

Law Enforcement Against Criminal Offense Committed by Curator in Their Independence in Managing Debtor's Assets During Suspension of Debt Payment Obligations (PKPU) and Bankruptcy Proceedings

Khotib Dg Usman¹, Ramli Umar²

¹² Universitas Cokroamainoto Yogyakarta, Indonesia.

usmankhotib@gmail.com

HIGHLIGHTS

- Misapplication of the *lex specialis* principle in bankruptcy-related crimes.
- Article 234 functions as a normative safeguard ensuring legal certainty.
- Criminal liability under the Bankruptcy Law operates independently from the KUHP.

ARTICLE INFO

Article History:

Received 25/02/2025

Received in revised form
26/02/2025

Available online 26/06/2025

Keywords:

Law Enforcement, Criminal
Procedure, Curator,
Independence, Debtor, PKPU,
Bankruptcy.

ABSTRACT

The absence of specific criminal law provisions within the Bankruptcy Law and Suspension of Debt Payment Obligations (PKPU) Law has been perceived as leading to the non-application of the principle that special laws (lex specialis) override general laws (lex generalis). The interpretation that the general provisions of the Indonesian Criminal Code (KUHP) should prevail in such cases is considered erroneous. In addressing criminal acts committed by parties involved in bankruptcy and PKPU, the establishment of general provisions aims to prevent a legal vacuum and ensure legal certainty. Accordingly, Article 234 and paragraph (2) of Article 234 of the Bankruptcy Law, particularly the phrase "may be subject to criminal sanctions," serve as both a normative safeguard and a balancing mechanism. This is particularly relevant given the lack of curators independence in law enforcement and the need for preventive measures to ensure compliance in PKPU proceedings. In other words, the Bankruptcy and Suspension of Debt Payment Obligations Law (UU PUT) does not merely regulate the procedural aspects of liability claims in cases where curators commit errors or negligence in managing and liquidating the bankrupt debtor's assets. Therefore, the provisions on criminal liability as stipulated in Articles 72, 73, and 234 of the Bankruptcy and PKPU Law constitute a legal framework applicable in general to criminal liability, including the imposition of criminal sanctions on those responsible for financial losses suffered by bankrupt individuals. This is based on the principle of independence. Consequently, criminal sanctions and liability under these provisions may be applied separately from the elements contained in the KUHP, and cases should be adjudicated in accordance with prevailing criminal procedural law under the KUHP.



A. INTRODUCTION

In the modern legal landscape, the scope of criminal acts has significantly expanded beyond traditional criminal law, intersecting with international, administrative, civil, and even bankruptcy law. Currently, Indonesia enforces Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU), as published in the State Gazette of the Republic of Indonesia Year 2004 Number 131 and Supplement to the State Gazette Number 4443. Prior to the enactment of this law, bankruptcy regulations were governed under the *Faillissements-Verordening* (Stbl. 1905 No. 217 jo. Stbl. 1906 No. 348), which was later revised through Government Regulation in Lieu of Law (PERPU) Number 1 of 1998. This PERPU introduced substantial amendments and refinements to the existing legal framework, as set forth in State Gazette Number 97 of 1998 and its Supplement Number 3761.

Although Law Number 37 of 2004 includes criminal sanctions, it does not clearly define the criteria under which a curator may be deemed lacking in independence. The underlying rationale for criminal sanctions is to uphold the curator's adherence to core principles during the management and settlement of bankruptcy assets. Nonetheless, in practice, instances of curator bias and deviation from impartiality continue to occur, complicating proceedings that should otherwise be straightforward. The inclusion of criminal provisions, instead of serving as a deterrent, has in some cases added layers of complexity to the bankruptcy process.

This issue is exemplified in the Surabaya District Court Decision Number 1827/Pid.B/2022/PN Sby dated May 24, 2023¹, in which curators Rochmat Herdito and Wahid Budiman were each sentenced to two years' imprisonment for falsifying the fixed list of creditors in the bankruptcy case of PT Alam Galaxy. The panel of judges found them guilty of violating Article 400 point 2 in conjunction with Article 55 paragraph (1) point 1 and Article

¹ Redaksi. "Kurator Kepailitan PT Alam Galaxy Divonis 2 Tahun, Terbukti Melanggar Pasal 400 angka 2 KUHP." Beritalima, 24 Mei 2023, <https://beritalima.com/kurator-kepailitan-pt->

263 of the Indonesian Criminal Code.² The case also involved a loan agreement, making the analysis of Article 1320 of the Civil Code regarding the validity requirements of an agreement highly relevant, as the legality of the agreement is determined by its compliance with these essential elements.

The inability of a debtor to fulfill debt obligations whether due to external (objective) constraints or internal (subjective) factors combined with the absence of good faith, eliminates the possibility of debt settlement through primary means (first way out). In such circumstances, bankruptcy serves as a secondary recourse (*ultimum remedium*) to ensure creditor protection, as recognized under the Bankruptcy Law. If disputes arise between the curator and either creditor or debtor, and the supervisory judge fails to resolve them, any concerned party may file a lawsuit over the contested debt amount through the *renvoi* procedure. This mechanism illustrates how unresolved civil disputes in bankruptcy proceedings can escalate into criminal proceedings, particularly in cases involving alleged misconduct by the curator in managing the debtor's assets during PKPU and bankruptcy.³

B. RESEARCH METHODS

This research employs a normative juridical method by examining legal norms, doctrines, and principles through a conceptual approach. It explores key constructs such as bankruptcy, the suspension of debt payment obligations (PKPU), justice, and criminal liability. The study further adopts a statutory approach to analyze and resolve legal disputes or conflicting interests between creditors and debtors. Data collection is conducted qualitatively, focusing on the identification of legal norms and doctrines relevant to the issues at hand. This method underscores that law is not solely

[alam-galaxy-divonis-2-tahun-terbukti-melanggar-pasal-400-angka-2-KUHP/#google_vignette](#). Accessed on August 22, 2024.

² Billy Dicko Stephanus Harefa. "Kekuatan Hukum Perjanjian Lisan Apabila Terjadi Wanprestasi (Studi Putusan Pengadilan Negeri Yogyakarta Nomor 44/PDT.G/2015/PN.Yyk)." *Jurnal Privat Law*, vol. 4, no. 2, Juli-Desember 2016.

³ Farida Kusuma. "Hak Jawab Tim Kurator PT Alam Galaxy Bantah Soal Mafia Kepailitan dan PKPU di Pengadilan Niaga." *Suara Surabaya*, 2024, <https://www.suarasurabaya.net/kelanakota/2024/hak-jawab-tim-kurator-pt-alam-galaxy-bantah-soal-mafia-kepailitan-dan-pkpu-di-pengadilan-niaga/>. Accessed on August 22, 2024.

prescriptive but also interpretative in nature, inherently linked to the principles of legal certainty and normative clarity.

C. RESULT AND DISCUSSION

Curator's Benchmark Said to Not Be Independent

A curator, by the nature of their professional responsibilities, is inherently accountable for any acts of negligence or misconduct, as expressly regulated under Article 234 paragraph (4) of the Bankruptcy and PKPU Law. In light of the aforementioned case involving two curators in Surabaya, this accountability must be analyzed through the lens of the principle of curator independence. This principle requires, foremost, a high level of intellectual competence, enabling the curator to exercise sound judgment and caution in decision-making. Furthermore, curators are expected to possess not only continuous legal expertise but also practical skills, and to uphold moral standards rooted in honesty, justice, and integrity—core values essential to maintaining professional credibility.⁴

It is essential to emphasize that the legal framework governing bankruptcy and debt repayment is designed to prevent the simultaneous and competing claims of multiple creditors over a debtor's assets. The law seeks to avoid a disorderly seizure of assets, particularly by secured creditors who may otherwise unilaterally liquidate collateral without regard to the debtor's broader interests. Additionally, the regulation aims to mitigate fraudulent practices committed by either creditors or debtors in the course of insolvency proceedings.

In other words, failure to uphold fairness in the curator's professional conduct—particularly within the structure and substance of bankruptcy and PKPU proceedings may result in unjust outcomes. This indicates a deviation from legal standards, irrespective of any additional ethical benchmarks set by professional associations. The conviction of the two curators by the Surabaya

⁴ Dedy Tri Hartono. "Perlindungan Hukum Kreditor Berdasarkan Undang-Undang Kepailitan." *Jurnal Ilmu Hukum Legal Opinion*, edisi I, vol. 4, 2016.

District Court serves as concrete evidence that such misconduct can lead to criminal liability, thereby underscoring the imperative for curators to exercise integrity and legal diligence in fulfilling their duties.

Accordingly, it requires no further affirmation that a curator may be held legally accountable when acts of negligence or misconduct are committed with intent or deliberate disregard, thereby fulfilling the element of culpability necessary to establish liability.⁵

The inclusion of criminal sanctions under Article 234 paragraph (2) reflects the firm and deliberate stance of bankruptcy law in mandating curator independence, particularly in avoiding conflicts of interest. This requirement aligns with the mandate of the Bankruptcy Law and the institutional structure of the Commercial Court. In my view, further specific regulation is unnecessary, as this obligation is already embedded within general principles of criminal law. These principles apply throughout both PKPU and bankruptcy proceedings, where the curator acts as a legal administrator mediating between the interests of debtors and creditors. While specific provisions may override general ones, such precedence must be substantiated by clear legal evidence.

Therefore, neither the Bankruptcy Law nor its explanatory sections can be considered erroneous in including provisions of criminal sanctions, both in terms of structure and substance. Excluding such provisions would inherently obscure the intent and integrity of the law itself. Hence, the absence of overly specific regulation regarding criminal sanctions reflects a proportionate and rational legislative approach. Nevertheless, according to Lawrence M. Friedman's theory of legal enforcement, the legal structure encompasses all legal institutions, including those responsible for drafting, implementing, and enforcing the law. The function of this structure is to produce relevant legal instruments and ensure their dissemination and internalization occur properly and justly. Aristotle himself proposed a theory of justice in both aspirational and corrective forms wherein every individual is entitled to equal

⁵ Sunarmi. *Hukum Kepailitan*. Jakarta: Softmedia, 2010.

rights that are proportionally distributed in economic matters, while corrective justice serves to rectify what is wrong in order to restore fairness.

In essence, the criminal prosecution of the two curators in the context of the PKPU and bankruptcy proceedings relates directly to the concept of justice, particularly distributive justice, as framed by Aristotle. Such justice is ideally embodied in the legal structure through the curator's role as a neutral intermediary between the conflicting legal interests of the debtor and the creditor, aiming to ensure that neither party suffers unjust loss in the course of business or commerce. This balance supports the continuation of both parties' economic activities on fair terms. Additionally, there exists a dimension of corrective justice addressing and rectifying institutional failures or wrongdoing within the structure of legal institutions, especially among law enforcement actors. The substance of the PKPU process is inherently aimed at reconciliation, whereby the debtor may fulfill their obligations either partially or in full. However, if the debtor fails to settle their debts despite submitting a settlement proposal, the court may ultimately issue a bankruptcy ruling.

In this regard, discourse on law is inherently connected to the concept of justice, as law devoid of justice leads to oppression and harm. Since the subject of law is inherently human, the essence of human relations lies in justice. Furthermore, discussions of law and justice should not be confined to formal structures alone, but must also be understood as ideals, expressions, and collective aspirations of society. Viewed from this perspective, the notion of independence is best understood as a process of identifying both the structural and substantive aspects of legal culture as it is practiced. In other words, legal culture encompasses not only legal awareness, but also the structures and substance that shape it. The question of a curator's lack of independence, although not explicitly regulated, must be evaluated through the lens of general principles that apply specifically in particular contexts. Thus, assessing a curator's lack of independence involves examining their conduct in performing their duties based on the principles of curatorial independence, honesty, and fairness. In this context, criminal law serves as

both a mechanism and a metric to assess whether the curator has fulfilled their responsibilities in accordance with these core principles.

Moreover, when a statute refers to provisions within criminal law, it must reflect consistency in the elements of the referenced norms, both in terms of legal structure and substance. This includes, for example, the alignment of evidentiary standards applicable in both criminal and civil proceedings, as illustrated in Article 184 paragraph (1) of the Indonesian Criminal Procedure Code (KUHP), which recognizes forms of evidence such as witness testimony, expert opinion, documentary evidence, defendant's statement, and circumstantial indicators.

In line with this, pursuant to Article 1866 of the Indonesian Civil Code (KUHPerdata), the hierarchy of admissible evidence places written documents at the highest level, followed by witness testimony, presumptions, confessions, and oaths. Written or documentary evidence is thus considered the primary and most authoritative form of proof in civil proceedings.

This necessity is exemplified by the case involving the two court-appointed curators who were ultimately subjected to criminal sanctions, as previously outlined in the background section of this research. The imposition of criminal liability upon these curators did not occur arbitrarily nor as a result of power dynamics, but rather followed an extensive evidentiary process. The conviction was rendered due to their proven lack of independence in carrying out their professional responsibilities, which contravened the foundational principles of curator independence namely, continuous scholarly competence, demonstrable professional expertise, and adherence to moral tenets such as honesty and justice.

The two curators carried out the inflation of claims at the request of two creditors, despite the absence of any prior contractual agreement, thereby constituting a deliberate unlawful act that cannot be excused under any justifying grounds. Within the framework of the PKPU (Postponement of Debt Payment Obligations) proceedings, one of the essential procedural stages is the verification meeting, in which all claims submitted by creditors must be substantiated with credible evidence, as mandated by Article 115 of

the PKPU Law. The curators' failure to conduct such verification demonstrates a lack of independence, particularly from the perspective of intellectual integrity the first principle of curator independence along with a lack of professionalism, moral accountability, and disregard for the integrity of the PKPU process. Furthermore, their failure to thoroughly verify the claims undermines the primary objective of the PKPU mechanism, which is to achieve a peaceful settlement within an extended period of up to 270 days, as regulated under Article 229 of the PKPU Law, where the granting and extension of the PKPU is determined by the court:

1. The approval of more than one-half ($\frac{1}{2}$) of the number of concurrent creditors present, representing at least two-thirds ($\frac{2}{3}$) of the total amount of claims that are either admitted or temporarily admitted from the concurrent creditors or their authorized representatives present at the hearing; and
2. The approval of more than one-half ($\frac{1}{2}$) of the number of creditors whose claims are secured by pledge, fiduciary security, mortgage, hypothec, or other security rights over property, who are present and represent at least two-thirds ($\frac{2}{3}$) of the total value of claims of such secured creditors present at the hearing

The two creditors engaged in the inflation of claims because they were in the minority, whereas the majority of creditors had previously agreed to reach a settlement with the debtor during the PKPU process. The objective of this inflation was to obtain a dominant or majority voting right within the PKPU proceedings, thereby preventing the approval of a settlement and instead leading to the declaration of bankruptcy against the debtor.

In fact, the debtor namely PT. Alam Galaxy was in a financially sound and solvent condition, with only one creditor, Bank BCA, whose credit was classified as current. This indicates that the requirements for declaring bankruptcy were not met. A debtor may only be declared bankrupt if there are at least two creditors who fail to reach a settlement with the debtor during the PKPU process or in the debt verification and reconciliation meeting. Therefore, the bankruptcy declaration against the debtor was unjustified.

Based on the author's analysis, the inflated claims were contested by PT. Alam Galaxy, as they did not align with the contents of the formal demand letter (somasi) received by the Debtor, which the Debtor was prepared to fulfill during the PKPU process. This position is supported by Article 138, which states: A debtor shall be deemed in default either by virtue of a formal order, an equivalent legal instrument, or by the nature of the obligation itself specifically, where the obligation stipulates that the debtor is automatically considered in default upon the expiration of a specified time period.

Furthermore, the curator failed to exercise due diligence in examining the contents of the PKPU petition, the demand letter (somasi), the independently audited financial statements submitted by the Debtor, and the factual circumstance within the PKPU process indicating that the majority of creditors were inclined toward a settlement. These elements serve as evidentiary grounds demonstrating that the actions of the two curators constituted not mere negligence, but intentional misconduct, thereby amounting to an unlawful act (*actus contra legem*) devoid of any justifying or excusing grounds under criminal law.

Although the Bankruptcy Law explicitly incorporates criminal sanctions, a prevailing issue lies in the assumption that the absence of detailed provisions regarding criminal aspects renders the principle of *lex specialis derogat legi generali* inapplicable. This legal maxim holds that specific laws (*lex specialis*) override general laws (*lex generalis*), such as those codified in the Indonesian Penal Code (KUHP). However, such an interpretation is misguided. Based on the aforementioned case, it becomes evident that bankruptcy and PKPU proceedings intrinsically involve both civil and criminal legal dimensions in their entirety, as well as in segmented interrelations within individual cases.

In this context, to prevent criminal acts by parties involved in bankruptcy proceedings, the general provisions of the Indonesian Penal Code (KUHP) remain applicable. This also serves to address the limitations found within the Bankruptcy Law itself. Accordingly, Article 234 paragraph (2) of the Bankruptcy Law, insofar as it prescribes criminal sanctions, should be

interpreted as both a safeguard of legal norms and a benchmark for assessing a curator's lack of independence. It functions as a measure of last resort, as demonstrated in the case involving the two curators, which exemplifies how criminal law serves as the final recourse within the PKPU and bankruptcy processes, including the *renvoi* procedure embedded therein.

Criminal Liability of a Curator

The issue of bankruptcy often involves overlapping domains between criminal and civil law. Various actions that occur throughout the course of bankruptcy proceedings frequently raise ambiguity as to whether such actions fall within the realm of criminal liability or civil responsibility. For this reason, bankruptcy law deliberately regulates the distribution of a bankrupt debtor's assets and the procedures involved to ensure an equitable and proportional allocation. It aims to prevent actions or decisions that might harm the involved parties and compromise the structural and substantive integrity of legal enforcement in bankruptcy and debt moratorium (PKPU) cases, as previously analyzed.⁶ However, in practice, such deviations may occur as evident in the aforementioned case even when the debtor is financially sound and solvent. In contrast, insolvency refers to a state of financial collapse where an individual or entity is unable to meet debt obligations due to a disparity between assets and liabilities.

On the other hand, M. Hadi Subhan argues that bankruptcy constitutes the implementation or continuation of the principles of *paritas creditorium* and *pari passu pro rata parte* within the property law regime (*vermogensrechts*). This view is grounded in Article 1131 of the Civil Code, which states that all of a debtor's assets whether movable or immovable, existing or future serve as collateral for all of their legal obligations. This implies that any act or conduct affecting a person's assets in the realm of private law inevitably has consequences for their wealth. Meanwhile, Didik Endro Purwoleksono posits

⁶ Sri Rahayu. "Faktor-Faktor yang Mempengaruhi Penerimaan Opini Audit Going Concern pada Perseroan Manufaktur Publik." *Jurnal Kajian Akuntansi*, vol. 4, no. 2, Desember 2009.

that criminal law must safeguard five distinct legal interests, which are as follows:

1. Soul, Any act that violates the legal interest of life specifically by causing the death of another person is subject to criminal sanction under Article 338 of the Indonesian Criminal Code (KUHP). If the act is committed with premeditation, it falls under the provisions of Article 340 KUHP. Furthermore, if the death occurs as a result of negligence, the perpetrator may be held criminally liable under Article 359 KUHP;
2. Human Body, Any individual who commits an act that endangers the physical integrity or bodily safety of another person may be subject to criminal penalties, including those stipulated in Article 351 of the Indonesian Criminal Code (KUHP), which addresses physical assault and related offenses;
3. Honor, Any person who threatens or attacks the dignity or reputation of another individual may be subject to criminal sanctions under Article 310 of the Indonesian Criminal Code (KUHP), which governs defamation and insults.
4. Liberty, Article 333 of the Indonesian Criminal Code (KUHP) stipulates that any individual who unlawfully and intentionally deprives another person of their liberty shall be subject to criminal penalties.
5. The following is the text of Article 263 (a) of the Criminal Code:
Any person who forges or falsifies a document that may give rise to a right, an obligation, or the discharge of a debt, or which is intended to serve as evidence of a particular matter, with the intent to use or cause another to use such document as if its contents were true and not falsified, shall be subject to a maximum imprisonment of six years (b) if such use can cause harm as a result of the forgery. Furthermore, the same penalty shall apply to any person who knowingly uses a forged or falsified document as if it were genuine, if the use of such document may result in harm.⁷

⁷ Didik Endro Purwoleksono. *Hukum Pidana*. Surabaya: Airlangga University Press, 2014.

When examined further, it can be seen that the curator's duties are divided into three parts, namely:

1. Administrative Duties, in the sense of being responsible for documenting and managing all matters occurring at each stage of the bankruptcy process.
2. Administration and Management of Bankrupt Assets, meaning that as long as the bankruptcy process has not yet reached the stage of insolvency, the Curator is authorized to continue managing the Debtor's business operations.
3. Settlement of the Bankrupt Debtor's Assets, meaning the Curator is responsible for distributing payments to Creditors derived from the sale of the Debtor's bankrupt estate.⁸

In line with the aforementioned, Munif Fuadi⁹ asserts that a relationship of trust is one in which one party has an obligation to act in the interest of another, though limited to the scope of that relationship. According to Article 72 of the Bankruptcy and PKPU Law, a curator may be sued and even held liable to pay compensation for damages resulting from negligence or errors that cause harm to parties involved in the bankruptcy process. This aligns with Aristotle's theory of justice, which encompasses two dimensions: distributive justice where everyone is entitled to equal rights in a proportional manner, particularly in economic distribution and corrective justice, which aims to rectify actions in order to restore fairness.

By its nature, a curator may engage in unlawful conduct and, as such, may be held personally liable for losses incurred by parties involved in bankruptcy proceedings. This liability arises when the curator's actions exceed the scope of his or her legal authority. Even when actions are carried out within the bounds of authority granted under the Bankruptcy and PKPU Law and are performed in good faith, the curator may still bear personal

⁸ Arkisman. "Pelaksanaan Tugas Kurator dalam Mengurus Harta Pailit Berdasarkan Pasal 72 Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang." *Jurnal Pro Hukum*, vol. 4, no. 1, Juni 2015.

⁹Riana Susmayanti. "Itikad Baik Pengurus Yayasan Menurut Undang-Undang Yayasan dalam Menjalankan Tugasnya pada Yayasan Pendidikan Tinggi." *Jurnal Arena Hukum*, Universitas Brawijaya, vol. 1, no. 1, 2008.

responsibility if unforeseen circumstances beyond his or her control result in harm to the bankruptcy estate.¹⁰

This provision refers to Article 78 of the Bankruptcy and PKPU Law, which stipulates that, in the absence of authorization or approval from the supervising judge where such authorization is required but not granted or not responded to the actions of the curator shall have no legal effect pursuant to Articles 83 and 84. Criminal liability differs from civil liability; in civil matters, liability is commonly termed “tanggung gugat” (litigation responsibility). According to the Great Dictionary of Bahasa Indonesia (KBBI), responsibility denotes the state of being obliged to bear consequences and to be subject to claims, accusations, or legal proceedings.¹¹ There are three types of responsibility as recognized in legal doctrine:

1. Accountability refers to a form of responsibility that is closely tied to financial matters and the management of entrusted assets or authority. For instance, an accountant is required to be accountable for the accuracy and reliability of financial reports under his or her supervision.
2. Responsibility, in the context of *responsibility* as a concept in public law, refers to the legal obligation of an individual to answer for their actions under the framework of statutory regulations. For example, a perpetrator may be prosecuted before a criminal court in accordance with the applicable laws and regulations.
3. Liability, in the context of civil law, refers to the legal responsibility to compensate for losses or damages suffered by a victim as a result of the actions of a perpetrator. For instance, a person or legal entity that causes harm may be sued in a civil court by the injured party, who seeks compensation for the damages incurred.¹²

¹⁰ Imran Nating. *Peranan dan Tanggung Jawab Kurator dalam Pengurusan dan Pembersihan Harta Pailit*. Jakarta: Raja Grafindo Persada, 2004.

¹¹ Tim Penyusun Kamus Pusat Pembinaan dan Pengembangan Bahasa. *Kamus Besar Bahasa Indonesia*. Jakarta: Balai Pustaka, 1989.

¹² K. Martono. *Kamus Hukum dan Regulasi Penerbangan*. Jakarta: Raja Grafindo Persada, 2007.

In the researcher's analysis, when contextualized within the aforementioned case wherein both curators were criminally sanctioned for inflating the claims related to the debt of PT. Alam Galaxy through a creditor it becomes evident that accountability should not be viewed solely through the lens of criminal liability. This observation is crucial to prevent the impression that criminal law asserts a dominant power or hegemony over the domain of civil law. Instead, criminal liability in such instances is supported by civil liability within the legal structure itself. When a curator fails to act independently in managing the settlement of legal interests between the creditor and the debtor, criminal sanctions may be imposed based on civil accountability, particularly through the concept of *tanggung gugat* (liability), which aligns with *responsibility* in the context of: public law where, for example, a perpetrator may be prosecuted before a criminal court pursuant to the applicable laws and regulations.

Nevertheless, in civil law, the term *tanggung gugat* is understood by Peter Mahmud Marzuki as equivalent to *liability* in English and *aansprakelijkheid* in Dutch. According to Marzuki, *tanggung gugat* represents a specific form of legal responsibility within the broader framework of accountability.¹³

However, in relation to the principle of "*geen straf zonder schuld*" (no punishment without fault), there are two operational interpretations within its application. First, when a prohibited act is committed or there is a neglect of a legal obligation for which criminal sanctions are prescribed, such conduct or omission must be explicitly stipulated in the criminal law. Second, the provision may be applied retroactively only with the exception as regulated in Article 1 paragraph (2) of the Indonesian Penal Code (*Kitab Undang-Undang Hukum Pidana* / KUHP).¹⁴

The Indonesian legislature has adopted the term "*strafbaar feit*" to refer to what is commonly understood as a criminal offense (*tindak pidana*) in the Indonesian Penal Code, without providing a clear explanation of what the

¹³ Peter Mahmud Marzuki. *Pengantar Ilmu Hukum*. Jakarta: Kencana Prenada Media, 2008.

term actually entails. In Dutch, the word "*feit*" translates to "act" or "deed," while "*strafbaar*" means "punishable." Therefore, in its literal sense, "*strafbaar feit*" can be interpreted as "an act that is punishable."¹⁵

In this context, criminal liability is contingent upon the commission of a criminal act, which may be attributed to an individual or an institution. In the case at hand, the two curators were subjected to criminal sanctions due to their involvement in inflating claims in collusion with a creditor concerning the debt of PT. Alam Galaxy. Such conduct was deemed to reflect a lack of independence, thereby justifying their criminal liability. The act constituted a clear violation attributable to the curators and was considered inexcusable under the law.

Regarding the element of fault in the criminal prosecution of curators, their accountability is assessed based on whether their conduct in executing their duties can be classified as unlawful. In the author's analysis, referring to the aforementioned case in which the two curators were criminally prosecuted, it can be concluded that the legal prerequisites for liability were met. This is due to the fact that their actions resulted in material losses to the bankruptcy estate and posed a broader threat to the public. In civil law, such conduct constitutes an unlawful act as defined under Articles 1365 in conjunction with 1366 of the Indonesian Civil Code.

However, in contrast to civil law, under criminal law a curator's conduct may embody elements of unlawfulness. Formally, an act is considered *wederrechtelijk* that is, unlawful when it is explicitly prohibited and punishable by legislation, forming part of the statutory elements of a criminal offense. In criminal law, errors or negligence committed by a curator that result in harm to the bankruptcy estate may be classified as intentional acts, and thus subject to criminal liability. To establish intent (*dolus*), it must be demonstrated that the perpetrator committed the act with knowledge and will meaning that

¹⁴ Andi Hamzah. *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta, 2004.

¹⁵ P.A.F. Lamintang. *Dasar-Dasar Hukum Pidana di Indonesia*. Bandung: Citra Aditya Bakti, 1997.

criminal sanctions should generally apply only to those who act knowingly and deliberately.

In its historical context, the concept of intent (*dolus*) was once envisioned in the 1804 Criminal Code as malevolent intent a deliberate desire to commit wrongful acts. This was articulated in Article 11 of the 1809 *Crimineel Wetboek*, which defined intent as the will to carry out an act prohibited by law. However, in the *Wetboek van Strafrecht* of 1881, which came into effect on September 1, 1886, such a definition of intent was omitted from the final text.¹⁶ Moeljatno later proposed several theories on the notion of intent, outlining different dimensions and interpretations of the term within the framework of criminal law:

1. An intentional act that is goal-oriented implies that the perpetrator can be held accountable and this form of intent is generally understood. When such intent is present in a criminal act, it means the perpetrator consciously and deliberately intended to commit the act, with a clear objective in mind.
2. An intentional act in the form of recklessness refers to a situation in which the perpetrator's actions are not specifically aimed at causing the resulting consequence, yet those consequences become the basis for criminal liability. This type of intent arises when the offender is aware of the potential outcome but proceeds regardless, thus fulfilling the elements of the offense.
3. An intentional act in the form of awareness of possible consequences (*dolus eventualis*) refers to a situation where the perpetrator consciously accepts the risk that their actions might lead to a prohibited outcome, even though it is not their primary objective. In such cases, the unlawful act occurs openly and without doubt as to the potential consequences. Furthermore, negligence (*culpa*) constitutes a type of fault that may also incur criminal liability, as it

¹⁶ R. Abdoel Jamali. *Pengantar Hukum Indonesia*. Jakarta: Rajawali Press, 2010.

reflects a failure to exercise the level of care required by law, even in the absence of intent.¹⁷

In the theory of cognition and imagination, it is asserted that a person cannot intend an act without first envisioning and desiring the occurrence of a particular outcome. Thus, a deliberate act is characterized by both the anticipation and the expectation of a specific consequence. This perspective emphasizes the significance of what is imagined and known by the perpetrator. The concept of *de wil* (will or intent) may be directed toward both the prohibited act itself and the unlawful consequences that follow.

There are two primary theories concerning the concept of "intent," namely the will theory and the knowledge or foresight theory. A criminal offense may not only arise from intentional acts (*dolus*) but also from negligence (*culpa*). Negligence lies between deliberate action and mere accident; nevertheless, *culpa* is generally considered less severe than intentional wrongdoing. According to Moeljatno, negligence constitutes a quasi-delict (*quasidelict*), which justifies the reduction of criminal penalties. There are two types of negligence: those that result in harm and those that do not lead to any consequential damage.

D. CONCLUSION

The lack of clarity in the criminal law provisions within the Bankruptcy and PKPU Law has led to misinterpretations of the *lex specialis derogat legi generali* principle, whereby specific laws should override general laws. This legal ambiguity has resulted in a normative vacuum concerning the prosecution of criminal acts committed during bankruptcy and PKPU proceedings. To address this gap and uphold legal certainty, general legal provisions remain applicable. In this context, Article 234 and paragraph (2) of Article 234 of the Bankruptcy Law particularly the clause related to criminal sanctions serve as normative safeguards and balancing mechanisms to address the issue of curator non-independence in legal enforcement. They

¹⁷ Moeljatno. *Perbuatan Pidana dan Pertanggungjawaban Pidana dalam Hukum Pidana*. Jakarta: Bina Aksara, 1993.

also function as preventive tools to avoid further complications in the administration of PKPU and bankruptcy. Consequently, the Bankruptcy and PKPU Law not only outlines procedures for civil liability in cases where a curator mismanages bankruptcy assets due to negligence or misconduct but also establishes provisions for criminal accountability. Articles 72, 73, and 234 of the Bankruptcy and PKPU Law constitute a valid legal basis for prosecuting parties whose actions harm the bankruptcy estate, in line with the principle of curator independence. Thus, criminal sanctions and liability can be applied independently of the elements defined in the Criminal Code (KUHP), with subsequent prosecution to follow the criminal procedure outlined in the Code of Criminal Procedure (KUHAP).

REFERENCES

Books

- Andi Hamzah. Asas-Asas Hukum Pidana. Jakarta: Rineka Cipta, 2004.
- Didik Endro Purwoleksono. Hukum Pidana. Surabaya: Airlangga University Press, 2014.
- Imran Nating. Peranan dan Tanggung Jawab Kurator dalam Pengurusan dan Pembersihan Harta Pailit. Jakarta: Raja Grafindo Persada, 2004.
- Martono. Kamus Hukum dan Regulasi Penerbangan. Jakarta: Raja Grafindo Persada, 2007.
- Moeljatno. Perbuatan Pidana dan Pertanggungjawaban Pidana dalam Hukum Pidana. Jakarta: Bina Aksara, 1993.
- P.A.F. Lamintang. Dasar-Dasar Hukum Pidana di Indonesia. Bandung: Citra Aditya Bakti, 1997.
- Peter Mahmud Marzuki. Pengantar Ilmu Hukum. Jakarta: Kencana Prenada Media, 2008.
- R. Abdoel Jamali. Pengantar Hukum Indonesia. Jakarta: Rajawali Press, 2010.
- Sunarmi. Hukum Kepailitan. Jakarta: Softmedia, 2010.
- Tim Penyusun Kamus Pusat Pembinaan dan Pengembangan Bahasa. Kamus Besar Bahasa Indonesia. Jakarta: Balai Pustaka, 1989.

Journals

- Arkisman. "Pelaksanaan Tugas Kurator dalam Mengurus Harta Pailit Berdasarkan Pasal 72 Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang." *Jurnal Pro Hukum*, vol. 4, no. 1, Juni 2015.
- Billy Dicko Stephanus Harefa. "Kekuatan Hukum Perjanjian Lisan Apabila Terjadi Wanprestasi (Studi Putusan Pengadilan Negeri Yogyakarta Nomor 44/PDT.G/2015/PN.Yyk)." *Jurnal Privat Law*, vol. 4, no. 2, Juli-Desember 2016.
- Dedy Tri Hartono. "Perlindungan Hukum Kreditor Berdasarkan Undang-Undang Kepailitan." *Jurnal Ilmu Hukum Legal Opinion*, edisi I, vol. 4, 2016.

- Riana Susmayanti. "Itikad Baik Pengurus Yayasan Menurut Undang-Undang Yayasan dalam Menjalankan Tugasnya pada Yayasan Pendidikan Tinggi." *Jurnal Arena Hukum*, Universitas Brawijaya, vol. 1, no. 1, 2008.
- Sri Rahayu. "Faktor-Faktor yang Mempengaruhi Penerimaan Opini Audit Going Concern pada Perseroan Manufaktur Publik." *Jurnal Kajian Akuntansi*, vol. 4, no. 2, Desember 2009.

Online Sources

- Farida Kusuma. "Hak Jawab Tim Kurator PT Alam Galaxy Bantah Soal Mafia Kepailitan dan PKPU di Pengadilan Niaga." *Suara Surabaya*, 2024, <https://www.suarasurabaya.net/kelanakota/2024/hak-jawab-tim-kurator-pt-alam-galaxy-bantah-soal-mafia-kepailitan-dan-pkpu-di-pengadilan-niaga/>. Accessed on August 22, 2024.
- Redaksi. "Kurator Kepailitan PT Alam Galaxy Divonis 2 Tahun, Terbukti Melanggar Pasal 400 angka 2 KUHP." *Beritalima*, 24 Mei 2023, https://beritalima.com/kurator-kepailitan-pt-alam-galaxy-divonis-2-tahun-terbukti-melanggar-pasal-400-angka-2-KUHP/#google_vignette. Accessed on August 22, 2024.