

# Revitalization of Curator Authority to Public Companies Declared Bankruptcy



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## KEY WORDS

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## ABSTRACT

This article discusses a public company declared bankrupt by the Commercial Court due to the rejection of its proposed settlement plan in the process of Suspension of Debt Payment Obligations (PKPU). As a result, the public company is declared bankrupt and is in a state of insolvency. However, the Financial Services Authority (OJK) continues to impose obligations on the bankrupt public company, such as adhering to the principle of transparency and submitting annual reports and periodic financial reports, which are not regulated in Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK & PKPU). According to UUK & PKPU, the Curator is only accountable to the Supervisory Judge and not to OJK. Furthermore, OJK has, in some cases, granted exemptions to certain bankrupt public companies from these obligations. The objective of this research is to provide legal certainty regarding whether the Curator of a bankrupt public company in a state of insolvency is still required to perform specific tasks mandated by OJK, and whether failure to carry out these duties can subject the bankrupt public company to administrative sanctions.

## 1. INTRODUCTION

When a loan is provided by a creditor to a debtor, the reality is that the loan is not always fully repaid on time. Sometimes only a portion is repaid, it is returned after the deadline, or in some cases, not repaid at all. Often, a debtor has multiple creditors with unpaid loans. In such cases, bankruptcy serves as a collective effort to ensure that all creditors receive fair and orderly payments based on the amount owed, preventing competition among them. In principle, bankruptcy involves the curator seizing all of the debtor's assets, as determined by the Commercial Court's ruling. Debt

payments to creditors are made according to the priority order set by law to settle the debtor's obligations.

One key party in bankruptcy is the curator. The role, duties, and responsibilities of the curator are crucial, as they are given wide authority by law to manage and settle the bankrupt estate. According to Article 24(1) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (UUK & PKPU), the debtor legally loses the right to manage their assets from the date of the bankruptcy ruling.

The curator's primary role is to prevent



individual asset seizures by creditors and instead implement collective asset seizures, so the debtor's assets can be fairly distributed to creditors. The curator's task is vital, as they must maximize the value of the bankrupt estate to ensure creditors receive as much payment as possible, as stipulated in Article 69(1) of UUK & PKPU.

Challenges faced by curators are complex and require expertise in various fields, such as law, finance, taxes, and corporate assets. Additionally, curators may face legal action from creditors when debtors do not voluntarily comply with court rulings. Legal protection for curators is not clearly regulated in UUK & PKPU, as curators are personally responsible for any negligence or mistakes that result in losses to the bankrupt estate, as per Article 72 of UUK & PKPU.

A particular issue arises when a public company is declared bankrupt. Public companies are regulated and supervised by the Financial Services Authority (OJK), which requires public companies to submit financial reports and material information disclosures. However, when a public company is declared bankrupt, the curator lacks clear legal grounds in UUK & PKPU to perform these OJK-mandated tasks.

## 2. METHOD

This study uses a quantitative approach as the basic approach, although it emphasizes more on the normative aspect, but to answer the questions in this study the data is divided into two types, namely normative data (through a normative approach) and empirical data (through an empirical approach). This study uses two types of methods, namely: 1) Library Research Method ( Library Research ) to help study the problems faced by comparing

bibliographic books or literature with data obtained from field research, namely literature related to bankruptcy and public company law issues and existing laws and regulations, so that the formulation of research problems can be found to be easy to solve; and 2) Empirical Research Method, carried out using primary data collected from field research and primary data in the form of experiences in carrying out duties as Curator and interviews with other curator colleagues in carrying out duties as Curators in public companies. After the required data has been collected, the data will be analyzed to produce descriptive analytical data. Next, the author tries to analyze all the information, both the information obtained in the interview process and all related literature and laws and regulations.

## 3. RESULT AND DISCUSSION

### Duties and Responsibilities of a Curator in Bankruptcy S General Events

The Curator is authorized to manage the debtor's assets following a bankruptcy decision, with the debtor losing control of their assets from the date of the decision, even if legal action is taken (Article 16 UUK & PKPU). The Curator's main task, as stated in Article 69(1) UUK & PKPU, is to manage and settle the bankrupt assets. To secure these assets, the Curator may request asset sealing (Article 99), record assets (Article 100), and compile a list of receivables (Article 102). If beneficial, the Curator can continue the debtor's business (Article 104).

The Curator is supervised by a Supervisory Judge and must submit a report every three months on the condition of the assets and task implementation, as well as an accountability report after the bankruptcy ends (Article 74 and 202). However, UUK & PKPU does not clearly outline sanctions for failing to submit these reports.



Although the UUK & PKPU provide minimal detailed regulations on sanctions for each task neglected by the Curator, the UUK & PKPU clearly stipulate that the Curator is personally responsible for any errors or negligence in carrying out his/her duties as stipulated in the UUK & PKPU that cause losses to the bankrupt estate (Article 72 of the UUK & PKPU). This is because with full authority on the Curator to manage and settle the bankrupt estate, his/her responsibility is unlimited. It is the Curator's responsibility to bear all losses suffered; all losses arising from carelessness or lack of professionalism on the part of the Curator are the Curator's own responsibility and cannot be claimed against the bankrupt estate.

The legal ratio of the Curator's responsibility for his/her errors or negligence which causes losses to the bankrupt's assets is as follows:

1. The curator is the party that manages and settles the bankrupt's assets. The Commercial Court has imposed legal obligations on the Curator, which are regulated in the UUK & PKPU. These obligations include the management and settlement of the bankrupt debtor's assets, which if the Curator fails to fulfill, then he must be responsible for the losses incurred. In this case, the law limits the Curator's authority to prevent him from acting arbitrarily;
2. There is legal uncertainty for creditors regarding the payment of their receivables. Payment of debts from bankrupt assets whose management and settlement are handled by the Curator, there is uncertainty for creditors regarding its implementation. If the Curator fails or is negligent in carrying out the management and settlement of the bankrupt assets, then creditors may face legal uncertainty in collecting receivables that should be paid from the bankrupt assets, which is the Curator's responsibility to manage;
3. There are provisions in the UUK & PKPU regarding the responsibility of the Curator.

If the negligence or error of the Curator (assuming there is an element of intent) has caused losses to anyone who hopes to receive settlement from the assets of the bankrupt debtor, then the Curator can be sued and must be responsible as a Curator and personally. Article 77 of the UUK & PKPU also contains provisions regarding this matter. The Curator can even face criminal charges for his actions;

4. There is abuse of authority by the Curator. Curators are generally authorized by the UUK & PKPU to handle the process of managing and settling bankrupt assets. Sometimes there is abuse of authority by the Curator in its implementation, resulting in losses for the bankrupt assets and therefore a lawsuit or objection can be filed against the Curator's detrimental actions.

### **Public Company Obligations for Reporting and Disclosure of Information**

Public companies, as defined in Law No. 40 of 2007 and regulated by capital market laws, must meet specific criteria regarding shareholders and capital. These companies, known as Issuers, have obligations to submit reports under the Principle of Transparency, as stipulated in Law No. 8 of 1995 on Capital Markets. Issuers must provide timely material information that could affect investor decisions.

The Financial Services Authority (OJK) regulates these requirements through POJK 31/POJK.04/2015, mandating that material information be submitted to the OJK and publicly announced within two working days. Additionally, public companies are required to submit annual and periodic financial reports, including audited annual financial statements, as regulated in POJK 29/POJK.04/2016 and POJK 14/POJK.04/2022. The submission and transparency obligations aim to ensure public trust and proper market functioning.

The audited Periodic Financial Report must contain at least the following matters, as per



Article 21 paragraph (1) POJK 14/POJK.04/2022:

1. Statement of financial position;
2. Statement of profit or loss and other comprehensive income;
3. Cash flow report; and
4. Opinion from a public accountant registered with the OJK who audited the Financial Statements.

Public companies must hold an Annual General Meeting of Shareholders (GMS) within six months of the last financial year, as per POJK 15/POJK.04/2020. This differs from private companies, with public companies required to notify shareholders at least 21 days prior to the GMS. Additionally, public companies must comply with Indonesia Stock Exchange (IDX) regulations, submitting reports through an electronic system and participating in Public Exposures to ensure transparency.

Transparency is essential in the capital market, as public shares are widely traded. The capital market sector emphasizes good corporate governance, particularly transparency, to protect the public and ensure fair and orderly market operations.

### **Consequences of Bankruptcy Decisions for Public Companies**

According to Article 1 of the UUK & PKPU, a debtor is defined as an individual with a debt arising from an agreement or law that can be collected in court. A bankrupt debtor specifically refers to one declared bankrupt by a Commercial Court. The key legal consequence of a bankruptcy decision is that the debtor loses the right to manage and control their assets, which are transferred to a Curator. From the date of bankruptcy, any obligations incurred by the debtor cannot be settled from the bankrupt estate unless they benefit it. Moreover, legal actions taken by the debtor prior to bankruptcy can be annulled if they harm the estate.

The UUK & PKPU does not explicitly differentiate between the bankruptcy of individuals and legal entities. For a bankrupt company, the declaration of bankruptcy by the Commercial Court does not result in its immediate dissolution, as indicated in Article 122. The responsibility to attend receivables verification meetings falls to the company's management. Thus, the legal entity continues to exist, and it may even operate under a going concern if the Curator believes it can increase the bankrupt assets.

More firmly regulated in Article 142 paragraph (1) letters d and e of the UUPT is that the dissolution of a company occurs for the following reasons, among others:

1. With the revocation of bankruptcy based on a Commercial Court Decision that has permanent legal force, the company's bankrupt assets are not sufficient to pay bankruptcy costs;
2. Because the bankrupt assets of a company that has been declared bankrupt are in a state of insolvency as regulated in the UUK & PKPU.

The provisions of Article 142 paragraph (1) letters d and e clarify that even when a company is declared bankrupt, it does not dissolve immediately but continues to exist until the bankruptcy process is complete. The management of the company, concerning its bankrupt assets, is transferred to a Curator.

Public companies can also be declared bankrupt, acquiring the status of a bankrupt debtor, but the implications for their public status are unclear, as there is no explicit regulation regarding the loss of public status upon bankruptcy. This raises questions about the rights of shareholders and the enforcement of special obligations mandated by capital market regulations, including the Transparency Principle. Despite being declared bankrupt, the company remains responsible for these obligations.

The transfer of management responsibilities





from the Board of Directors to the Curator creates confusion, as the Capital Market Law and the UUK & PKPU do not clearly assign these obligations to the Curator. While the UUK & PKPU outlines the Curator's duties, it does not require them to fulfill obligations specific to public companies as determined by the OJK.

Moreover, the Curator often faces challenges in meeting these obligations, such as preparing Annual and Periodic Financial Reports, due to the lack of cooperation from the bankrupt company's management. This situation forces the Curator to work with limited documentation and information, complicating compliance with transparency requirements.

One example is PT. Grand Kartech, Tbk which has been declared bankrupt since June 28, 2021. Since the bankruptcy declaration decision, the Directors of PT. Grand Kartech, Tbk have legally lost their rights to manage the company's assets, where these rights and authorities are transferred to the Curator Team of PT. Grand Kartech, Tbk. However, because the company still exists and has not been dissolved, the obligations given by the OJK as an implementation of the Transparency Principle should also still apply to PT. Grand Kartech, Tbk. In addition, if it is not carried out, the sanctions stipulated for negligence in carrying out these obligations are also still valid and can be imposed on the public company, which in the end can harm the bankrupt's assets. The sanctions imposed include:

1. Administrative sanctions for not submitting and announcing Material Information or Facts as regulated in Article 9 POJK 31/POJK.04/2015;
2. Administrative sanctions for not preparing an Annual Report as regulated in Article 19 POJK 29/POJK.04/2016;
3. Administrative sanctions for not preparing Periodic Financial Reports as stipulated in Article 25 of POJK 14/POJK.04/2022.

Even since 2021, OJK has increased the fines for

late submission of reports or announcements as stipulated in the Financial Services Authority Regulation Number 3/POJK.04/2021 of 2021 concerning the Implementation of Activities in the Capital Market Sector as a deterrent effect for public companies that are negligent in carrying out their obligations. Therefore, the obligation of a public company that has been declared bankrupt to submit Material Information and Facts and to make Annual Reports and Periodic Financial Reports cannot be said to be immediately lost, because the public company itself still exists and these obligations remain attached to it, which if not carried out, can actually result in sanctions being imposed and harm the bankrupt's assets.

### **Obligations and Authorities of Directors in Bankruptcy of Public Companies**

Similar to the status of a company that is still alive and has not simply dissolved, after a public company is declared bankrupt, the authority of the Board of Directors actually remains. Bankruptcy only covers its assets in the form of assets and liabilities, while the company remains capable of carrying out legal acts. The company only cannot manage and transfer and bind its assets included in the bankruptcy estate for debts after the company is declared bankrupt, because this authority has been exclusively held by the Curator. When viewed from the provisions in several articles in the UUK & PKPU, there are a number of obligations of the Board of Directors that still exist after the company is declared bankrupt by the Commercial Court Decision, namely:

1. Obligation of the Board of Directors to appear before the Supervisory Judge;
2. Obligation of the Board of Directors to appear before the Curator;
3. The obligation of the Board of Directors to attend the First Creditors' Meeting to explain matters relating to bankruptcy



- and to be accountable for the causes of bankruptcy, the condition of the bankrupt's assets and all other information requested by the Supervisory Judge, Curator or requested by creditors;
4. Obligation of the Board of Directors to attend the Accounts Receivable Verification Meeting;
  5. The obligation of the Board of Directors is not to leave their residence without the permission of the Supervising Judge

The Board of Directors also still has rights, such as the right to file a cassation appeal or a judicial review of the bankruptcy decision. In addition, other rights are still attached to the Board of Directors as long as they are not related to the management of the bankrupt estate.

### **Obligations of Curator in Bankruptcy of Public Company**

Regarding the obligation to submit Material Information and Facts, make Annual Reports and make Periodic Financial Reports, there are still regulations that explicitly regulate it. Although as above, the Board of Directors still has obligations and rights attached to it as the company's management, regarding the obligation to implement the Transparency Principle so far it has not been ascertained whether it is included in the category related to bankrupt assets or not, and therefore it is not clear whether the obligation is still the obligation of the Board of Directors or has been transferred to the Curator.

There is an opinion that states that the Curator is not required to make an Annual Report or Periodic Financial Report required by the OJK for public companies because the Curator is not responsible to the OJK, but to the Supervisory Judge. In the UUK & PKPU itself, there is no regulation regarding the reporting obligation

from the Curator to the Supervisory Judge other than the report on the implementation of the Curator's duties which is submitted every 3 (three) months. However, there is also an opinion that states that the obligation to make an Annual Report and Periodic Financial Report should still be carried out by the Curator because the company is still alive and has not been dissolved, so that by law the obligations required by the OJK must still be carried out. The 2 main reasons that support this opinion are:

1. Since the legal entity status of a public company that has been declared bankrupt remains, the obligation exists as long as the company has not been dissolved as a legal entity, or at least before the bankrupt debtor is declared to have entered the insolvency stage. Referring to the provisions of Article 178 of the UUK & PKPU, insolvency occurs by law if: a) If a Peace Plan is not offered in the receivables verification meeting; b) The Peace Plan offered is not accepted by the creditors; or c) The Approval of the Peace (Homologation) is rejected by the Court. However, in simple terms, insolvency is basically a situation where the bankrupt debtor is in a state where he is truly unable to pay his debts that have matured and can be collected. A bankrupt debtor who has entered the insolvency stage means that he has entered the settlement stage to liquidate all his assets and distribute them to the creditors. Thus, it is certain that the Curator no longer has to carry out its obligations as a public company to submit Annual Reports and Periodic Financial Reports because the bankrupt debtor is no longer operating and the administrative sanctions from the OJK no longer have any effect because all assets belonging to the bankrupt debtor will have been sold and distributed to creditors;
2. Since the Curator's duties and authorities are to manage, maintain and maximize the



bankrupt's assets, then the logical consequence is that the Curator's duties are also to make Annual Reports and Periodic Financial Reports to the OJK. This is by considering that the debtor's bankruptcy could be canceled by a cassation decision or a judicial review decision, in which case, if during the bankruptcy period the Curator does not carry out the reporting and Information Disclosure obligations, it is possible that the public company whose status has been raised to bankruptcy will be subject to sanctions by the OJK for late reporting.

On the other hand, groups that contradict the opinion above, adhere to the principle of "lex specialist derogatory legion generali", where UUK & PKPU are specific laws, while the provisions of UUPT are general provisions, so that the obligation has ended with the bankruptcy of the public company. This is supported in real terms by the OJK Announcement Number PENG-2/PM. 21/2024 concerning the Determination of Issuers or Public Companies Exempted from Reporting and Announcement Obligations. In the announcement, OJK applies an exception for a number of public companies that have been declared bankrupt, one of which is PT. Grand Kartech, Tbk, from the Reporting and Announcement obligations because the companies- The company has been declared bankrupt based on a court decision that has permanent legal force.

The function of bankruptcy law in Indonesia and the background to the formation of UUK & PKPU is the development where bankruptcy is not only a tool to settle debtor assets that are insufficient to pay all debts, but also functions as a debt collection mechanism. UUK & PKPU was born driven by the need for the business world

for legal instruments in resolving debt problems that are fair, fast, open and effective. The legal ratio of the UUK & PKPU is to regulate the continuity of the company and the rights and obligations of its management in a special situation, namely when the company falls into bankruptcy. Although according to the UUPT, the company is not dissolved when declared bankrupt so that the obligations are still attached to it, according to the UUK & PKPU, the company has entered a special condition where the focus has shifted to the settlement and payment of debts. Therefore, in this case the principle of "lex specialist derogatory legion generali" by fulfilling the principles of using the following principles:

1. The two provisions being debated in this case have the same degree, namely that they are both at the level of laws (UUPT and UUK & PKPU);
2. The two legal provisions above are in the same regime, namely they are still included in the civil law environment; and
3. The provisions contained in the lex generalis remain applicable except as specifically regulated in the lex specialist.

Based on the principles above, in relation to the problem of the obligation of public companies that have been declared bankrupt to submit Information Disclosure, then between the UUK & PKPU and the UUPT, the lex specialis is UUK & PKPU, while lex generalis is UUPT. Thus, the provisions should apply to the conditions of UUK & PKPU that public companies that have been declared bankrupt based on a Commercial Court Decision are included in special circumstances, where the Disclosure of Information obligations previously attached to them are terminated.

However, it should still be noted that the exceptions to the reporting obligations for public



companies as above, only apply to certain companies and are not applied generally in a permanent regulation to all public companies declared bankrupt. This means that its application is on a case-by-case basis, seen from the circumstances and conditions of the company concerned, and is applied through a Decision of the OJK Board of Commissioners Members announced through an OJK Announcement, not through an OJK Regulation or the like. This case-by-case application can also be understood by looking at whether the bankruptcy was preceded by a PKPU first or not, because:

1. If the bankruptcy does not originate from PKPU, then the bankrupt debtor does not immediately enter the insolvency stage, so there is still the possibility of continuing business activities (Going Bankruptcy). Concern) by the Curator, where the Annual Report and Periodic Financial Reports may be considered still necessary;
2. If the bankruptcy comes from PKPU, it means that the bankrupt debtor immediately enters the insolvency stage, which means that the bankruptcy assets are immediately settled/sold and then the proceeds are distributed to the creditors. In this case, there is no longer any urgency to make an Annual Report and Periodic Financial Report.

#### 4. CONCLUSION

The debtor's right to manage its assets after bankruptcy is lost and transferred to the Curator. Although the Curator is responsible for maximizing the bankruptcy assets, the Curator is not explicitly required by law to fulfill the specific duties of the OJK, such as financial reporting. The Curator faces various challenges in carrying out its duties, such as limited access to company data, as well as the issue of the extent of the Curator's responsibility in carrying out the

obligations of public companies, including Information Disclosure.

So far there is still debate about whether the Curator must still fulfill the reporting obligations required by the OJK or whether the Curator should be exempted from these duties because a public company that has been declared bankrupt should not be equated with a public company in normal circumstances. Currently, clearer legal provisions are still needed regarding the Curator's obligations.

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