay off their debts.

Muflis (bankrupt person), in linguistic terms, is someone who does not have a job that can sufficiently meet their needs. Meanwhile, in legal terms, Muflis is a person who is prohibited by a judge from spending their assets because they are in debt that has consumed all of their assets and is still insufficient, so that even if all of their assets are distributed to creditors, it will still not cover all of their debts. The scholars of the madhhab agree that a person with the status of Muflis is not prohibited from using their assets, regardless of the amount of their debt, except after an official prohibition from a judge. If they use their assets before the judge's prohibition, their actions are still considered valid. Creditors and other parties have no right to prohibit them, as long as the use of the assets is not intended to avoid debt payments or hide the rights of others that they have.

Bankruptcy in Sharia Economics is mentioned in two contexts: First, if the debt borrowed by a person (debtor) has depleted the assets of the debtor, so that the debtor is unable to pay or settle the debt. Second, if a person does not have any assets that clearly belong to them.⁴⁵ The authorities/government may restrain a bankrupt person from spending their

⁴⁴ M Hasbi Ash-Shiddieqy, *Hukum – Hukum Fiqh Islam*, (Jakarta : Bulan Bintang) Hlm. 427..

⁴⁵ Habib Nazir, Muhammad Hasanudin, *Ensiklopedi Ekonomi Dan Perbankan Islam*, Jakarta : Kafa Publisng(2004): 622

assets, and the government may even sell the person's assets and then distribute them to the creditors.

Although KHES equates the meaning of the word *taflis* with bankruptcy, the author believes that a more appropriate term to use as a counterpart to *taflis* is the word "bankrupt". In the Big Indonesian Dictionary, the word bangkrut is defined as suffering a huge loss to the point of collapse (e.g., a company, store, etc.); going out of business; losing all of one's property; or becoming destitute. The definition in the dictionary reflects the condition of having no assets left, which is in line with the meaning of the word *taflis* as explained earlier.

The identification that can be taken from the description of the word *taflis* above is that *taflis* or bankruptcy in Islamic law has the following elements:⁴⁶

1. The debtor.

The debtor referred to is a debtor who is in a state of bankruptcy, commonly referred to as *Muflis*.

2. The person or persons who have receivables (creditors).

3. Imam Maliki of the Maliki school of thought argues that creditors (those who lend money) may prevent—through legal action—the use of the bankrupt person's assets, whereby the bankrupt debtor (*muflis*) automatically loses ownership of their assets and is considered like a child who has just *reached the age of discernment*.

4. The existence of unpaid debts

The decision of the Qadhi/judge that the debtor is bankrupt or unable to pay the debt.

In Islamic law, the management and settlement of a debtor's assets is not much different from the concept of auction. Al-Hajr is a prohibition

⁴⁶ Lili Nur Indah Sari. Memahami Prinsip Dasar Kepailitan dalam Hukum Ekonomi Syariah. PA Sumenep, 22 Mei 2023, diakses 14 September 2025, [https://pa-sumenep.go.id/wp-content/uploads-2023-06-artikel-memahami-prinsip-dasar-kepailitan-dalam-hukum-ekonomi-syariah-pdf/](https://pa-sumenep.go.id/wp-content/uploads-2023-06/artikel-memahami-prinsip-dasar-kepailitan-dalam-hukum-ekonomi-syariah-pdf/)

for debtors (muflis) to manage their assets, but this does not mean that the muflis' assets are not managed. However, the existence of al-hajr legally transfers the authority to manage the muflis's assets to the court to distribute the proceeds from the sale of the muflis's assets to creditors. This is intended to be used to pay debts that are due and unpaid. Before the distribution of the bankrupt person's assets (), the management and settlement of the bankrupt person's assets are carried out by the court.

In the process of managing and settling the bankrupt person's assets, all of the debtor's property, both movable and immovable, as well as the services/benefits of these objects, are first seized. The seizure is carried out from the moment the debtor is declared bankrupt by the court. In principle, seizure in bankruptcy involves all of the bankrupt person's property in their possession, except for property in the bankrupt person's possession that does not belong to them and lost property, which cannot be seized. In addition, there are several categories of property that cannot be seized due to their vital status as a means of continuing life. These categories of property are housing, clothing, and food.⁴⁷

The sale of these items is carried out by a judge, and the proceeds are distributed to creditors based on the proportion of their debts. Regarding the sale of these items, A. Waris Aulawi provides the following limitations that need to be considered⁴⁸ :

1. Method of sale

The sale must be carried out as quickly as possible. This is beneficial for both parties. For the debtor, the sooner he is free from the pressure of this misfortune, the better it will be for him to restart his career. For the creditor, it means that he will get his rights back faster so that they can be added to his capital or used for other purposes. It should

⁴⁷ A. Aulawi Waris. "Pailisemen Dalam Hukum Islam" Jurnal Al-Djamiyah No. 2: 10

⁴⁸ Lucky Dafira. "Konstruksi Hukum Kepailitan Syariah Di Indonesia". Surabaya: Scopindo Media Pustaka(2021): 147

be noted that the speed of the sale should not result in a drop in the price of the goods.

Depending on their nature and condition, some goods need to be sold immediately, while others can be sold later. Goods that are likely to deteriorate quickly or whose prices may fall if held should be sold first. In the case of immovable property, buildings should be sold before land. Therefore, the sale must be carried out in such a way as to obtain a high price while taking into account a reasonable time frame. The interests of both the debtor and the creditor are at stake. Therefore, the judge's discretion in this matter is essential.

2. Nature of the sale

The sale is conducted in public and openly. It is appropriate for the debtor and creditor to be present at the sale. This method will prevent misunderstandings and is useful for the interests of both parties. The debtor can help determine the sale price because he knows more about the goods than anyone else. Thus, the price of the goods can be guaranteed to be reasonable. Conversely, they can disclose any defects in the goods so that the sale is conducted honestly. Conversely, creditors can act as third parties, namely buyers of the goods. It is possible that some of the goods belong to them, so they have the opportunity to get them back with priority.

3. Place of sale

The place of sale in the bankruptcy estate liquidation process must ensure that the sale is conducted openly and is accessible to the general public. This principle of openness aims to prevent practices that are detrimental to one of the parties and to ensure that the selling price obtained truly reflects a fair market value. Therefore, the sale can be conducted at a market, at a location specifically designated for auction activities, or at other public places that are easily accessible to potential

buyers. With this mechanism in place, it is hoped that the sale of the bankrupt debtor's assets will be transparent, competitive, and generate optimal value for the benefit of all creditors.⁴⁹

⁴⁹ Lucky Dafira. “Konstruksi Hukum Kepailitan Syariah Di Indonesia”

CHAPTER V

CONCLUSION

A. Conclusion

Based on the results of research on the interpretation of Article 31 paragraph (1) of Law Number 37 of 2004 and the obstacles faced by curators in managing and settling the assets of bankrupt debtors, the following conclusions can be drawn:

1. Curators working in the city of Malang do not experience restrictions on their authority in managing and liquidating bankrupt assets, unlike some curators in Jakarta who face obstacles due to the attitude of separate creditors who adhere to the interpretation of Article 31 paragraph (1) as the basis for justifying their actions. As law enforcement officials, the correct interpretation of norms and the implementation of each article is very important so that the implementation of the Bankruptcy Law and Postponement Of Debt Payment Obligations can run effectively in accordance with the expected objectives.
2. In bankruptcy practice, it is often found that separate creditors are reluctant to surrender letters, goods, or other objects that serve as collateral, thus creating obstacles for curators in carrying out their duties of settling bankruptcy assets. The legal recourse available to the trustee is to file a lawsuit. Since the mechanism used is through the Commercial Court, the lawsuit falls under the category known in practice as "*other lawsuits*" as referred to in Article 3 paragraph (1) of the Bankruptcy and Postponement Of Debt Payment Obligations.

B. Recommendations

Based on the results of research on the implications of Article 31 paragraph (1) on the authority of the curator, the following recommendations can be made:

1. For curators, a proactive attitude is needed in exercising their authority, both through persuasive approaches and legal measures. Curators must dare to use the available legal instruments to ensure that the rights of other creditors are protected, as well as establish good communication with separate creditors to prevent conflicts.
2. For commercial courts, it is important to provide full support in overcoming obstacles to the execution of collateral, including through swift and effective decisions or rulings. Courts are also expected to be more responsive in involving law enforcement officials so that the process of settling bankruptcy assets is not delayed, which would be detrimental to the interest of all creditors.

Thus, optimizing the role of trustees in the management and settlement of bankruptcy assets can only be achieved if there is harmony between clear regulations, a cooperative attitude from creditors, and tangible support from judicial institutions.

BIBLIOGRAPHY

Undang-Undang

Undang-Undang No. 37 Tahun 2004 Terkait Kepailitan dan Penundaan Kewajiban Pembayaran Utang

Undang-Undang Dasar Republik Indonesia Tahun 1945

Putusan Perkara

Putusan Perkara Mahkamah Konstitusi No. 11/PUU-XXI/2023

Literatur

Acep Rohendi. “Perdamaian Dalam Kepailitan Sebagai Upaya Penyelesaian Utang Piutang Antara Debitur Dengan Para Kreditur”. *Selisik*, no 2 Vol 6(2020): 58-66

Ahmad Dwi Mulyatno. “*Kewenangan Kurator Untuk Mengurus Perseroan Terbatas Pailit*” *Jurnal Hukum, Pendidikan & Sosial Keagamaan* Volume 1 no. 2(2022): 155-178

Alfin Sulaiman, “*Hak Imunitas Profesi Kurator dan Pengurus*”. *Hukum Online*, 22 April 2014, diakses 20 April 2025, <https://www.hukumonline.com/berita/a/hak-imunitas-profesi-kurator-dan-pengurus-lt53560215cad4f/>

Arus Akbar Silondae. “*Pokok-pokok Hukum Bisnis*”. Jakarta: Salemba Empat, 2011

Dewata, Mukti Fajar Nur, dan Yulianto Achmad. *Dualisme Penelitian Hukum Normatif dan Empiris*. Yogyakarta: Pustaka Pelajar, 2010.

Fatih Fauzan, Rizal Rustam. “*Ekseskusi Jaminan Berdasarkan Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang*”. *Jurnal Ilmu Hukum “The Juris”* Vol VI No. 2(2022):265-271

- Gede Parta Wijaya dan Diah Ratna. “*Pengurusan Dan Pembersan Harta Pailit: Bentuk Kewenangan Dan Perlindungan Kurator*”. Jurnal Kertha Semaya, Vol. 11 No. 8(2023): 3-4. : <https://doi.org/10.24843/KS.2023.v11.i08.p10>
- Habib Nazir, Muhammad Hasanudin, *Ensiklopedi Ekonomi Dan Perbankan Islam*, Jakarta : Kafa Publising, 2004
- H. Aries Jnifianto, Andika Wijaya. “Kompetensi Profesi Kurator dan Pengurus”. Jakarta: Sinar Grafika (2018)
- Hindrawan, P., Sunarmi, S., Ginting, B., & Harianto, D. *Tanggung Jawab Kurator dalam Menerapkan Asas Pari Passu Prorata Parte dalam Pengurusan dan Pembersan Harta Pailit* . *Locus Journal of Academic Literature Review*, Volume 2 Issue 8(2023) , 720–732. <https://doi.org/10.56128/ljoalr.v2i8.223>
- Joko Sriwadodo, M.S Tumanggor. “*Perkembangan Hukum Kepailitan dan PKPU di Indonesia*”. Kalimantan: Kepel Press, 2024
- Lawrence M. Friedman. “*System Hukum Dalam Perspektif Ilmu Sosial, The. Legal System: A Sosial Science Perspektive*” Bandung: Nusa Media, 2009
- Lawrence M Friedman, “The Concept of the Self in Legal Culture,” *Cleveland State Law Review* 38, no. 4, 1990
- Lili Nur Indah Sari. Memahami Prinsip Dasar Kepailitan dalam Hukum Ekonomi Syariah. PA Sumenep, 22 Mei 2023, diakses 14 September 2025, <https://pa-sumenep.go.id/wp-content/uploads-2023-06-artikel-memahami-prinsip-dasar-kepailitan-dalam-hukum-ekonomi-syariah-pdf/>
- Lucky Dafira. “Konstruksi Hukum Kepailitan Syariah Di Indonesia”. Surabaya: Scopindo Media Pustaka, 2021
- Marzuki Lubis, “Peranan Budaya Hukum Dalam Perspektif Pembangunan Hukum Nasional,” *Penegakan Hukum* 1, No. 1 (2014): 16–37
- M. Hadi Shubhan. “*Hukum Kepailitan (Prinsip, Norma dan Praktik di Peradilan)*”, Surabaya: Prenada Media Group, 2007.

- Moh. Saleh. *Kurator Sebagai Eksekutor dalam Penyelesaian Kasus Kepailitan*. Jurnal Kompilasi Hukum Volume 9 No. 1(2024): 41-53
- Muhammad Alif Mudzakir. “*Tugas Dan Peran Kurator Dalam Proses Kepailitan (Studi Kasus Dalam Perkara No. 11/Pdt.Sus-Pailit/2020/PN.Smg Jo No. 11/Pdt.Sus-PKPU/2019/PN.Smg)*” Undergraduated thesis, Universitas Islam Sultan Agung, 2023
- Muhaimin. *Metode Penelitian Hukum*. Mataram: Mataram University Press, 2020.
- Peter Mahmud M. “Penelitian Hukum”. Jakarta: Kencana, 2011
- Prayogo Hindrawan, Sunarmi, Budiman Ginting, Dedi Harianto. Tanggung Jawab Kurator dalam Menerapkan Asas *Pari Passu Prorata Parte* dalam Pengurusan dan Pemberesan Harta Pailit. Locus Journal of Academic Literature Review: Volume 2 Issue 8(2023): 721-732
- Prof.Dr. Satjipto Rahardjo, S.H. “*Ilmu Hukum*”. Bandung : Penerbit Alumni, 1986.
- R. Besse Kartoningrat, Peter M. Marzuki, M. Hadi Shubhan. *Prinsip Independensi dan Pertanggung Jawaban Kurator Dalam Pengurusan dan Pemberesan Harta Pailit*. RechtIdee, Vol. 16 No. 1(2021): 37-63
- Rizka Varhana Anis. “Analisis Yuridis Tanggung Jawab Kurator Dalam Pengurusan Harta Pailit” Universitas Alauddin Makassar, 2024.
- Rizky Dwinanto, “Waktu ‘Tepat’ Mengajukan Rencana Perdamaian dalam Kepailitan dan PKPU” Hukum Online, 13 November 2019, diakses pada 23 Juni 2023, <https://www.hukumonline.com/klinik/a/waktu-tepat-mengajukan-rencana-perdamaian-dalam-kepailitan-dan-pkpu-lt5dcbca5b1defb/>
- Serlika Aprita, Rio Rio Adhitya. *Etika Profesi Kurator*. Jember: Pustaka Abadi, 2017
- Singal, N. Y., Rumimpunu, F., & Tampongangoy, G. H. “*Kajian Hukum Tanggung Jawab Kurator Dalam Penyelesaian Perkara Kepailitan Pasca Putusan Pengadilan Niaga*”. Jurnal Lex Privatum Vol. X No. 1(2022): 229-239

Soerjono Soekanto. "Faktor-Faktor Hukum" Jakarta: Raja Grafindo, 2008

Wirjono Prodjodikoro. "*Hukum Acara Perdata di Indonesia*". Bandung: Sumur bandung, 1984

Yusuf Nursaid, Annalisa Y. "Akibat Hukum Kreditur Separatis Atas Penetapan Masa Insolvensi Yang Berlaku Surut Dalam Proses Kepailitan". Jurnal Ilmiah Ilmu Hukum(2020): 632-655

Zainal Asikin, *Hukum Kepailitan dan Penundaan Kewajiban Pembayaran Utang di Indonesia*. Bandung: Pustaka Reka Cipta, 2013

APPENDIXES

A. INTERVIEW GUIDELINE

INFORMANT BIODATA

1. Full Name :
2. Gender :
3. Place Date Birth / Age :
4. Last Education :
5. Position :
6. Length of Service :
7. Meeting Date :

QUESTIONS

1. Bagaimana isi dan maksud dari Pasal 31 ayat (1) UU No. 37 Tahun 2004 tentang Kepailitan?
2. Apa perspektif kurator tentang dampak Pasal 31 ayat (1) terhadap tugas dan kewenangan mereka?
3. Bagaimana esensi Pasal 31 ayat (1) UU Kepailitan dalam konteks penghentian eksekusi asset?
4. Apakah ada perbedaan antara teori hukum yang tertuang dalam Pasal 31 ayat (1) dengan kondisi riil di lapangan saat mengelola harta pailit?
5. Apakah terdapat kendala dalam mengambil alih pengurusan harta pailit setelah adanya putusan pailit?
6. Apa saja strategi kurator untuk melindungi kepentingan debitur dalam proses kepailitan?
7. Bagaimana strategi dalam mengatasi keterbatasan wewenang akibat Pasal 31 ayat (1) UU Kepailitan agar proses pemberesan tetap efektif?
8. Bagaimana Bapak menilai efektivitas kewenangan kurator yang diberikan oleh Pasal 31 ayat (1)? Apakah sudah cukup atau perlu penguatan regulasi?

9. Apakah terdapat usulan atau saran terhadap perbaikan pelaksanaan kewenangan kurator berdasarkan pengalaman praktik?
10. Apa rekomendasi Bapak untuk memperbaiki UU Kepailitan agar kewenangan kurator lebih optimal tanpa mengabaikan kepentingan publik?

B. INTERVIEW DOCUMENTATION



CURICULUM VITAE (CV)



PERSONAL DATA

Name : Intan Isnaeni
SIN : 200202110159
Phone Number : 082146567936
Email : intan.isnaenii17@gmail.com
Religion : Islam
Gender : Female
Address : Gunung Bromo Street Block XI H, Number 29, West
Denpasar, Bali

FORMAL EDUCATION

No	School/Institute	Major	Period
1	SDN 9 Dauh Puri Kaja	-	2008-2014
2	SMP Harapan Nusantara	-	2014-2017
3	SMA Kristen Harapan	-	2017-2020
4	UIN Maulana Malik Ibrahim Malang	Sharia Economic Law	2020-2025