

THE CURATOR'S ROLE AND EXPERTISE IN MANAGING BANKRUPT ESTATES AMID CONFLICT

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ABSTRACT

This study investigates legal reforms in bankruptcy, focusing on the principle of business continuity in debt restructuring cases. By applying this principle, debtors can restructure their debts, facilitating peaceful settlements that enhance the economic value of the debtor companies. The increase in economic value benefits both debtors and creditors. Financial difficulties have become a significant global challenge, often resulting in corporate bankruptcies that disrupt financial institutions and economic stability. The 1997 Asian financial crisis underscored the need for improved bankruptcy procedures. Early detection of financial distress can help stakeholders prevent future losses. This research also explores the curator's role in resolving bankruptcy cases and reducing conflicts in accordance with existing laws. Additionally, it examines how corporate governance, ownership structures, and risk management influence bankruptcy outcomes. A comprehensive approach is essential to ensure fair asset distribution during bankruptcy, especially in complex cases involving disputed assets, such as land. The curator's actions, guided by Indonesia's Law No. 37 of 2004 on Bankruptcy, play a key role in ensuring transparency, fairness, and legal compliance throughout the process. The study concludes with recommendations to enhance mediation and legal procedures for effectively resolving land disputes in bankruptcy cases, ensuring a fair resolution for all stakeholders involved.

Keywords : Bankruptcy Reform, Business Continuity, Curator Role, Debt Restructuring.

INTRODUCTION

Bankruptcy legal reform involves initiatives to amend and enhance the bankruptcy process in line with relevant laws and regulations. In the context of resolving PKPU (Postponement of Debt Payment Obligation) cases, the implementation of the business continuity principle enables debtors to restructure their debts, leading to a peaceful settlement and resolution of the debt dispute between the involved parties. Properly applying this principle in bankruptcy cases positively impacts the debtor company's economic value, as assets are likely to retain or even increase in value compared to companies that do not follow this approach. Enhancing (Irianto, 2015) the economic value of the debtor company benefits both the debtor and creditors, both directly and indirectly¹. Financial challenges present significant issues for both developed and developing nations, as they can halt a company's operations, subsequently affecting the balance sheets of lending institutions. Such financial losses threaten the smooth functioning of economic activities and the stability of the financial system. Factors such as corporate governance, ownership structure, and ownership concentration were key contributors to the company (Rajan, 1997) failures during the 1997 Asian financial crisis².

Governments worldwide recognize the importance of enhancing insolvency procedures, especially during financial and economic crises. Following the 1997–1998 financial and economic crises, many Asian countries have focused on improving and institutionalizing (Fair, 2001) both formal and informal processes for rescuing distressed businesses³. While some nations have prioritized enhancing the rescue process, they have paid less attention to refining the liquidation process in line with existing regulations. Financial distress signals that a company is nearing insolvency, which can have widespread negative effects on society, prompting policymakers to rethink insolvency prediction and its underlying causes. Early prediction of financial distress can help corporate stakeholders anticipate potential future losses (Zhou, 2023)⁴. Global crises, such as the 2008 financial crisis and the COVID-19 pandemic, have compelled even the most powerful international companies to closely monitor their financial health (Woodlock et al., 2014)⁵. This evolving environment necessitates reforms and more precise prediction methods for assessing the financial stability of (Brygala, 2022) companies⁶, particularly small and medium enterprises, which typically have fewer financial (Ciampi et al., 2021) resources⁷. This study explores the role of curators in completing the bankruptcy process and minimizing conflicts during bankruptcy in accordance with relevant regulations.

LITERATURE REVIEW

Bankruptcy has emerged as a popular tool for resolving litigation claims against insolvent firms. Academics have greeted this development with skepticism and concern, arguing that many large firms turn to bankruptcy to reduce expected payouts at the expense of plaintiffs who (Lindsey, 2022) have been harmed by corporate misconduct⁸. Bankruptcy has received considerable attention in the legal, economic, and financial literatures (Hotchkiss, 1995) for decades as an important subject of study⁹. The literature examines the choice between private and court-supervised restructuring, and how firms are steered between bankruptcy liquidation and reorganization. The literature also examines the factors that influence post-bankruptcy firm survival. Frictions stemming from information asymmetry, conflicts of interest, and perverse incentives from trustees or judges can increase the direct and indirect costs of bankruptcy. A recent study found that information asymmetry and conflicts of interest lead to screening errors and excessive delays¹⁰. Researchers have found that many managers sell assets without creditor approval, to the detriment of (Dou et al., 2020) creditors¹¹. This study contributes to how the bankruptcy process occurs on conflicted land and the role and art of the curator to complete his duties and responsibilities (Antill, 2020) in accordance with applicable provisions and laws¹².

According to James¹³, (James, 2016), companies can strategically utilize restructuring procedures to preserve asset value for stakeholders and mitigate performance decline by addressing competitors' advantages. By maintaining the company's value, conflicts of interest between creditors and other stakeholders can be minimized (Blazy et al., 2018)¹⁴. noted that the redressement judiciaire procedure offers substantial asset protection (82%), similar to that provided by judicial liquidation (91%). Moreover, restructuring is often a more cost-effective solution for shareholders and creditors to manage financial difficulties. Bankruptcy poses a significant challenge for companies due to its detrimental social and financial impacts (Wu, 2010)¹⁵. It is an inseparable phenomenon (Pisula, 2020) from the modern economy¹⁶. The increase in company bankruptcies can have adverse effects, particularly on economic development at both regional and national levels. Pasternak-Malicka emphasized (Pasternak-Malicka, 2021) that economic activities are often fraught with uncertainties and risks that

business operators may not easily identify¹⁷. Failing to recognize a crisis (Hart, 2000) within an organization or adopting an ineffective strategy can precipitate a severe crisis, potentially leading to bankruptcy¹⁸. Bankruptcy laws are crucial for the efficient functioning of a modern economy, enabling the appropriate allocation of capital by distinguishing between viable companies and those better suited for liquidation. In Indonesia, the current applicable law is Law No. 37 of 2004, which comprehensively addresses bankruptcy issues.

Various studies have highlighted the positive aspects of business groups, particularly how they can leverage internal capital markets and reallocate resources among (Riyanto et al., 2008) group companies to address challenges in accessing external financing, especially in developing economies (Stein, 1997)¹⁹. This internal financing advantage can be critical when affiliated companies face financial difficulties and limited access to external funds²⁰. Bankruptcy is closely linked to risk, with risk perception serving as the foundation for bankruptcy prediction studies and playing a crucial role in business decision-making. Risk is defined as the uncertainty inherent in business activities, such as unpredictability regarding future events that could result in financial loss, reputational harm, operational disruptions, or other negative outcomes²¹. The impact of risk on organizational failure is substantial (Kaplan et al., 2012), and both risk management and perception are vital to maintaining an organization's financial health and operational (Mikes, 2009) continuity²². Commonly, risks are categorized into financial risk, credit risk, strategic risk, and management risk, and these categories are often employed in analysis.

Jha et al²³ conducted a study focusing solely on the role of public trust in bankruptcy. For researchers examining the broader influence of culture on bankruptcy efficiency, it's important to consider various cultural factors that significantly impact both the incidence of bankruptcy in business institutions and the level of public trust in these institutions (Jha et al., 2024). These factors collectively affect bankruptcy outcomes. Additionally, employee bankruptcy costs influence a company's capital structure decisions by affecting union bargaining power. Research using a design based on major bankruptcy reform differences specifically (Haltfold et al., 2024), reforms that increase personal bankruptcy costs reveals that such reforms generally reduce union bargaining power²⁴. This, in turn, leads to a decrease in the financial leverage of unionized firms compared to their non-unionized counterparts.

METHODOLOGY RESEARCH

The formal jurisprudence approach and the statute approach are two primary methods used to analyse and comprehend the law. The formal jurisprudence approach emphasizes the examination of existing court rulings and their role in shaping and interpreting the law. Conversely, the statute or normative approach centres on statutory texts and relevant legal documents. This method prioritizes the analysis of legal norms found in laws, regulations, and other official provisions. Research employing this approach aims to systematically understand the meaning, purpose, and application of these legal norms. It involves interpreting statutory texts, identifying the legal principles they contain, and exploring how these norms can be applied in various contexts.

RESULT & DISCUSSION

Payment Obligations Law (Law No. 37 of 2004) and its related regulations. Such land disputes may involve claims from various parties, including creditors, debtors, or third parties.

1. Bankruptcy assets encompass all assets owned by the debtor at the time of bankruptcy declaration. For land disputes, the initial step is to ascertain whether the land in question is part of the bankruptcy estate. The curator must verify if the land is indeed an asset that can be seized or if there is a valid claim by another party²⁵.
2. The curator is responsible for verifying the legal status of the land, including the land certificate and ownership rights. In cases where there is a claim or dispute over the land, the curator must review the relevant documentation and may seek assistance from government agencies such as the National Land Agency (BPN)²⁶.
3. The curator can facilitate mediation between parties claiming rights to the land. If negotiations do not lead to a resolution, the matter may be brought to court for a binding decision²⁷.
4. If the land is confirmed as part of the bankruptcy estate, the curator may proceed with the sale of the land. The sale proceeds must be distributed to creditors according to their claim priorities, and the process must be conducted transparently and in accordance with established procedures²⁸.

The curator plays a crucial role in minimizing conflicts and ensuring that the settlement of bankruptcy assets is conducted fairly and in compliance with the law. The curator's actions should consider the interests of all parties involved in the bankruptcy process.

1. The curator must maintain open communication with all stakeholders, including creditors, debtors, and third parties. This helps reduce tensions and ensures that all parties are informed about the bankruptcy process and the status of the assets²⁹.
2. The curator must prepare and verify an accurate list of receivables and liabilities. This is essential for determining payment priorities and preventing disputes over claims³⁰.
3. Transparency and accountability are key to maintaining the trust of all parties. The curator must ensure that all transactions and decisions related to the bankruptcy estate are properly recorded and accountable³¹.
4. In the event of disputes between stakeholders, the curator can employ mediation or arbitration to resolve them, avoiding lengthy and costly litigation³².
5. The entire process must comply with applicable legal provisions. The curator must ensure that all actions are in accordance with existing regulations and laws³³.
6. By following this approach, the curator can minimize conflicts and ensure that the settlement of the bankruptcy estate is conducted in a fair and legal manner.

CONCLUSION & RECOMMENDATION

In accordance with Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (the Bankruptcy Law), once a company's bankruptcy status is confirmed, the court-appointed curator has a crucial role in identifying, collecting, and inventorying all of the company's assets, including any disputed land. The curator must also verify the ownership and legal status of the land. Disputes over land ownership often involve third parties, such as claimants or parties with property rights. These disputes can be resolved through various means, such as mediation, arbitration, or litigation. If a land dispute remains unresolved when the bankruptcy process begins, the court or curator must assess how the dispute will affect the distribution of assets. According to the Bankruptcy Law, once the assets are identified, the curator is responsible for selling them to pay off the company's debts. However, if the disputed land cannot be sold immediately due to unresolved issues, the court may temporarily pause the bankruptcy process or arrange for the sale in a way that suits the circumstances. It's important that the legal priority in settling the company's debts is maintained, and the unresolved land disputes could impact the timing and method of debt repayment. The bankruptcy process can be concluded only after all disputes are resolved, assets are collected, and the distribution is carried out according to the law. The principle of

justice is essential, requiring the curator to act impartially, considering all claims and interests in accordance with the law. Additionally, the curator must adhere to all relevant legal regulations, including the Bankruptcy Law and PKPU, to uphold the integrity and legitimacy of the bankruptcy process. Efficient and effective asset management by the curator, which takes into account market value and recovery potential, is vital to maximizing returns for all stakeholders. If conflicts arise, the curator is expected to act as a mediator or facilitator in negotiations to find a mutually beneficial resolution, aiming to resolve disputes amicably. By following these steps, the curator can minimize the risk of conflict and ensure that the settlement of PT. PWS, Tbk's bankrupt estate complies with the law.

The initial step is to facilitate mediation among the involved parties such as the company, creditors, and landowners to reach a mutually agreeable solution before escalating the matter to court. It's crucial to engage local legal and government authorities to ensure the dispute resolution adheres to relevant laws and regulations, including Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations. If mediation does not resolve the issue, disputes over land can be adjudicated by the competent commercial court, ensuring fair protection of the rights of creditors and landowners. Maintaining transparency and clarity in land ownership documentation and verifying claims are essential to avoid further issues. The curator should conduct regular meetings with creditors and shareholders to update them on the progress of the bankruptcy estate settlement and allow them to express their opinions or objections. Additionally, the curator must adhere to the guidelines set out in Law No. 37 of 2004, particularly concerning the prioritization of debt payments and distribution of bankrupt assets, to minimize potential conflicts. By adopting a transparent and communicative approach in line with the law, curators can help ease tensions among stakeholders and ensure a smooth settlement of bankrupt assets.

SOURCE OF LAWS AND REGULATIONS

- 1) Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law)
- 2) Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA)
- 3) Law Number 40 of 2007 concerning Limited Liability Companies (UU PT)
- 4) Civil Code (KUH Perdata); Article 1132 of the Civil Code (KUH Perdata)
- 5) Basic Agrarian Principles (UUPA)
- 6) Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution
- 7) Regulation of the Supreme Court of the Republic of Indonesia.

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