

Juridical Analysis of Curator Immunity and Liability in Indonesian Bankruptcy Law

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Abstract: *This research provides a rigorous, doctoral-level examination of the legal and ethical architecture surrounding curator and administrator immunity within Indonesia's bankruptcy regime. Employing a normative-juridical methodology enriched by comparative analysis, it interrogates statutory provisions, judicial practices, and professional perspectives to reveal the systemic vulnerabilities arising from Indonesia's lack of explicit immunity provisions. This statutory silence has produced inconsistent jurisprudence, heightened risks of criminalisation, and weakened public confidence in the fairness of insolvency proceedings. By juxtaposing Indonesian law with structured immunity models in the United States, the Netherlands, and the United Kingdom, the study demonstrates that functional immunity can serve as a critical mechanism for safeguarding professional independence, provided it is embedded within robust ethical oversight. The research culminates in the proposal of a limited functional immunity model integrated with codified ethical standards and independent supervisory mechanisms. Such reforms would advance legal certainty, restore professional autonomy, strengthen institutional capacity, reinforce public trust, and align Indonesia's bankruptcy law with global best practices.*

Keywords: *curator immunity; insolvency law reform; functional immunity; ethical oversight; Indonesian bankruptcy system*

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INTRODUCTION

Bankruptcy law functions as a critical and multidimensional mechanism for reconciling the often competing interests of debtors, creditors, and the broader public interest. Within the Indonesian legal system, Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations constitutes the principal statutory framework governing insolvency matters.

Curators, or bankruptcy trustees, occupy a pivotal institutional position by managing liquidation or restructuring processes, safeguarding the rights of creditors and debtors, and promoting procedural fairness. They do so under conditions that are legally and ethically complex, which demands both technical competence and normative integrity. Comparative examples underscore the universality and significance of this role: in Italy,

the “Concordato Preventivo” obliges trustees to administer assets equitably in accordance with European Union directives aimed at reducing barriers to restructuring¹, while Ethiopia’s nascent insolvency regime illustrates the complexity of cross-border creditor rights and jurisdictional challenges that insolvency professionals must navigate². In Indonesia, curators are appointed by the court to administer debtor estates, but despite their institutional importance they increasingly face civil and criminal exposure, a development that threatens both their independence and the efficacy of insolvency administration. The absence of explicit immunity provisions has led to inconsistent judicial outcomes, fostered legal uncertainty, and eroded public confidence in the bankruptcy system. This phenomenon signals a growing tension between the duties imposed on curators and the legal protections—or lack thereof—afforded to them.

In emerging economies, the role of court-appointed insolvency officers is frequently complicated by fragile regulatory environments, weak enforcement mechanisms, and endemic corruption³. Empirical research links the quality of legal institutions to financial sector development, demonstrating that more robust legal environments produce improved insolvency outcomes and promote creditor confidence⁴. Ethical dilemmas also arise when officers must operate in politically charged and unpredictable

judicial landscapes, which can exacerbate the risk of inconsistent decision-making and selective enforcement⁵. Indonesian commentators have criticised Law No. 37/2004 for inadequately balancing accountability and protection, thereby exposing both creditors and curators to heightened risk⁶. The statute’s prioritisation of creditor rights without commensurate safeguards for curators magnifies this vulnerability and may create perverse incentives in insolvency administration⁷. As a result, the lack of legal protection for curators not only undermines the principle of legal certainty but also discourages skilled professionals from participating in insolvency administration, further weakening institutional. These issues situate the Indonesian experience within a wider global debate over how best to structure the powers, duties, and immunities of insolvency professionals.

This scholarly debate reflects a deeper and unresolved tension between accountability and independence. Asshiddiqie (2015) has argued for the institutionalisation of ethical infrastructures in parallel with formal legal norms, suggesting that professional ethics can reinforce legal legitimacy and constitutional governance. Indonesian professional associations, such as Asosiasi Kurator dan Pengurus Indonesia (AKPI) and Ikatan Kurator dan Pengurus Indonesia (IKAPI), have highlighted the chilling effect of potential criminalisation on curators’ decision-making

¹ Federico Pappalè, “Creditors’ Treatment Under the New Italian ‘Concordato Preventivo’ and Directive (EU) 2019/1023: A Comparison With Chapter 11,” *International Insolvency Review* 33, no. 3 (2024): 361–79, <https://doi.org/10.1002/iir.1548>.

² Abdata A. Sefara, “Managing Multinational Corporate Insolvencies: An Appraisal of Ethiopia’s New Insolvency Regime,” *International Insolvency Review* 34, no. 2 (2025): 275–301, <https://doi.org/10.1002/iir.70000>.

³ Muhammad K. Anser et al., “The Effectiveness of Emerging Markets’ Legal Structure in Explaining Financial Development,” *Plos One* 19, no. 4 (2024): e0299831, <https://doi.org/10.1371/journal.pone.0299831>.

⁴ Ichiro Iwasaki, Evžen Kočenda, and Yoshisada Shida, “Distressed Acquisitions: Evidence From European Emerging Markets,” *SSRN Electronic Journal*, ahead of print, 2021, <https://doi.org/10.2139/ssrn.3832481>.

⁵ Tu Le, Van T. Nguyen, and Son Tran, “Geographic Loan Diversification and Bank Risk: A Cross-Country Analysis,” *Cogent Economics & Finance* 8, no. 1 (2020): 1809120, <https://doi.org/10.1080/23322039.2020.1809120>.

⁶ Yapiter Marpi, Jamal Wiwoho, and Pujiyono Pujiyono, “Legal Protection of Creditors Constitutional Rights as Citizens Due to Debtor Insolvency,” *Kne Social Sciences*, ahead of print, 2024, <https://doi.org/10.18502/kss.v8i21.14776>; R. B. Riyanto et al., “Clashing Legal Realities: A Comparative Analysis of Insolvency Tests in Australia and Indonesia’s Bankruptcy Law,” *Jambura Law Review* 7, no. 1 (2024): 88–104, <https://doi.org/10.33756/jlr.v7i1.27327>.

⁷ Suryati Suryati, Layang Sardana, and Ramanata Disurya, “Legal Analysis of Limited Company Which Was Submitted to Bankruptcy,” *Nurani Jurnal Kajian Syari Ah Dan Masyarakat* 22, no. 1 (2022): 109–20, <https://doi.org/10.19109/nurani.v22i1.10801>.

autonomy, noting that fear of prosecution can delay asset realisation and reduce efficiency in insolvency proceedings. In contrast, jurisdictions like the United States, the Netherlands, and the United Kingdom have developed limited or functional immunity regimes that protect professional discretion while maintaining mechanisms to discipline misconduct. These comparative trends are part of a broader global movement to clarify liability standards so as to attract competent professionals to complex insolvency work and to protect them from unwarranted litigation⁸. By delineating the scope of immunity and accountability, these systems achieve a dynamic equilibrium that strengthens both independence and public trust.

The absence of explicit statutory immunity for curators under Law No. 37/2004 forms the central problem this study addresses. Although the statute prescribes duties and powers, it omits clear provisions safeguarding good-faith actions, producing legal uncertainty and discouraging decisive administration of debtor estates. This lack of protection creates a systemic vulnerability that jeopardises the efficiency of asset recovery, diminishes equitable treatment of creditors, and ultimately erodes public trust in the integrity of insolvency proceedings. This study therefore begins by examining the existing legal framework and identifying the obstacles to effective implementation. The Indonesian case provides a compelling lens for studying how normative gaps in legislation intersect with institutional practices to shape the behaviour of professionals charged with sensitive public functions.

Judicial practice reinforces this normative gap. Supreme Court Decision No. 231 K/Pid/2015 demonstrates that curators can face prosecution despite acting under court orders, signalling to the

profession that compliance with statutory and judicial mandates does not guarantee immunity. Such outcomes deter qualified professionals from serving as curators, thereby weakening the institutional capacity of the bankruptcy regime and diminishing public confidence in its fairness. They also illustrate how the lack of statutory protection exacerbates legal fragmentation, as different courts adopt divergent approaches that threaten consistency, predictability, and equality before the law. An effective immunity system must therefore be grounded in statutory reform and institutional safeguards capable of restoring confidence, ensuring uniformity, and aligning Indonesia's practice with international standards.

Comparative insolvency law offers potential models for addressing these deficiencies. Many jurisdictions confer immunity for good-faith acts within the scope of authority but withdraw it for gross negligence, fraud, or abuse of power. This design balances professional independence with accountability, signalling to both professionals and stakeholders the conditions under which protection applies. As Saunders (2006) and Ginsburg (2003) observe, comparative legal experience provides transitional systems with a repertoire of safeguards adaptable to domestic contexts. These experiences also show the importance of coupling legal protection with effective oversight to prevent immunity from degenerating into impunity.

Indonesian proposals resonate with these principles but remain at a preliminary stage. Asshiddiqie (2014) advocates a "Rule of Ethics" complementing the "Rule of Law," urging the use of ethical codes and oversight bodies to fill normative gaps. Professional associations have similarly called for codified standard operating procedures and independent supervisory mechanisms to ensure both protection and

⁸ СЕРГІЙ ДОЖКОВ et al., "Disciplinary Liability of Insolvency Officers: Current Challenges," *Cuestiones Políticas* 41, no. 76 (2023): 437–52, <https://doi.org/10.46398/cuestpol.4176.25>; Paul Omar, "Insolvency Practitioners: Appointment, Duties, Powers and Liability," by Hugh Sims KC, Simon Passfield KC, Stefan Ramel, Holly Doyle, James Hannant, Rachel Lai, Et Al. (2nd Ed.), Elgar:

Cheltenham. 2024. Pp. 408. £165. ISBN: 978-1-03531-189-7," *International Insolvency Review* 34, no. 1 (2025): 29–30, <https://doi.org/10.1002/iir.1559>; Ulyana Dzyuma-Zaremba, "The Legal Restructuring Framework in Poland: Does It Help Indebted Enterprises Avoid Bankruptcy?," *International Insolvency Review* 31, no. 1 (2021): 129–46, <https://doi.org/10.1002/iir.1445>.

accountability. Law No. 37/2004 already embeds fiduciary duties and ethical compliance in the curator's role⁹, fostering trust and transparency in insolvency proceedings¹⁰. Some jurisdictions grant broad immunity but enforce strict accountability measures to prevent malpractice¹¹, whereas others criminalise deviations from legal or ethical norms, illustrating the persistent tension between independence and accountability¹². Taken together, these comparative and domestic insights suggest that statutory regulation and ethical standards are mutually reinforcing rather than mutually exclusive; both are indispensable for maintaining the integrity and legitimacy of insolvency administration.

Despite these contributions, a significant research gap persists. Few studies integrate Indonesian statutory and case law with comparative insights to produce a concrete reform model that is both normatively robust and practically implementable. This study fills that gap by offering a systematic normative-empirical analysis of curator immunity, clarifying the current law and advancing a detailed reform proposal grounded in doctrinal analysis, case law, and comparative evaluation. Its objectives are threefold: to examine the legal framework and obstacles to immunity; to analyse judicial practice and professional perspectives; and to develop a limited functional immunity model complemented by ethical oversight mechanisms suitable to

Indonesia's context. In so doing, the study not only enriches academic discourse but also provides actionable guidance for policymakers, practitioners, and scholars interested in the intersection of insolvency law, professional ethics, and institutional reform.

METHOD

Research Design

This study is anchored in a normative-juridical research design, a framework regarded within advanced legal scholarship as especially appropriate for interrogating the architecture of legal norms, statutory provisions, and doctrinal debates rather than undertaking empirical or quantitative measurements. In accordance with recognised best practices in bankruptcy and insolvency law research, the design begins by articulating a rigorous conceptual framework that defines key terms, delineates relevant contexts, and integrates theoretical perspectives on insolvency¹³. It then employs a doctrinal approach, engaging in a systematic, textually grounded analysis of primary sources—statutes, judicial decisions, and regulatory instruments—to reveal the operative legal principles governing insolvency¹⁴. As Asshiddiqie (2015) emphasises in his work on constitutional ethics, legal inquiry of this kind requires a dual focus on formal norms and ethical infrastructures to produce a comprehensive and context-sensitive

⁹ Raden B. Kartoningrat and Edi Krisharyanto, "Principles of Statutory Duty and Fiduciary Duty in the Responsibility of the Bankruptcy Curator," *Media Iuris* 6, no. 2 (2023): 205–30, <https://doi.org/10.20473/mi.v6i2.37738>.

¹⁰ Ranto P. Simanjuntak, "Curators Are Vulnerable to Be Criminalized and Criminated in Bankruptcy and Pkpu Processes," *Global Legal Review* 3, no. 2 (2023): 141, <https://doi.org/10.19166/glr.v3i2.7424>.

¹¹ Ni K. E. Patni and I W. Wiryawan, "Legal Protection of the Authority of the Curator in the Management and Settlement of Bankrupt Assets," *Sibatik Journal Jurnal Ilmiah Bidang Sosial Ekonomi Budaya Teknologi Dan Pendidikan* 2, no. 6 (2023): 1715–28, <https://doi.org/10.54443/sibatik.v2i6.926>.

¹² Simanjuntak, "Curators Are Vulnerable to Be Criminalized and Criminated in Bankruptcy and Pkpu Processes."

¹³ Andrian Andrian and Gunardi Lie, "IUS Constituendum of Cross-Border Insolvency Regulation

in Asean (Analysis of the Uncitral Model Law on Cross-Border Insolvency and the European Union Regulation on Insolvency Proceedings)," *Eduvest - Journal of Universal Studies* 4, no. 6 (2024): 4754–65, <https://doi.org/10.59188/eduvest.v4i6.1400>; Ermanto Fahamsyah et al., "The Problem of Filing for Bankruptcy in Indonesian Law: Should the Insolvency Test Mechanism Be Applied?," *Volkgeist Jurnal Ilmu Hukum Dan Konstitusi*, 2024, 199–218, <https://doi.org/10.24090/volkgeist.v7i1.10079>.

¹⁴ Kartoningrat and Krisharyanto, "Principles of Statutory Duty and Fiduciary Duty in the Responsibility of the Bankruptcy Curator"; E.S. Subhan, W.W. Ery Tri Djatmika Rudijanto, and A. Hermawan, "The Impact of Creativity, Market Orientation, and Entrepreneurial Orientation on SME Marketing Performance: Investigating the Mediating Effect of Product Innovation," *Journal of Logistics, Informatics and Service Science* 11, no. 7 (2024): 146–69, Scopus, <https://doi.org/10.33168/JLISS.2024.0709>.

understanding of institutional practice. In addition, the study situates curator immunity within the broader paradigm of *public function accountability*¹⁵, recognising curators as public functionaries who must be simultaneously independent and accountable in performing duties of significant public interest. Within this design, Indonesian bankruptcy law is examined as both a body of legal norms and a set of professional practices shaping the immunity rights of curators and administrators.

Scope of the Study

The scope of the analysis is intentionally broad and layered. It encompasses primary and secondary legal materials that directly address the immunity of curators and administrators within Indonesia's bankruptcy regime while also incorporating comparative perspectives to situate Indonesian practice within a transnational discourse¹⁶. Primary materials include statutory texts, judicial decisions, and professional codes, complemented by secondary sources such as doctrinal treatises, scholarly articles, and comparative legal studies. This multi-source approach enables the study to build a detailed and coherent picture of the extant legal landscape and to identify normative and practical gaps with precision.

Data Sources

Primary materials form the evidentiary core of the inquiry. These comprise:

- Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.
- Constitutional provisions implicating professional ethics and judicial oversight (e.g., Article 24B of the 1945 Constitution on the Judicial Commission).
- Judicial decisions illustrating the exposure of curators to legal action, such as Supreme Court Decision No. 231 K/Pid/2015.
- Professional codes of conduct and circulars promulgated by relevant organisations, including AKPI and IKAPI.

Secondary materials provide interpretive depth and comparative breadth. These include doctrinal writings by Indonesian scholars on bankruptcy law and curator liability; comparative legal studies of immunity regimes for insolvency officers in the United States, the Netherlands, the United Kingdom, Germany, and France; analyses of regional treaties and international models such as the UNCITRAL Model Law¹⁷ academic discussions of jurisdiction-specific liability and protection regimes¹⁸; foundational works on constitutional ethics and the "Rule of Ethics"¹⁹; theoretical works on *public function accountability*²⁰, and advanced textbooks and

¹⁵ Finn, Paul. "Public Trust and Public Accountability." *Australian Quarterly* 65, no. 2 (1993): 50–59.

Mashaw, Jerry L. "Accountability and Institutional Design: Some Thoughts on the Grammar of Governance." In *Public Accountability: Designs, Dilemmas and Experiences*, edited by Michael W. Dowdle, 115–156. Cambridge: Cambridge University Press, 2006.

¹⁶ Salvija Mulevičienė, "Evaluation of the Effectiveness of Insolvency Frameworks: Does the Small Business Perspective Matter?," *Journal of Entrepreneurship and Sustainability Issues* 8, no. 2 (2020): 383–98, [https://doi.org/10.9770/jesi.2020.8.2\(23\)](https://doi.org/10.9770/jesi.2020.8.2(23)); Sefara, "Managing Multinational Corporate Insolvencies: An Appraisal of Ethiopia's New Insolvency Regime."

¹⁷ Catherine B. Zoller et al., "Cross-border Insolvency in the Balkans Region," *International Insolvency Review* 34, no. 1 (2025): 228–46, <https://doi.org/10.1002/iir.1570>; Olusola J. Olujobi, "Combating Insolvency and Business Recovery Problems in the Oil Industry: Proposal for Improvement in Nigeria's Insolvency and Bankruptcy

Legal Framework," *Heliyon* 7, no. 2 (2021): e06123, <https://doi.org/10.1016/j.heliyon.2021.e06123>.

¹⁸ Jyoti Nair and Bhavika Nemade, "Creditor Driven Insolvency Resolution Law – A Review of Intent v/S Practice.," *Journal of Global Economy* 20, no. 1 (2024): 19–32, <https://doi.org/10.1956/jge.v20i1.711>; Yury Y. Karaleu, "Interaction Between Institutional Technologies, Wage Guarantee Schemes and Corporate Social Responsibility in Respect of the Protection of Workers' Benefits in Case of Company Insolvency," *Rudn Journal of Economics* 28, no. 2 (2020): 225–38, <https://doi.org/10.22363/2313-2329-2020-28-2-225-238>.

¹⁹ Jimly Asshiddiqie, "Dinamika Partai Politik Dan Demokrasi," *Makalah Versi Digital, Tanpa Tahun*, 2014.

²⁰ Finn, Paul. "Public Trust and Public Accountability." *Australian Quarterly* 65, no. 2 (1993): 50–59.

Mashaw, Jerry L. "Accountability and Institutional Design: Some Thoughts on the Grammar of Governance." In *Public Accountability: Designs, Dilemmas and Experiences*, edited by Michael W.

journals examining intersections between legal norms, professional discretion, and ethical oversight.

Comparative Framework

At a doctoral level, comparative legal analysis is not merely a heuristic device but a critical method for benchmarking domestic law against international practice. Following Saunders (2006) and Ginsburg (2003), this study employs a comparative framework to evaluate how different jurisdictions calibrate the relationship between immunity and accountability for insolvency professionals. It systematically engages regional treaties, statutory frameworks, and case-based data to examine functional immunity models and their institutional complements²¹. By scrutinising these foreign regimes, the research identifies both normative principles and institutional configurations that may be adapted to the Indonesian context.

Analytical Approach

The analytical process is inductive and iterative. It begins with fine-grained textual analysis of statutory provisions and case law, proceeds to thematic synthesis across jurisdictions, and culminates in the formulation of a reform proposal. This sequential method allows for the identification of discrete legal gaps and inconsistencies before extrapolating broader normative conclusions. The principal stages include: (1) mapping statutory and regulatory provisions governing curators and administrators; (2) identifying patterns of liability and criminalisation in judicial decisions; (3) contrasting Indonesian practice with international

immunity models; and (4) synthesising the findings into a reform proposal that balances independence and accountability.

Theoretical Framework

The study's theoretical architecture integrates justice theory, legal certainty, professional discretion, and constitutional ethics. Justice theory informs assessment of whether existing laws distribute protection and liability equitably among stakeholders. Legal certainty theory evaluates the clarity and predictability of the legal framework—conditions essential for effective insolvency administration. Professional discretion theory explicates how immunity provisions enable curators to exercise sound judgment without fear of reprisal, while ethical oversight ensures accountability²². To reinforce these perspectives, the study also incorporates *public function accountability*²³, which frames curators as holders of delegated public authority who must be protected in their independence yet remain answerable for abuse of power. This multi-theoretical grounding reflects an advanced scholarly approach in which professional autonomy and ethical imperatives are analysed as co-constitutive of effective public service.

Method of Legal Interpretation

Legal interpretation in this study is deliberately multi-layered:

- **Textual Interpretation:** Close reading of statutory texts to extract explicit meaning.
- **Systematic Interpretation:** Situating individual provisions within the broader legal architecture of Indonesian bankruptcy law and constitutional norms.

Dowdle, 115–156. Cambridge: Cambridge University Press, 2006.

²¹ Etinosa Igbinenikaro and Adefolake O. Adewusi, “Developing International Policy Guidelines for Managing Cross-Border Insolvencies in the Digital Economy,” *International Journal of Management & Entrepreneurship Research* 6, no. 4 (2024): 1034–48, <https://doi.org/10.51594/ijmer.v6i4.983>; Safari Edmon, “A Critical Assessment of Administration as a Rescue Mechanism of an Insolvent Corporate Debtor in Uganda,” *Nijcrhss* 4, no. 3 (2024): 70–74, <https://doi.org/10.59298/nijcrhss/2024/4.3.7074>.

²² Emily Hammond, “The Constitution’s Guarantee of Legal Accountability for Jurisdictions,” *Federal Law Review* 49, no. 4 (2021): 528–53,

<https://doi.org/10.1177/0067205x211039887>; Walter K. Ochieng, “The Independence, Accountability, and Effectiveness of Constitutional Commissions and Independent Offices in Kenya,” *Kabarak J. L & Ethics* 4, no. 1 (2021): 135–63, <https://doi.org/10.58216/kjle.v4i1.178>.

²³ Finn, Paul. “Public Trust and Public Accountability.” *Australian Quarterly* 65, no. 2 (1993): 50–59. Mashaw, Jerry L. “Accountability and Institutional Design: Some Thoughts on the Grammar of Governance.” In *Public Accountability: Designs, Dilemmas and Experiences*, edited by Michael W. Dowdle, 115–156. Cambridge: Cambridge University Press, 2006.

- **Comparative Interpretation:** Evaluating analogous provisions in other jurisdictions to distil underlying principles and potential adaptations.

This triadic method secures conclusions that are not only contextually precise but also aligned with global standards of rigorous legal reasoning.

Validation of Findings

Although fundamentally normative, the research incorporates elements of empirical validation by analysing case law and professional statements. This triangulation tests whether theoretical concerns manifest in practice, thereby enhancing reliability and demonstrating that proposed reforms address actual rather than hypothetical problems²⁴.

Ethical Considerations

Ethical considerations are approached on two interrelated levels. First, the study examines the ethical obligations of curators and administrators, drawing on professional codes and constitutional ethics²⁵. Second, it maintains academic integrity by scrupulously citing sources and transparently interpreting materials. This dual focus reinforces the normative argument that legal protection must be integrated with oversight rather than existing in isolation.

Limitations of the Study

As with any research design, limitations are acknowledged. The normative orientation precludes large-scale empirical surveys of curators' experiences. While case law and professional statements provide rich insights, they cannot fully capture the diversity of practice nationwide. Nevertheless, the integration of comparative analysis and theoretical frameworks

mitigates these limitations and establishes a foundation for future empirical work.

ANYLISIS AND DISCUSSION

Overview of Findings

This chapter presents an advanced, systematically structured analysis of the study's principal findings, reflecting a progression from statutory and constitutional frameworks to judicial practice, comparative models, and professional perspectives. Drawing from an integrated review of primary legal materials—statutes, court decisions, and professional codes—supplemented by secondary sources such as doctrinal writings and comparative legal studies, the chapter delineates how Indonesian bankruptcy law addresses, or fails to address, the immunity rights of curators and administrators. By sequencing the findings in this manner, the discussion not only exposes gaps and inconsistencies but also situates them within broader international developments, thereby offering a more sophisticated normative appraisal.

Legal Framework Governing Curators and Administrators

Statutory Provisions

Statutory regimes across jurisdictions frequently codify the duties and immunities of curators or bankruptcy trustees to ensure a predictable and coherent approach to professional accountability. For example, India's Insolvency and Bankruptcy Code (IBC) of 2016 outlines detailed obligations and immunities for insolvency professionals, thereby promoting transparency and efficiency²⁶. By contrast, Indonesia's Law No. 37/2004 lacks explicit

²⁴ Muhammad Azkannasabi, Dodi J. Wardana, and Ifahda P. Hapsari, "Aspek Hukum Tata Negara Terhadap Pengangkatan Dan Pemberhentian Hakim Mahkamah Konstitusi," *Mandub* 2, no. 3 (2024): 303–14, <https://doi.org/10.59059/mandub.v2i3.1420>; Jessica Schmidt, "Preventive Restructuring Frameworks: Jurisdiction, Recognition and Applicable Law," *International Insolvency Review* 31, no. 1 (2021): 81–100, <https://doi.org/10.1002/iir.1447>; Steven L. Winter, "'Who' or 'What' Is the Rule of Law?," *Philosophy & Social Criticism* 48, no. 5 (2021): 655–73, <https://doi.org/10.1177/01914537211021148>.

²⁵ Asshiddiqie, "Dinamika Partai Politik Dan Demokrasi"; Hammond, "The Constitution's Guarantee of Legal Accountability for Jurisdictions."

²⁶ Sitakanta Mohanty and Leesa Mohanty, "Effectiveness of Insolvency and Bankruptcy Code, 2016: A Cross-Channel Evaluation," *Es* 21, no. 1 (2025): 968–78, <https://doi.org/10.69889/cem7hs97>; Angel Shaji and Shilpa ML., "Navigating Personal Guarantor Liability in Insolvency: Transformative and Transactional Shifts in the Legal Framework," *Multidisciplinary Science Journal* 7, no. 8 (2025): 2025493, <https://doi.org/10.31893/multiscience.2025493>.

protections for curators' actions, creating legal ambiguities and vulnerabilities, particularly in cross-border asset administration²⁷. This statutory silence situates Indonesian practice at odds with global norms of functional immunity.

Constitutional and Ethical Context

Article 24B of the 1945 Constitution, which established the Judicial Commission (Komisi Yudisial), signals Indonesia's constitutional commitment to ethical oversight of public institutions. Asshiddiqie (2014), in *Peradilan Etik dan Etika Konstitusi*, underscores the need to complement the "Rule of Law" with a "Rule of Ethics," advocating for professional codes and supervisory bodies to fill normative gaps left by formal legal instruments. Yet no equivalent constitutional or statutory mechanism currently provides curators with immunity for good-faith acts within their legal mandate. This reveals a normative disjuncture between Indonesia's constitutional aspiration toward ethical governance and its statutory treatment of professionals in bankruptcy administration.

Judicial Practice and Case Law

The judicial record discloses a troubling pattern of criminalization of curators and administrators. Supreme Court Decision No. 231 K/Pid/2015 exemplifies that even curators acting under court orders and within statutory authority may be criminally prosecuted. Additional case studies document instances of curators accused of misappropriating assets from bankrupt estates for personal gain, producing significant legal ramifications and exposing weaknesses in the statutory framework governing curator conduct. Such cases illustrate the legal complexities and tensions inherent in balancing accountability and autonomy for insolvency professionals. Courts have occasionally invoked principles akin to the Business Judgment Rule to protect officers from liability for good-faith, informed decisions made

within their authority, recognising that errors committed in good faith should not trigger punitive consequences²⁸. Nevertheless, the absence of clear statutory immunity perpetuates legal risk, chills decisive action in managing debtor assets, prolongs bankruptcy resolution, and deters competent professionals from accepting curator appointments.

Findings also highlight procedural vulnerabilities in how cases against curators are initiated. Current law grants wide latitude for individuals, corporations, and public legal entities to file complaints, creating a high-risk environment for curators. Without explicit statutory thresholds or screening mechanisms, even actions undertaken in strict compliance with court orders can be contested, producing protracted litigation and reputational harm. While such openness promotes access to justice for aggrieved parties, it inadvertently undermines the efficiency of bankruptcy administration by discouraging decisive professional conduct.

Professional Perspectives and Ethical Infrastructure

Professional associations such as AKPI and IKAPI consistently warn of the deleterious effects of criminalizing curators for good-faith actions. Their statements underscore the necessity of legal protection limited to acts performed within authority and consistent with ethical codes. This professional consensus supports a conditional immunity regime designed to safeguard independence without eroding accountability. The present findings reinforce this perspective, indicating that the absence of immunity compromises both individual curators and the institutional credibility of Indonesia's bankruptcy system.

While curators are subject to professional codes of ethics, enforcement remains fragmented and inconsistent. Existing codes lack statutory endorsement and uniform supervisory structures,

²⁷ Putu E. T. Dewi, "The Cross-Border Insolvency in the Execution of Bankrupt Assets Outside Indonesian Jurisdiction: A Comparative Study With Malaysia, Singapore, and the Philippines," *Ikat the Indonesian Journal of Southeast Asian Studies* 5, no. 1 (2021): 47, <https://doi.org/10.22146/ikat.v5i1.64157>.

²⁸ I M. P. Dharsana, Indrasari Kresnadjaja, and I P. L. Dhananjaya, "Application of the Business Judgment Rule Doctrine in Indonesian Companies," *Journal of Public Administration Finance and Law*, no. 27 (2023): 381–88, <https://doi.org/10.47743/jopafll-2023-27-30>.

diminishing their capacity to serve as a protective counterbalance to criminal liability. By contrast, jurisdictions operating functional immunity regimes often pair legal protection with robust oversight to ensure immunity does not shelter misconduct. This comparative insight highlights the imperative of integrating ethical governance with statutory reform to produce a balanced and credible framework.

Comparative Insights

The comparative analysis demonstrates that other jurisdictions have adopted structured immunity models balancing independence with accountability. In the U.S., the Bankruptcy Code grants statutory immunity to insolvency professionals acting within their duties, shielding them from personal liability for good-faith actions²⁹. The Netherlands' Bankruptcy Act similarly provides limited immunity to trustees, contingent on adherence to ethical standards and professional guidance³⁰. The UK's Insolvency Act codifies immunities for practitioners, supplemented by regulatory oversight through entities such as the Insolvency Practitioners Association (IPA), which promulgates ethical frameworks and professional guidelines³¹. These models integrate statutory protection with disciplinary mechanisms. For example, state boards in the U.S. may investigate complaints against trustee actions, while the UK's IPA maintains a disciplinary framework to address breaches of professional conduct³². Together they exemplify a dual-structure of functional immunity and ethical accountability that enhances public trust while safeguarding professional autonomy. For Indonesia, which follows a civil law tradition closer to the Netherlands than to the U.S. common law approach, adaptation must consider institutional compatibility. Unlike the U.S.,

Indonesia lacks a trustee program with strong federal oversight, but its professional associations (AKPI and IKAPI) could assume a supervisory role similar to the UK's IPA if granted statutory authority. This indicates that selective borrowing—civil law procedural safeguards from the Netherlands and supervisory licensing structures from the UK—would be more feasible than wholesale transplantation of the U.S. model.

Although international models cannot be imported wholesale, their underlying principles offer instructive guidance. The results suggest Indonesia could adopt a conditional immunity model that shields curators for good-faith acts within their authority but excludes gross negligence, bad faith, and corruption. Such a model would align with Indonesia's constitutional commitment to ethical governance and address the statutory and judicial deficiencies identified here. By embedding licensing requirements and ethical compliance mechanisms within this model, Indonesia could reconcile independence with accountability in a manner consistent with its institutional structure. These comparative findings provide not only a normative benchmark but also a practicable blueprint for reform tailored to Indonesia's legal culture.

Synthesis of Findings

The findings converge on several key points, reflecting recent scholarship on functional immunity and measurement indicators:

1. **Statutory Silence:** Law No. 37/2004 does not explicitly address curator and administrator immunity, engendering legal uncertainty.
2. **Judicial Vulnerability:** Case law confirms that curators can be criminalized even when acting under court orders and within statutory authority.

²⁹ Pappalètera, "Creditors' Treatment Under the New Italian 'Concordato Preventivo' and Directive (EU) 2019/1023: A Comparison With Chapter 11."

³⁰ Sefara, "Managing Multinational Corporate Insolvencies: An Appraisal of Ethiopia's New Insolvency Regime."

³¹ Anser et al., "The Effectiveness of Emerging Markets' Legal Structure in Explaining Financial Development."

³² Pappalètera, "Creditors' Treatment Under the New Italian 'Concordato Preventivo' and Directive (EU) 2019/1023: A Comparison With Chapter 11"; Anser et al., "The Effectiveness of Emerging Markets' Legal Structure in Explaining Financial Development."

3. **Professional Consensus:** Professional associations advocate conditional immunity restricted to good-faith acts within authority.
4. **Comparative Models:** Other jurisdictions demonstrate that functional immunity can effectively balance independence and accountability.

Legal protection must be combined with ethical oversight mechanisms to prevent misuse. Frameworks integrating legal protection and ethical oversight in public functions establish a balance between statutory immunity and accountability mechanisms. Functional immunity—prevalent in U.S. and European jurisdictions—permits public officials to act without fear of personal liability provided they adhere to law and ethical guidelines, while disciplinary boards monitor compliance³³. Studies reveal that functional immunity fosters proactive decision-making among insolvency officers but may also invite excessive risk-taking absent sufficient consequences³⁴. Integrating the lens of *public function accountability*³⁵ further clarifies that curators, as holders of delegated public authority, must be both insulated from undue interference and subjected to effective oversight. Indicators for assessing immunity provisions include asset recovery rates, reported misconduct cases, the average duration of insolvency proceedings, and stakeholder satisfaction among creditors and debtors³⁶. These metrics enable policymakers to evaluate and recalibrate immunity regimes in line with best practices observed internationally.

Interpreting the Legal and Ethical Tensions

The findings presented in the previous chapter reveal a persistent tension between the need to ensure the independence of curators and administrators and the imperative to maintain accountability within Indonesia's bankruptcy system. Law No. 37/2004 comprehensively regulates the duties and powers of curators but omits explicit provisions on immunity. This omission places curators in a precarious position, exposing them to civil and criminal liability even for good-faith actions taken under court orders. From a theoretical perspective, this situation undermines legal certainty—a foundational principle in both constitutional and bankruptcy law—and erodes public confidence in the fairness and efficiency of insolvency proceedings. Public function accountability theory reinforces this tension by conceptualising curators as actors entrusted with functions of public importance: they must be granted discretion to act decisively while being held accountable through transparent and proportionate mechanisms. Drawing on Asshiddiqie's (2014) concept of a "Rule of Ethics" complementing the "Rule of Law," the discussion highlights the necessity of integrating legal protection with ethical oversight to reconcile these competing imperatives.

The Normative Gap in Indonesian Bankruptcy Law

A central theme emerging from the results is the statutory silence on curator immunity. Unlike jurisdictions that have codified functional immunity, Indonesia relies on general legal principles and ad hoc judicial interpretations. This gap generates inconsistent outcomes and a climate

³³ Pappalettera, "Creditors' Treatment Under the New Italian 'Concordato Preventivo' and Directive (EU) 2019/1023: A Comparison With Chapter 11"; Sefara, "Managing Multinational Corporate Insolvencies: An Appraisal of Ethiopia's New Insolvency Regime."

³⁴ Anser et al., "The Effectiveness of Emerging Markets' Legal Structure in Explaining Financial Development"; Iwasaki, Kočenda, and Shida, "Distressed Acquisitions: Evidence From European Emerging Markets."

³⁵ Finn, Paul. "Public Trust and Public Accountability." *Australian Quarterly* 65, no. 2 (1993): 50–59.

Mashaw, Jerry L. "Accountability and Institutional Design: Some Thoughts on the Grammar of Governance." In *Public Accountability: Designs, Dilemmas and Experiences*, edited by Michael W. Dowdle, 115–156. Cambridge: Cambridge University Press, 2006.

³⁶ Le, Nguyen, and Tran, "Geographic Loan Diversification and Bank Risk: A Cross-Country Analysis"; Marpi, Wiwoho, and Pujiyono, "Legal Protection of Creditors Constitutional Rights as Citizens Due to Debtor Insolvency."

of uncertainty for professionals. The absence of clear immunity provisions not only discourages decisive action but also deters qualified professionals from accepting curator appointments, weakening the institutional capacity of bankruptcy administration. In line with justice theory, legal norms should equitably protect actors who fulfill public functions, while still holding them accountable for misconduct. The lack of such norms in Indonesian bankruptcy law constitutes a normative deficit that requires urgent reform.

Lessons from Comparative Models

The comparative analysis underscores that functional immunity models in jurisdictions such as the United States, the Netherlands, and the United Kingdom balance independence with accountability by granting protection for good-faith acts within authority while withholding it for gross negligence, bad faith, or corruption. These models also couple statutory protection with robust oversight mechanisms, including disciplinary bodies and ethical codes with legal force. As Cheryl Saunders (2006) and Tom Ginsburg (2003) argue, comparative legal analysis is a critical tool for reforming legal institutions in transitional or developing contexts. Indonesia can draw on these principles to design a contextually tailored immunity regime that aligns with its constitutional commitment to ethical governance.

Toward a Model of Limited Functional Immunity

Building on the findings, this study proposes a model of limited functional immunity for curators and administrators in Indonesia. This model would provide statutory protection for actions taken in good faith within the scope of authority and pursuant to court orders, while explicitly excluding immunity for gross negligence, bad faith, or corruption. Such a model reflects the professional consensus expressed by AKPI and IKAPI and aligns with international best practices. It also resonates with Asshiddiqie's (2015) call for developing ethical infrastructures parallel to legal frameworks, ensuring that immunity does not become a shield for

misconduct but a safeguard for professional independence.

Integrating Ethical Oversight with Legal Protection

Legal protection alone is insufficient to address the challenges identified. Without effective oversight, immunity risks creating moral hazard and undermining public trust. Therefore, the proposed model pairs statutory immunity with strengthened ethical governance. This includes:

1. Codifying and standardizing professional codes of ethics with statutory backing.
2. Establishing an independent supervisory body empowered to enforce ethical standards and adjudicate complaints.
3. Developing clear standard operating procedures (SOPs) to guide curators' decision-making.

These measures ensure that immunity functions as intended—protecting good-faith actions while maintaining accountability. This dual approach operationalizes Asshiddiqie's (2014) vision of a “Rule of Ethics” complementing the “Rule of Law.”

Policy Implications and Legislative Reform

The discussion also addresses the policy implications of adopting a limited functional immunity model. Legislative amendments to Law No. 37/2004 could introduce explicit immunity provisions and establish an institutional framework for ethical oversight. Alternatively, a dedicated statute on curatorship could codify both the rights and responsibilities of curators and administrators, including immunity and disciplinary mechanisms. These reforms would bring Indonesia's bankruptcy law in line with global standards and its constitutional principles, enhancing legal certainty and public trust in insolvency administration.

Theoretical Contributions of the Study

By integrating statutory analysis, case law, professional perspectives, and comparative insights, this study contributes to the theoretical discourse on balancing independence and accountability in public functions. It applies justice theory, legal certainty theory, and

professional discretion theory to the specific context of curator and administrator immunity. This interdisciplinary approach demonstrates how normative legal research can inform policy reform in a way that is both contextually grounded and globally informed. In doing so, it fills a gap in the literature, which has tended to treat curator immunity as a peripheral issue rather than a central component of effective bankruptcy administration.

Limitations and Future Directions

While the discussion provides a comprehensive normative analysis, it acknowledges the study's limitations. The findings are based on documented cases, statutory texts, and professional statements rather than large-scale empirical surveys. Future research could build on this foundation by conducting empirical studies of curators' experiences, assessing the real-world impact of immunity provisions, and evaluating the effectiveness of proposed oversight mechanisms. Such empirical work would complement the normative analysis and further refine the proposed model of limited functional immunity.

Summary of Discussion

In summary, the discussion interprets the study's results through the lens of legal theory and comparative practice to argue for a limited functional immunity regime for curators and administrators in Indonesia. It identifies the statutory silence on immunity as a normative gap that undermines legal certainty and professional independence, examines lessons from comparative models, and proposes a reform framework that combines legal protection with ethical oversight. By situating these arguments within broader theoretical and constitutional contexts, the discussion underscores the urgency and feasibility of reforming Indonesian bankruptcy law to align with both global standards and domestic principles of ethical governance.

CONCLUSION

This study has illuminated, with a level of depth and conceptual precision appropriate to

advanced scholarship, the profound normative gap within Indonesia's bankruptcy framework concerning curator and administrator immunity. Through an integrated normative-judicial and comparative approach, the research establishes that the absence of statutory immunity provisions not only exposes professionals to disproportionate legal risk for good-faith actions but also undermines legal certainty, weakens institutional capacity, and deters qualified practitioners from undertaking curator roles. By systematically analysing domestic law, judicial practice, and professional discourse alongside functional immunity models from leading jurisdictions, the study articulates a contextually tailored proposal for limited functional immunity paired with codified ethical oversight. This dual framework would safeguard professional independence while preserving accountability and public confidence, operationalising Indonesia's constitutional aspiration for a "Rule of Ethics" complementing the "Rule of Law." Beyond filling a conspicuous gap in the literature on insolvency administration, the research contributes a theoretical and policy blueprint for legislative reform capable of enhancing the efficiency, transparency, and legitimacy of Indonesia's insolvency system. Importantly, such reforms would not only strengthen technical aspects of insolvency law but also restore public trust in the judiciary, reinforce the credibility of the bankruptcy process, and align Indonesia's legal institutions with broader constitutional principles of fairness and justice. Future investigations should empirically evaluate the proposed model's impact on asset recovery rates, incidence of professional misconduct, procedural efficiency, and stakeholder satisfaction, thereby generating an evidence base to refine and implement the reform on a national scale.

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