

# 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. The curator is responsible for collecting, securing and managing all assets belonging to the debtor who has been declared bankrupt. 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

## 1. 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 the economic value of the debtor company benefits both the debtor and creditors, both directly and indirectly (Irianto, 2015). 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 failures during the 1997 Asian financial crisis (Rajan & Zingales, 1997). Here's an outline of the bankruptcy process and the various stakeholders involved at each stage Filing for Bankruptcy; 1) Trustee Appointment & Review; 2) Meeting of Creditors; 3) Reorganization or Liquidation; 4) Plan Confirmation or Distribution; 5) Discharge or Closure.

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 both formal and informal processes for rescuing distressed businesses (Ministry of Finance of Republic of Indonesia, 2001). 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 et al., 2023). 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 & Dangol, 2014). This evolving environment necessitates reforms and more precise prediction methods for assessing the financial stability of companies (Brygała, 2022), particularly small and medium enterprises, which typically have fewer financial resources (Ciampi et al., 2021). This study explores the role of curators in completing the bankruptcy process and minimizing conflicts during bankruptcy in accordance with relevant regulations.

## 2. 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 have been harmed by corporate misconduct (Lindsey, 2022). Bankruptcy has received considerable attention in the legal, economic, and financial literatures for decades as an important subject of study (Hotchkiss, 1995). 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 delays (Hotchkiss, 1995). Researchers have found that many managers sell assets without creditor approval, to the detriment of creditors (Dou et al., 2020). 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 in accordance with applicable provisions and laws (Antill, 2020).

According to 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). 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, 2020). It is an inseparable phenomenon from the modern economy (Pisula, 2020). The increase in company bankruptcies can have adverse effects, particularly on economic development at both regional and national levels. Pasternak-Malicka emphasized that economic activities are often fraught with uncertainties and risks that business operators may not easily identify (Pasternak-Malicka et al., 2021). Failing to recognize a crisis within an organization or adopting an ineffective strategy can precipitate a severe crisis, potentially leading to bankruptcy (Hart, 2000). 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 group companies to address challenges in accessing external financing, especially in developing economies (Stein, 1997). This internal financing advantage can be critical when affiliated companies face financial difficulties and limited access to external funds (Riyanto & Toolsema, 2008). 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 outcomes (Mikes, 2009). The impact of risk on organizational failure is substantial, and both risk management and perception are vital to maintaining an organization's financial health and operational continuity (Kaplan, 2012). Commonly, risks are categorized into financial risk, credit risk, strategic risk, and management risk, and these categories are often employed in analysis.

Jha et al. (2024) 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. 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, reforms that increase personal bankruptcy costs—reveals that such reforms generally reduce union bargaining power (Halford et al., 2024). This, in turn, leads to a decrease in the financial leverage of unionized firms compared to their non-unionized counterparts.

### 3. Methodology Research

The formal jurisprudence approach and the normative approach are two primary methods used to analyse and comprehend the law. formal jurisprudence approach is a method of legal analysis that emphasizes the structure, logic, and internal coherence of legal systems, often prioritizing the form of law over its content or social consequences. normative approach The approach analyzes whether laws can be rationally and ethically justified. It looks at the reasons behind legal norms and whether those reasons are convincing from a philosophical standpoint.

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.

### 4. Result & Discussion

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

A) 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

party (Law No. 37, 2004a).

B) 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) (Law No. 37, 2004b).

C) 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 decision (Law No. 37, 2004c).

D) 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 procedures (Law No. 37, 2004d).

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.

A) 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 assets (Law No. 37, 2004e).

B) The curator must prepare and verify an accurate list of receivables and liabilities. This is essential for determining payment priorities and preventing disputes over claims Law (Law No. 37, 2004f).

C) 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 accountable (Law No. 37, 2004g).

D) In the event of disputes between stakeholders, the curator can employ mediation or arbitration to resolve them, avoiding lengthy and costly litigation (Law No. 30, 1999).

E) The entire process must comply with applicable legal provisions. The curator must ensure that all actions are in accordance with existing regulations and laws (Law No. 37, 2004h).

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.

## 5. Conclusion

Here's a more specific breakdown of the process and responsibilities of the curator under the Bankruptcy Law in the context of disputed land:

A) Once a company's bankruptcy is confirmed by the court, the curator is appointed to manage the company's estate, including all assets and liabilities.

B) Identification and Inventory of Assets:

1) The curator must identify and collect all assets of the bankrupt company.

This includes physical assets, financial assets, and any disputed land.

2) The curator needs to create a detailed inventory of all assets, noting their status, value, and any encumbrances or disputes associated with them.

C) Verification of Ownership and Legal Status:

1) The curator must verify the ownership of disputed land, checking legal documents, property records, and any claims made by third parties.

2) The curator must assess the legal status of the land, including any ongoing legal disputes or issues affecting the land's marketability.

D) Resolution of Land Disputes:

1) If there are disputes over the land, these can be addressed through mediation, arbitration, or litigation. The curator may facilitate or oversee these processes.

2) The unresolved dispute may affect how and when the land can be sold or distributed. The curator needs to evaluate the impact on the overall distribution of assets.

E) Handling Disputed Land:

1) If the disputed land cannot be sold immediately, the court may pause the bankruptcy process or implement temporary measures to handle the land appropriately.

2) The curator is responsible for selling the asset at a fair market value once disputes are resolved. The proceeds from the sale will be used to repay the company's debts.

F) Adherence to Legal Priorities:

1) The curator must follow legal priorities for debt repayment, ensuring that creditors are paid according to the Bankruptcy Law and other relevant regulations.

2) The curator must adhere to all legal regulations, including the Bankruptcy Law and any other applicable laws such as the PKPU (Suspension of Debt Payment Obligations).

G) Efficient Asset Management:

1) The curator should manage assets efficiently, considering their market value and potential recovery to maximize returns for stakeholders.

2) The curator should act as a mediator in resolving disputes and aim for amicable solutions to minimize conflict and expedite the bankruptcy process.

H) Conclusion of Bankruptcy Process:

1) The bankruptcy process can only be concluded after all disputes are resolved, assets are collected, and debts are repaid according to legal priorities.

2) The curator must ensure that the process upholds the principle of justice, acts impartially, and complies with all legal requirements to maintain the integrity of the bankruptcy proceedings.

By following these specific steps, the curator ensures that the management of the bankrupt estate, including any disputed land, is handled in accordance with legal requirements and in a manner that is fair and efficient for all stakeholders involved.

## 6. Recommendation

To streamline the mediation process between the company, creditors, and landowners before court involvement, it's essential to follow structured steps:

A) The first step involves bringing all relevant parties—company representatives, creditors, and landowners—into a dialogue to reach a mutually acceptable solution. Local legal and government authorities should be actively engaged to ensure that the process aligns with applicable laws, including Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU).

B) If mediation fails, the next step would be adjudication by the competent commercial court. It is critical to ensure fair protection of creditors' and landowners' rights during these proceedings. Clear documentation of land ownership and proper verification of claims can prevent complications during the process.

C) The curator should hold regular meetings with creditors, shareholders, and other stakeholders to provide updates on the progress of the bankruptcy estate settlement. This allows for the expression of any opinions or objections, fostering a more inclusive process.

D) The curator must strictly adhere to the provisions of Law No. 37, especially concerning the prioritization of debt payments and distribution of assets. This law outlines the hierarchy of claims, ensuring that secured creditors, employees, and other priority debts are paid before unsecured creditors.

E) Maintaining transparency in all dealings, especially regarding land ownership and asset distribution, is crucial. Regular reporting and open communication channels with all stakeholders can help ease tensions and prevent potential legal disputes.

By adopting a transparent, communicative, and law-abiding approach, curators can help smooth the settlement process, reducing the likelihood of conflicts and ensuring an orderly distribution of bankrupt assets.

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## Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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