

Curator's Responsibility for Errors in the Administration of Bankrupt Estate that Causes Losses to Creditors

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Abstract: *This research discusses the Curator's responsibility in managing and settling the assets of a bankrupt debtor, especially when the Curator's negligence causes losses to creditors. Bankruptcy is often the last resort for companies facing financial difficulties. Based on Law no. 37 of 2004, the Curator has the authority to manage and settle bankruptcy assets under the supervision of a judge. However, the crucial role of the Curator also raises the risk of abuse of authority which is detrimental to creditors. This research uses normative legal methods with deductive analysis techniques, examining legal aspects related to the Curator's responsibilities, namely Law no. 37/2004 as well as accountability mechanisms if negligence or errors occur in the bankruptcy process. The research results show that the Curator can be held accountable both legally and personally if his negligence or error results in losses for creditors, with a reporting mechanism to the supervising judge as the first step. These findings highlight the importance of the Curator's integrity and professionalism to ensure fair and effective bankruptcy implementation, as well as protecting creditor rights from potential losses.*

Keywords: *Curator's Liability; Bankrupt Assets; Negligence; Creditor's Losses; Accountability Mechanism.*

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INTRODUCTION

The rapid fluctuations in the economy have created a duality within societal structures, particularly in the business sector.

Such economic turbulence can present opportunities for corporate growth, yet it also poses significant challenges to a company's sustainability. In other words, the very speed

of these economic shifts may precipitate a firm's downfall by rendering expansion impossible under prevailing conditions.¹ These factors often lead to new internal problems within a company, leading to an imbalance between revenue and expenses, forcing the company to resort to debt.² Worse yet, the company may also find itself in a downward spiral, leading to an inability to repay debts, potentially leading to bankruptcy.

Regarding insolvency, Article 1(1) and Article 2(1) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations define bankruptcy as a condition in which the Commercial Court declares that a debtor lacks the ability to pay its debts to creditors.³ The law stipulates that, to be declared bankrupt, a debtor must have at least one debt that is due and collectible, as well as debts to a minimum of two creditors. From this, it is clear that bankruptcy is essentially a commercial remedy for a debtor's inability to meet its financial obligations. A debtor may petition the court to declare itself bankrupt (a voluntary petition), but such a declaration can only be made by the court following due process.⁴

In accordance with Article 24(1) of the same statute, a debtor is deemed bankrupt as of the date the bankruptcy ruling is pronounced. From that moment onward, the debtor legally loses all rights to manage or dispose of assets included in the bankruptcy estate. This loss of management rights triggers a general seizure of all the debtor's property—both assets held at the time of the bankruptcy declaration, and any acquired during the bankruptcy period. While this seizure is a logical consequence of the bankruptcy declaration, not all of the debtor's assets are subject to surrender to the trustee (kurator). Certain items are expressly excluded: bedding and clothing; official and work-related equipment; one month's supply of food; salaries, wages, and pensions; professional fees; intellectual-property royalties; amounts determined by the supervising judge for the debtor's maintenance; and funds derived from the earnings of the debtor's children.⁵

In this condition, even though the debtor has lost the right to control the assets he owns, this does not mean that the debtor has also been deprived of his right to carry out legal acts (*volkomen handelingsbevoeg*). This indicates that the actions of a bankrupt debtor

¹ Serlika Aprita, "Wewenang Dan Tanggung Jawab Hukum Kurator Atas Kesalahan Atau Kelalaiannya Mengakibatkan Kerugian Bagi Debitor Dalam Proses Hukum Pengurusan Dan Pemberesan Harta Pailit," *Solusi* Vol. 17, No. 2 (2019): 154–174, <https://jurnal.unpal.ac.id/index.php/solusi/article/view/173>, p. 160

² Ruthefika Maydebora Saragih et al., "Analisis Faktor – Faktor Yang Mempengaruhi Financial Distress Pada Perusahaan Manufaktur Sektor Industri Barang Konsumsi Yang Terdapat Di BEI," *Journal of Economic, Bussines and Accounting (COSTING)* 7, no. 3 (2024): 7204–7215, p. 7205. <https://doi.org/10.31539/costing.v7i4.10178>.

³ Kadek Indra Dewantara and dan Dewa Gde Rudy, "Kewenangan Kurator Dalam Mengurus Dan Menguasai Aset 'Debitor Pailit,'" *Kertha Semaya* Vol. 7, No. 9 (2019): p. 1–14, <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/51685>.

⁴ Shelomita Putri Amelia and Ema Nurkhaerani, "Penentuan Keadaan Insolvensi Terhadap Proses Kepailitan Dalam Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang," *Mahkamah : Jurnal Riset Ilmu Hukum* 2, no. 3 (2025): 112–123, p. 119. <https://doi.org/10.62383/mahkamah.v2i3.683>.

⁵ Bintang Herlambang Wibowo and Ni Made Ari Yulianti Griadhi, "UPAYA KURATOR DALAM MEMAKSIMALKAN ASET HKI MILIK PERSEROAN TERBATAS YANG MENGALAMI PAILIT ATAU PENUNDAAN KEWAJIBAN PEMBAYARAN UTANG," *Kertha Negara : Journal Ilmu Hukum* 11, no. 10 (2024): 1128–1140, p. 1130. <https://jurnal.harianregional.com/kerthanegara/full-108014>.

do not necessarily have legal consequences for assets that were previously included in the bankruptcy estate.⁶ In other words, if a future situation arises that causes a bankrupt debtor to commit an unlawful act, that act will no longer be binding on the assets, unless the obligation in question is capable of benefiting the bankrupt debtor. Upon further investigation, this situation creates legal uncertainty for creditors regarding the repayment of their receivables. This situation is the basis for the need to establish an authorized party to manage and settle the assets of a bankrupt debtor, namely through the role of a receiver.⁷

As previously explained, the legal consequence of a bankruptcy declaration is the imposition of a general seizure (*sita umum*) on the debtor's estate.⁸ The execution and administration of these assets are carried out by one or more Kurators—or by the Balai Harta Peninggalan (BHP)—all of whom must operate under the supervision of a Hakim Pengawas, appointed by the Pengadilan Niaga at the time the bankruptcy verdict is read. The primary objective is to apply the proceeds from asset sales to satisfy the bankrupt debtor's obligations to creditors on a prorata *parti* basis and in accordance with creditor ranking.⁹ The duty of the Kurator to administer and liquidate the bankruptcy estate is explicitly mandated by Article 69(1) of Law No. 37 of 2004, which states that the Kurator's task encompasses both the management and

the winding-up of the debtor's assets. Given this authority, the Kurator plays a pivotal role in the settlement of the bankrupt estate and must therefore maintain strict independence, avoiding any conflict of interest with either debtor or creditor.

This requirement aligns with the provisions of the Bankruptcy Law, which legalize the administration and execution of insolvency proceedings. In particular, there is a limitation on the Kurator's monopoly by the BHP: Article 70(2) of Law No. 37 of 2004 clarifies that a Kurator need not be drawn exclusively from the BHP but may be appointed from other qualified individuals who meet the statutory criteria.¹⁰ Those criteria include Indonesian domicile, expertise in the administration and liquidation of bankruptcy estates, and registration with the Ministry responsible for legal affairs and legislation (i.e., under the auspices of the Minister of Law and Human Rights).

This provision represents a departure from Government Regulation in Lieu of Law (Perpu) No. 1 of 1998—later ratified by the DPR as Law No. 37 of 2004—which had confined the role of Kurator to BHP personnel alone. Under the current law, however, the Pengadilan Niaga may appoint private individuals as Kurators to oversee the administration and liquidation of a bankrupt debtor's assets. Should neither debtor nor creditor propose a candidate, the BHP will automatically assume the role of Kurator.¹¹

⁶ Ahmad Dwi Mulyatno, "Kewenangan Kurator Untuk Mengurus Perseroan Terbatas Pailit," *Asas Wa Tandhim Jurnal Hukum, Pendidikan & Sosial Keagamaan* Vol. 1, No. 2 (2022): 155–178, p. 158. <https://doi.org/https://doi.org/10.47200/awtjhpsa.v1i2.1280>.

⁷ Adrian Sutedi, *Hukum Kepailitan*, Cet. 1 (Bogor: Ghalia Indonesia, 2009), p. 88.

⁸ Rahayu Hartini, *Hukum Kepailitan*, Ke. 4 (Malang: Universitas Muhammadiyah Malang, 2008), p. 23.

⁹ & T. Devi Keizerina Azwar. Venia Utami Keliat, Sunarmi, Bismar Nasution, "Curator Authority in

Handling and Settlement of Bankrupt Assets Where State as A Preferred Creditor," *Journal of Education, Humaniora and Social Sciences (JEHSS)* Vol. 4, No. 2 (2021): 608–615, p. 609. <https://doi.org/https://doi.org/10.34007/jehss.v4i2.693>.

¹⁰ Sunarmi, *Hukum Kepailitan*, Ed. Pertama (Depok: Kencana, 2017), p. 56.

¹¹ M. Taufik Hidayat, "Penyelesaian Sengketa Akibat Kesalahan Kurator Dari Berkurangnya Harta Debitur Pailit Yang Merugikan Pihak Kreditur Dalam Kepailitan," *Al-Adl: Jurnal Hukum* Vol. 7,

Moreover, the Kurator's mandate extends beyond mere preservation and distribution of the bankruptcy estate to creditors.¹² The Kurator is also charged with maximizing the value of the bankrupt assets under his or her management. To that end, the Kurator must uphold the highest standards of professional integrity and ethical conduct to avoid conflicts of interest that could undermine both the liquidation process and the objectivity of the estate's administration.

According to Sutan Remy Sjahdeini, a conflict of interest arises in any of the following situations:¹³ 1) The Kurator also serves as a creditor; 2) The Kurator has family ties with a controlling shareholder or a member of the debtor's management; 3) The Kurator holds more than 10 percent of shares in either a creditor's or the debtor's company; 4) The Kurator is an employee, director, or commissioner of a creditor's or the debtor's company. Given the broad powers conferred by Law No. 37/2004, the Kurator must act with the utmost prudence and bears liability for all actions relating to the management and liquidation of the bankruptcy estate. This shift of responsibility mirrors the bankruptcy of a limited liability company: prior to insolvency, the board of directors manages corporate

assets; upon bankruptcy, that responsibility vests in the Kurator.¹⁴

Although legal provisions prescribe the Kurator's independence and impartiality, a gap persists between *law in the books* and *law in practice*. Numerous instances have emerged in which Kurators have engaged in malfeasance or negligence, causing financial harm to creditors. For example, in the bankruptcy of PT Adam Air, former employees—organized as the Independent Adam Air Workers' Union (FORSIKAD)—petitioned the Central Jakarta District Court to replace the appointed Kurator.¹⁵ They alleged unprofessional conduct: the Kurator delayed filing for bankruptcy and failed to liquidate assets, thereby jeopardizing approximately 3,000 employee claims and delaying payment of Rp 120 billion in severance and long-service awards, which remained unpaid as of August 2008. This case illustrates the high stakes of the Kurator's role; negligence can give rise to creditor lawsuits for failure to vindicate their entitlements, resulting in compensable damages.

In practice, the strategic function of the Kurator remains vulnerable to fraudulent conduct that borders on criminality, with creditors bearing the brunt of such misconduct.¹⁶ Creditors, having endured

No. 14 (2015): 50–68, p. 55–56. <https://doi.org/http://dx.doi.org/10.31602/adl.v7i14.226>.

¹² Sindy Riani Putri Nurhasanah, Antonius Sidik Maryono, Ulil Afwa, "Quo Vadis Esensi Lembaga PKPU Pasca-Putusan Mahkamah Konstitusi Nomor 23/PUU-XIX/2021," *Jurnal Hukum Lex Generalis* Vol. 3, No. 4 (2022): 247–268, p. 254. <https://doi.org/https://doi.org/10.56370/jhlg.v3i4.246>.

¹³ Efy Yulistyowati Dewi Tuti Muryati, Dhian Septiandani, "Pengaturan Tanggung Jawab Kurator Terhadap Pengurusan Dan Pembersihan Harta Pailit Dalam Kaitannya Dengan Hak Kreditor Separatis," *Jurnal Dinamika Sosial Budaya* Vol. 19, No. 1 (2017): 11–21, p. 16. <https://doi.org/http://dx.doi.org/10.26623/jdsb.v19i1.682>.

¹⁴ Dedi Harianto, Prayogo Hindrawan, Sunarmi, Budiman Ginting, "Tanggung Jawab Kurator Dalam Menerapkan Asas Pari Passu Prorata Parte Dalam Pengurusan Dan Pembersihan Harta Pailit," *Locus Journal of Academic Literature Review* Vol. 2, No. 8 (2023): 720–732, p. 730. <https://doi.org/https://doi.org/10.56128/ljoalr.v2i8.223>.

¹⁵ Serlika Aprita, "Wewenang Dan Tanggung Jawab Hukum Kurator Atas Kesalahan Atau Kelalaiannya Mengakibatkan Kerugian Bagi Debitor Dalam Proses Hukum Pengurusan Dan Pembersihan Harta Pailit," p. 154.

¹⁶ Gunawan Widjaja, *Risiko Hukum & Bisnis Perusahaan Pailit* (Jakarta: Forum Sahabat, 2009), p. 34.

prolonged nonpayment and sought judicial relief through bankruptcy proceedings, expect the Kurator—mandated by law—to expedite the recovery of their debts. Yet when the Kurator's performance is negligent or compromised by conflicts of interest, the creditor's hopes for prompt settlement are dashed, inflicting further losses.

This study differs from previous studies that examined the responsibility of curators primarily from a normative or criminal perspective. The first study (A Juridical Review of the Responsibility of Curators in the Management and Settlement of Bankrupt Assets) highlighted the ambiguity of Article 72 of Law No. 37/2004 and the impact of the lack of detailed forms of error, thus complicating the prosecution of accountability;¹⁷ the second study (A Juridical Analysis of the Criminal Responsibility of Curators for the Crime of Embezzlement in the Process of Settlement of Bankrupt Assets) focused on the criminal dimension of embezzlement and sanctions under the Criminal Code.¹⁸ In contrast to these two studies, this article prioritizes an integrated analysis that not only describes the normative gaps and criminal sanctions, but also examines the settlement mechanism, the role of the supervising judge, and the consequences of the curator's responsibility both in an institutional and personal capacity if negligence results in creditor losses. The normative, teleological, and historical approaches used aim to uncover the ratio legis and implementation gaps that cause uncertainty in creditor protection; while also formulating an operational and legally tested

accountability mechanism with practical recommendations.

The identified gap analysis indicates that previous research has focused more on normative descriptions of the ambiguity of Article 72 and on identifying the crime of embezzlement, but has not yet presented a comprehensive framework for accountability mechanisms between the civil, administrative, and criminal realms that can be immediately operationalized in commercial courts. This study fills this gap by detailing the bifurcation of the curator's responsibilities—as a redressal organ in an institutional capacity—and personal responsibilities when negligence or abuse of authority is proven; and then maps the sequence of legal efforts starting from objections to the supervising judge, distribution claim mechanisms, to criminal offenses if necessary. The research objectives are threefold: (1) explaining the ratio legis of the curator's accountability; (2) formulating an operational accountability mechanism; and (3) providing recommendations for amendments and supervisory practices to ensure more certain and efficient creditor protection. The research approach is normative juridical with methods of literature study, comparison, and decision analysis; the results are expected to form the basis for practical, applicable legal reform.

This situation raises two critical questions for examination: First, What is the ratio legis of the Kurator's liability for negligence in supervising and liquidating a bankruptcy estate that causes creditor losses? Second, What mechanisms of accountability should apply to the Kurator for such

¹⁷ Ni Ketut Devi Damayanti and I Gusti Ayu Putri Kartika, "Juridical Review Of The Curator's Responsibilities In The Management And Settlement Of Bankruptcy Assets," *JURIDICA: Jurnal Fakultas Hukum Universitas Gunung Rinjani* 6, no. 1 (2024): 21–29, p. 27. <https://doi.org/10.46601/juridicaugr.v6i1.332>.

¹⁸ Yanti Tiara Br Siahaan and August P Silaen, "Analisis Yuridis Pertanggungjawaban Pidana Kurator Terhadap Tindak Pidana Penggelapan Dalam Proses Pembersihan Harta Pailit," *Law, Development and Justice Review* 7, no. 2 (2024): 175–191, p. 189. <https://doi.org/10.14710/ldjr.7.2024.175-191>.

negligence in the execution and administration of a bankruptcy estate resulting in creditor harm?

METHOD

This study employs normative legal research—also known as doctrinal legal research—which treats law as a prescriptive discipline and examines it solely from its normative perspective. It encompasses an analysis of legal principles, the organization of the legal system, vertical and horizontal synchronization of norms, comparative law, and legal history.¹⁹ Accordingly, the researcher will scrutinize the application of curator liability for negligence in bankruptcy under Law No. 37 of 2004, as pursued by creditors through the supervisory judge, while continually referencing the relevant statutory provisions, the rules of procedure in the Pengadilan Niaga, and other applicable legal regulations.

The data for this study were gathered via library research. In terms of form, the study utilizes primary sources—namely, statutes, judicial decisions, and related regulations—as well as secondary sources, including books, journal articles, and scholarly papers addressing the curator's liability for negligence in bankruptcy proceedings managed by the supervisory judge. All collected materials will be subject to deductive analysis (from general to specific) using the statute approach, the teleological approach, and the historical approach to Law

No. 37 of 2004.²⁰ For the analysis of these legal materials, the author employs descriptive, evaluative, argumentative, and prescriptive techniques.²¹

ANYLISIS AND DISCUSSION

The *Ratio Legis* of a Kurator's Liability for Negligence in the Supervision and Administration of a Bankruptcy Estate Causing Creditor Losses

As is well known, in the stages of supervising and administering a bankruptcy estate, the Kurator plays a central role in securing the full satisfaction of creditors' claims. The Kurator's primary duty in resolving the debtor's insolvency does not merely serve the interests of the petitioning party but rather the integrity of the entire bankruptcy estate. This means the Kurator must not unduly favor creditors over the debtor, but act with equity toward both. Positioned above the debtor, the Kurator holds plenary authority to manage and wind up estate assets—provided there exists a cooperative relationship in which the debtor confers full trust upon the Kurator's administration.²² Yet, in practice, instances of Kurator misconduct or negligence frequently arise, resulting in creditor losses. Such circumstances naturally give rise to legal liabilities on the part of the Kurator, and any inquiry into those liabilities must begin with an examination of the ratio legis underpinning them.

¹⁹ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Cet. Ke-1 (Jakarta: RajaGrafindo Persada, 2011), p. 34.

²⁰ Peter Mahmud Marzuki, *Penelitian Hukum*, Ed. 1, Cet (Jakarta: Kencana, 2010), p. 93.

²¹ I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*, Cet. Ke-3 (Jakarta Timur: Prenadamedia group, 2019), p. 12.
<https://www.google.co.id/books/edition/Metodologi>

[i_Penelitian_Hukum_Normatif_dal/-MpADwAAQBAJ?hl=en&gbpv=1](https://www.google.co.id/books/edition/Metodologi).

²² Rudolf Silaban. Alusianto Hamonangan, Muhammad Ansori Lubis, Mhd Taufiqurrahman, "Peranan Kurator Terhadap Kepailitan Perseroan Terbatas," *Jurnal Pengabdian Kepada Masyarakat MAJU UDA Universitas Darma Agung MEDAN* Vol. 2, No. 1 (2021): 20–34, p. 23.
<https://doi.org/http://dx.doi.org/10.46930/pkmmaju.uda.v2i1.1182>.

Before delving into the ratio legis of Kurator liability, it is essential to grasp the essence of bankruptcy regulation as set forth in the undang-undang on bankruptcy. Bankruptcy legislation should be understood as both a legal mechanism and proof of the law's existence, designed to address the real financial distress that renders a debtor unable to meet its obligations ("exit from financial distress").²³ The conceptual foundation of this mechanism is underscored by Mosgan Situmorang's assertion that "the primary purpose of bankruptcy is the distribution of the debtor's assets among creditors, a process conducted and overseen by the Kurator." Once assets are marshaled, they are apportioned among all creditors—a treatment consistent with the classification of bankruptcy as debt collection,²⁴ and reflected in the Faillissementsverordening. Similarly, Jerry Hoff posits that the objective of bankruptcy is to ensure creditors receive their entitlements in accordance with applicable priorities.²⁵ Accordingly, the Kurator must act in the best interests of both creditors and the debtor, with a duty to preserve estate assets at every turn.

These principles reveal that bankruptcy aims to avoid fragmented sita and piecemeal execution by individual creditors—procedures that would prolong the resolution of the estate. Through a collective sita, the entirety of the debtor's assets is seized and subsequently distributed to all creditors

according to their respective rights.²⁶ It is here that bankruptcy law functions as a guarantor of creditors' claims, operating as a collective proceeding to resolve the "collective action problem" posed by divergent interests among multiple creditors.

In light of these objectives, the Kurator's role—entrusted by the Bankruptcy Law with the administration and liquidation of the estate—constitutes the first ratio legis supporting Kurator liability for errors in administering a bankrupt estate that harm creditors. Accordingly, any dereliction of duty by the Kurator must incur liability for resulting losses. This obligation is reinforced by Article 72 of Law No. 37 of 2004, which provides that the Kurator is fully responsible for any personal error or negligence in carrying out his or her authority to manage and/or liquidate the estate when such conduct causes harm to the bankruptcy estate.

The inclusion of a liability regime for Kurator negligence is by design. Given the Kurator's central powers in estate administration, the law must impose clear boundaries and sanctions. As Peperzak observes, the effectiveness of any legal power can be gauged by its sanctioning mechanisms: when a rule is flagrantly disobeyed, sanctions are essential to uphold the rule's authority. Legitimate sanctions—grounded in jurisprudence—serve as a deterrent, exercising lawful coercion to enforce compliance.

²³ Nazhif Ali Murtadho and Millatus Shohihah, "Pengaruh Likuidasi Bank Terhadap Perlindungan Para Nasabah (Studi Kasus BPR Legian Denpasar)," *Jurnal ISO: Jurnal Ilmu Sosial, Politik Dan Humaniora* 4, no. 1 (2024): 1–17, p. 4. doi.org/10.53697/iso.v4i1.1827.

²⁴ Titik Tejaningsih, "Perlindungan Hukum Terhadap Kreditor Separatis Dalam Pengurusan Dan Pembersihan Harta Pailit" (Disertasi: Universitas Islam Indonesia, 2016), p. 2. <https://dspace.uui.ac.id/handle/123456789/9437>.

²⁵ Moch Zulkarnain Al Mufti, "Tanggung Jawab Kurator Dalam Penjualan Harta Pailit Di Bawah Harga Pasar," *Lex Renaissance* Vol. 1, No. 1 (2016): 92–106, p. 93. <https://doi.org/https://doi.org/10.20885/JLR.vol1.is1.art6>.

²⁶ R. Anton Suyatno, "Pemanfaatan Penundaan Kewajiban Pembayaran Utang Sebagai Upaya Mencegah Kepailitan" (Universitas Diponegoro, 2002), p. 88. <http://eprints.undip.ac.id/13473/1/2002MIH1789.pdf>.

The second ratio legis for Kurator liability arises from the legal uncertainty creditors face when the Kurator's negligence compromises the process intended to resolve their claims. The Kurator's duties extend beyond mere asset management to maximizing the estate's value so as to optimize distributions to creditors.²⁷ Failure to fulfill this duty exacerbates legal uncertainty and denies creditors the effective recovery to which they are entitled.

Should the Kurator's actions or policy decisions fall short of creditors' expectations, Article 77(1) of Law No. 37 of 2004 grants standing to creditors, the Creditors' Committee, and the Debtor's Committee to file written objections with the Hakim Pengawas.²⁸ Additionally, interested parties may petition the Hakim Pengawas to issue an order directing the Kurator to take—or refrain from—specific actions.

Under Article 77(2) of Law No. 37 of 2004, the Hakim Pengawas is obliged, upon receiving any petition concerning the Kurator's performance in supervising and administering the bankruptcy estate, to forward the written objection to the Kurator in question no later than three (3) days after receipt of the petition. Further, Article 77(3) imposes on the Kurator a duty to submit a written response to the Hakim Pengawas within the same three-day timeframe following receipt of the objection notice.

The third ratio legis for Kurator liability arises from the dual nature of the Kurator's role—both as the court-appointed estate administrator and as a private individual. Consequently, should negligence or misconduct occur during the management and liquidation of the debtor's estate,²⁹ the Kurator must bear full responsibility and satisfy any sanctions imposed by paying compensation. This liability applies both in the Kurator's official capacity and personally, where errors or deliberate omissions have caused losses to interested parties—in this case, the creditors—seeking repayment from the bankrupt estate.³⁰

When speaking of his capacity as Kurator, the scope of liability is expressly governed by Article 77 of Law No. 37 of 2004, which addresses the Kurator's responsibility for errors and negligence that cause losses to creditors. Meanwhile, liability in his personal capacity is regulated by Article 72 of the same law, concerning the Kurator's individual responsibility for negligence or misconduct in the exercise of his profession that results in losses to the bankruptcy estate suffered by creditors. Beyond the direct liability for harms caused, the Kurator is also accountable for negligence or mistakes that create damage, thereby diminishing the value of the estate he administers. Under Article 1365 of the KUHPerdata on unlawful acts (*perbuatan*

²⁷ Fennieka Kristianto, *Kewenangan Menggugat Pailit Dalam Perjanjian Kredit Sindikasi*, Cet. 1 (Jakarta: Minerva Athena Pressindo, 2009), p. 234. [http://repository.president.ac.id/bitstream/handle/123456789/6028/Kewenangan Menggugat Pailit Dalam Perjanjian Kredit Sindikasi - Fennieka Kristianto.pdf?sequence=1&isAllowed=y](http://repository.president.ac.id/bitstream/handle/123456789/6028/Kewenangan%20Menggugat%20Pailit%20Dalam%20Perjanjian%20Kredit%20Sindikasi%20-%20Fennieka%20Kristianto.pdf?sequence=1&isAllowed=y).

²⁸ Herlina Herlina, Ilham Abbas, and Andi Risma, "Tanggung Jawab Hukum Kurator Atas Pengurusan Dan Pemberesan Harta Pailit," *Qawanin Jurnal Ilmu Hukum* 3, no. 2 (2024): 1–14, p. 4. 10.56087/qawaninjih.v3i2.375.

²⁹ Efy Yulistyowati Dewi Tuti Muryati, Dhian Septiandani, "Pengaturan Tanggung Jawab Kurator Terhadap Pengurusan Dan Pemberesan Harta Pailit Dalam Kaitannya Dengan Hak Kreditor Separatis," *Jurnal Dinamika Sosial Budaya* Vol. 19, No. 1 (2017): p. 11–21, <https://journals.usm.ac.id/index.php/jdsb/article/view/682/437>.

³⁰ Nazhif Ali Murtadho, "Perlindungan Hukum Terhadap Kreditor Preferen Dalam Pemberesan Proses Kepailitan," *Journal of Contemporary Law Studies* 1, no. 4 (2024): 207–226, p. 209. <https://doi.org/10.47134/lawstudies.v2i3.2499>.

melawan hukum), any intentional negligence or fault by the Kurator in the performance of his duties and authorities may give rise to a tort claim.³¹ Accordingly, sanctions—whether administrative, civil, or even criminal—may be imposed if aggrieved parties bring suit against the Kurator for such wrongdoing.

The fourth ratio legis for Kurator liability concerns the misuse of entrusted duties and professional authority under insolvency law, leading to creditor losses. As noted, the Kurator's authority is legally recognized and endowed with juridical force to administer and liquidate the debtor's estate. Thus, when the Kurator errs or neglects his duties, causing harm, he must answer for those actions. Recently, a Kurator was sued by a bankrupt debtor in court, who alleged that the Kurator's actions were wrongful and even accused him of embezzlement. Such incidents often arise from insufficient legal protection for Kurators in carrying out their duties, exposing them to criminal suits.³² However, any challenge to the Kurator's conduct must proceed through the statutory mechanism—namely, a petition of objection to the Hakim Pengawas—before resorting to other remedies.

The Mechanism of Kurator Liability for Negligence in the Supervision and Administration of Bankruptcy Estates Causing Creditor Losses

The Kurator's liability, when founded on fault or negligence in administering and

winding up the debtor's estate, is governed by Article 69(1) of Law No. 37 of 2004. Accordingly, any liability incurred in his professional capacity as Kurator is charged to the bankruptcy estate, not imposed on him personally for the payment of damages. In other words, so long as the error or negligence occurs within the scope of his authority as Kurator, responsibility lies with the estate rather than personally in terms of compensation payments. Examples of Kurator conduct that may give rise to creditor claims include: failing to include a creditor's claim in the distribution plan; knowingly selling an asset omitted from the list of estate property; knowingly selling a third party's asset; or mistakenly pursuing a fictitious claim or seizing property not lawfully subject to attachment.

The mechanism for enforcing the Kurator's legal responsibility in his official capacity is triggered when such errors or negligence occur during the administration and winding-up of the estate. Article 77(1) of Law No. 37 of 2004 grants creditors the right to lodge objections with the Hakim Pengawas if they believe the Kurator's performance in overseeing the liquidation is unsatisfactory.³³ Upon receipt of such an objection, the Hakim Pengawas must forward the objection to the Kurator within three (3) days, as stipulated in Article 77(2). Likewise, the Kurator must submit his response to the Hakim Pengawas within three (3) days of receiving the objection notice, pursuant to Article 77(3).³⁴

³¹ Serlika Aprita, "Wewenang Dan Tanggung Jawab Hukum Kurator Atas Kesalahan Atau Kelalaiannya Mengakibatkan Kerugian Bagi Debitor Dalam Proses Hukum Pengurusan Dan Pembersan Harta Pailit.", p. 155.

³² Anita Gladina Ayu Nurhayati, Amanda Raissa, Avira Rizkiana Yuniar, "Kelemahan Kurator Dalam Pembersan Harta Pailit," *Jurnal Hukum Magnum Opus* Vol. 3, No. 2 (2020): 213–222, p. 219–220.

<https://doi.org/https://doi.org/10.30996/jhmo.v3i2.3442>.

³³ Lihat Pasal 77 ayat (2) UU Kepailitan dalam: Presiden Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang," Pub. L. No. 37, Database Peraturan BPK-RI 55 (2004), <https://peraturan.bpk.go.id/Home/Details/40784>.

³⁴ Lihat Pasal 77 ayat (3) UU Kepailitan dalam: Presiden Republik Indonesia, "Undang-Undang

Finally, where the Kurator's professional conduct has directly caused creditor losses, the Hakim Pengawas must issue a ruling within three (3) days after receiving the Kurator's response.³⁵

In addition to liability in his professional capacity as Kurator, the Kurator may also be held accountable in his personal capacity, subject to the mechanisms and obligations set forth by law. Article 69(1) of Law No. 37 of 2004 affirms that any act or omission by the Kurator causing loss in the supervision and winding-up of the bankruptcy estate—whether intentional or not—must be answered by the Kurator. This provision properly limits the breadth of the Kurator's authority to prevent abuse of the office.

Accordingly, it is essential to identify the indicators or benchmarks for determining whether a Kurator has engaged in professional misconduct through negligence or error. Article 72 of Law No. 37 of 2004 specifies that the Kurator bears two categories of duties: First, as a profession with statutory duties—obligations explicitly defined and regulated by legislation, as outlined in Law No. 37 of 2004.³⁶ Second, the Kurator is subject to fiduciary duties or fiduciary obligations. These arise from the fiduciary relationship inherent in the role, whereby one party undertakes actions that affect another's interests and must therefore subordinate personal interests. The Kurator's fiduciary duties extend to the court—represented by the Hakim Pengawas in bankruptcy

proceedings—as well as to the bankrupt debtor, the creditors, and the shareholders.

From this, it is clear that the Kurator holds the authority to earn the trust of the court, the debtor, the creditors, and the shareholders in order to execute his duties and exercise his powers to the fullest, so that the interests of all parties may be optimally accommodated.³⁷ In this regard, Article 78(1) of Law No. 37 of 2004 provides that whenever the Kurator takes action involving a third party, he must first obtain authorization from the Hakim Pengawas. Should such authorization not be obtained—or should the Kurator disregard the provisions of Articles 83 and 84 of Law No. 37 of 2004—then, under the law, the third party's transaction remains valid. However, the Kurator faces the logical consequence under Article 87(2) of Law No. 37 of 2004: he must assume personal liability toward both the bankrupt debtor and the creditors.

Where the Kurator's wrongdoing or negligence—particularly actions taken without the Hakim Pengawas's consent—results in losses, the Kurator's legal responsibility is personal.³⁸ In other words, he must personally pay compensation. For example, if the Kurator is found to have misappropriated assets of the bankruptcy estate, or if his unprofessional conduct causes further losses, such liabilities rest squarely on him. In such instances, the losses may not be charged against the bankruptcy estate.

When appearing in court, the Kurator cannot act independently of the Hakim

Republik Indonesia Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang.”

³⁵ Kadek Indra Dewantara and dan Dewa Gde Rudy, “Kewenangan Kurator Dalam Mengurus Dan Menguasai Aset ‘Debitor Pailit.’”, p. 65.

³⁶ Rachmadi Usman, *Dimensi Hukum Kepailitan Di Indonesia* (Jakarta: Gramedia Pustaka Utama, 2004), p. 37.

³⁷ Serlika Aprita, “Wewenang Dan Tanggung Jawab Hukum Kurator Atas Kesalahan Atau Kelalaiannya Mengakibatkan Kerugian Bagi Debitor Dalam Proses Hukum Pengurusan Dan Pembersihan Harta Pailit.”, p. 158.

³⁸ Kadek Indra Dewantara and dan Dewa Gde Rudy, “Kewenangan Kurator Dalam Mengurus Dan Menguasai Aset ‘Debitor Pailit.’”, p. 7.

Pengawas, who oversees his performance in executing duties and exercising authority. However, under certain circumstances, the Kurator may carry out his duties and powers without first obtaining the Hakim Pengawas's permission—such as in disputes over claim reconciliation or conflicts regarding the continuation of reciprocal agreements that are unfulfilled or only partially fulfilled, as provided in Article 36 of Law No. 37 of 2004, and disputes concerning the termination of lease agreements by the bankrupt debtor against third parties (Article 38 of Law No. 37 of 2004).

Regarding the form of legal accountability imposed on the Kurator for errors or negligence in his professional role, Article 74(1) of Law No. 37 of 2004 requires the Kurator to submit reports to the Hakim Pengawas on the condition of the bankruptcy estate at three-month intervals.³⁹ These reports must be made publicly available and may be inspected by any person free of charge, in accordance with Article 74(2) of Law No. 37 of 2004.

CONCLUSION

The ratio legis underpinning the Kurator's liability for negligence or error causing creditor losses in the administration and winding-up of a bankrupt debtor's estate encompasses several principles. First, the Kurator is the party to whom the law grants exclusive authority to manage and liquidate the debtor's assets—authority that must be conferred by the Pengadilan Niaga. Second, creditors suffer legal uncertainty when the Kurator mishandles the recovery of claims from the bankruptcy estate. Third, insolvency legislation delineates the Kurator's duties and liabilities both in his official capacity and

personally when errors or negligence inflict losses upon the estate. Fourth, the misuse of powers—legitimated by bankruptcy law—by the Kurator that harms the debtor further justifies liability.

The mechanism for the Kurator's liability for losses arising from negligence or error in his official capacity begins with specific examples: failing to include a creditor's claim in the distribution plan; knowingly selling an asset omitted from the estate inventory; knowingly selling a third party's asset; or improperly pursuing or seizing property based on a false claim. Creditors may file an objection with the Hakim Pengawas, who can then instruct the Kurator to take—or refrain from—specified actions. In his personal capacity, the Kurator's liability for losses due to negligence or wrongdoing—particularly when acting without the Hakim Pengawas's consent—is strictly personal. In such cases, the Kurator must personally compensate creditors for any damages caused by his unauthorized or negligent conduct.

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