

Ambiguity of curator's authority in implementing sales of collateral objects on behalf of third parties in bankruptcy proceedings

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Abstract: Curators play a pivotal role in the bankruptcy process, tasked with managing and settling bankrupt assets. However, there exists ambiguity regarding the curator's authority in executing the sale of collateral objects on behalf of third parties. This study aims to analyze the regulations and authority of curators, as well as the legal certainty for curators in settling or selling collateral objects on behalf of third parties within the bankruptcy process. The current research employs a normative legal research methodology, utilizing a statutory approach and case studies. The findings reveal that curators are authorized to sell bankrupt assets through open auctions while adhering to the principles of bankruptcy. Nevertheless, regulatory changes concerning document requirements for auctioning third-party assets have led to legal uncertainty. Clear and firm regulations are necessary to enable curators to sell collateral objects on behalf of third parties without requiring proof of rights transfer, by completing alternative documents such as a statement letter and the determination of the supervisory judge. Harmonization of these regulations is expected to establish legal certainty for curators in carrying out their duties.

Keywords: Auction, Bankruptcy, Curator, Legal certainty, Settlement of Bankruptcy Assets.

1. Introduction

In Legal relationships usually occur between every legal subject, whether individual or non-individual, one form of legal relationship is an agreement regarding debts and receivables entered by a debtor and creditor, this results in the debtor and creditor being bound by obligations/accomplishments of debts and receivables which are outlined in the form of an agreement both written and verbal. Legal relationships usually occur between every legal subject, whether individual or non-individual, one form of legal relationship is an agreement regarding debts and receivables entered by a debtor and creditor, this results in the debtor and creditor being bound by obligations/accomplishments of debts and receivables which are outlined in the form of an agreement both written and verbal [1].

The above conditions result in many debtors being threatened with bankruptcy due to national economic conditions and debtors not having the ability to pay their debts to creditors. A situation where the debtor is unable to make payments on his debts to creditors is called bankruptcy [2]. The object of the bankruptcy law dispute, referring to the definition and objectives above, is "debt" and "more than one creditor". This is expressly stated in the provisions of Article 2 paragraph (1) of Law of the Republic of Indonesia Number 37 of 2004 (hereinafter referred to as the "Bankruptcy and PKPU Law"). The object of "debt" and the number of creditors which must be more than one, is a fundamental requirement in filing a bankruptcy petition against a debtor to be examined and decided by the Panel of Judges of the Commercial Court [3].

Bankruptcy should be a legal condition determined by the Commercial Court at the District Court for debtors who have at least two creditors and are not (unable or unwilling) to pay at least one debt that is due and payable. If a debtor is decided to become a bankrupt debtor through a commercial court

decision, there will be legal consequences, namely that the debtor will be subject to general confiscation of all of the bankrupt debtor's assets and the bankruptcy debtor's authority to control and manage his assets will be lost. Meanwhile, creditors will experience uncertainty regarding the legal relationship that exists between bankruptcy debtors and creditors [4]. To overcome this uncertainty, a curator is appointed who will manage and settle the bankrupt debtor's assets and resolve the legal relationship between the bankrupt debtor and his creditors under the supervision of the Supervisory Judge.

The curator has the obligation to carry out the duties of managing and/or settling bankruptcy assets in accordance with Article 69 paragraph (1) of the Bankruptcy Law and PKPU. According to Jerry Hoff, the purpose of bankruptcy is to pay the creditors' rights which they should receive according to their order level. Therefore, the curator must act in the best interests of creditors and debtors. All the debtor's assets, whether in the form of movable objects or fixed objects, whether existing or new in the future, become collateral for all debt obligations. With the enactment of Article 1131 of the Civil Code, automatically or by law there is a guarantee for the debts of a debtor to each creditor for all the debtor's assets [2].

Guarantees in general and debt guarantees do not provide complete certainty regarding debt repayment, because creditors do not have prior rights so that the creditor's position remains as a concurrent creditor against other creditors. Only with material collateral does the creditor have the right to precede it so that he is a privileged creditor who can take advance payment of the collateral without regard to other creditors [5].

Furthermore, Article 1131 and Article 1132 of the Civil Code is an embodiment of the guarantee of certainty of payment for transactions that have been entered into by debtors with their creditors in a proportional position. (Sutendi, 2009:9-10) Furthermore, Article 21 of the Bankruptcy Law and PKPU is almost the same as the provisions of Article 1131 of the Civil Code, only the provisions in Article 1131 of the Civil Code are broader because they cover existing assets and those that will exist in the future, whereas in Article 21 of the Bankruptcy Law and PKPU only assets only at the time of the decision to declare bankruptcy [6].

Therefore, as a form of carrying out its duties, the curator will sell bankruptcy assets openly to the public as regulated in Article 185 paragraph (1) of the Bankruptcy Law and PKPU and in accordance with the procedures specified in the laws and regulations. other related matters such as Regulation of the Minister of Finance of the Republic of Indonesia Number 213/PMK.06/2020 concerning Implementation of Auctions which was later amended through Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 concerning Instructions for Implementing Auctions. However, in fact, with sufficient legal grounds, there are still obstacles that are often experienced by curators in settling bankruptcy assets, especially collateral objects in the name of third parties in the bankruptcy process, so that this results in unclear duties and authority of curators in carrying out their efforts. settlement of the collateral object.

On the other hand, if the curator does not sell the collateral object in the name of a third party which is included in the bankruptcy estate, it will cause potential losses to creditors holding collateral in the name of the third party because the curator includes the collateral in the bankruptcy estate which will be settled but is hampered in carrying out the settlement against guarantees on behalf of the third party.

Starting from the explanation and problems related to the unclear authority of the Curator in implementing the sale of collateral objects on behalf of third parties in the bankruptcy process above, the author is interested in conducting research on "The Ambiguity of the Curator's Authority in Implementing the Sale of Collateral Objects on Behalf of Third Parties in the Bankruptcy Process". The Problem Formulation:

1. What are the regulations and authority of the curator in settling or selling bankrupt assets in the bankruptcy process?
2. What is the legal certainty for curators in settling or selling collateral objects on behalf of third parties in the bankruptcy process?

1.1. Conceptual Framework

a. Curator

Curator is the Inheritance Property Office, or an individual appointed by the Court to manage and settle the assets of the Bankrupt Debtor under the supervision of the Supervisory Judge in accordance with this Law.

b. Bankruptcy

Bankruptcy or bankruptcy is generally defined as a situation where the debtor stops paying. The situation of no longer paying is usually caused by financial conditions (financial distress) where the creditor's business experiences a setback [7]. Furthermore, Standard and Poors (N&P) defines bankruptcy as follows:

“The first occurrence of a payment default on any financial obligation, rated or unrated, other than a financial obligation subject to a bonafide commercial dispute; an exception occurs when an interest payment missed on the due date is made within the grace period”

Etymologically, the term bankruptcy comes from the word “bankruptcy” which comes from the Dutch word “failliet” [8]. The term “failliet” comes from the French word “faillite” which means strike or payment jam. In Black's Law Dictionary, “bankruptcy” or “bankrupt” is defined as follows:

“The state or condition of person (individual, partnership, corporation, or municipality) who is unable to pay his debt as they are, or become due”, which is a situation where a person is unable to pay off his debts that are due.

Meanwhile, Article 1 point 1 of the Bankruptcy and PKPU Law concerning Bankruptcy and Postponement of Debt Payment Obligations explains that Bankruptcy is a general confiscation of all assets of the Bankrupt Debtor, the management and settlement of which is carried out by the Curator under the supervision of the Supervisory Judge [9].

c. Disposal of Bankruptcy's Assets in Bankruptcy

The term settlement of bankruptcy assets (insolvency) in the Explanation of Article 57 paragraph (1) of the Bankruptcy Law and PKPU concerning explains that what is meant by insolvency is a state of being unable to pay. Insolvency occurs by law, that is, if there is no peace and the bankrupt's assets are unable to pay all debts that must be paid through settlement by the curator.

2. Method

Legal research is basically a scientific activity based on certain methods, systematics and thinking, which aims to study one or several specific legal phenomena by analyzing, carrying out in-depth examination of these legal factors [10]. In this research, the author used library research methods. Library research is a method of collecting data by examining literature and/or interviews with sources related to the object being studied so that it will provide a general picture of the issue to be discussed.

The research carried out by the author is normative legal research with descriptive research type and qualitative data analysis methods. In this research, the researchers conducted a document study using secondary data. It is where the data obtained from primary legal materials, secondary legal materials, tertiary legal materials.

Primary legal materials consist of legislation, jurisprudence and treaties. Primary legal materials used in this research include: Civil Code, Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects -Objects related to land, Law Number 42 of 1999 concerning Fiduciary Guarantees, Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998, Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 concerning Instructions for Implementing Auctions.

Secondary legal materials are legal materials that provide explanations of primary legal materials. Secondary legal materials consist of books, research results, journals, papers, magazines and the

internet. Secondary legal materials used in this research are books, papers, scientific articles, and the internet.

Tertiary legal materials are legal materials that provide guidance on primary legal materials and secondary legal materials. This research approach uses a statutory approach, namely an approach carried out by examining statutory regulations. Case study approach, which is an approach taken by including existing case examples.

3. Discussion

3.1. In Arrangements and Authorities of the Curator in Carrying Out the Settlement or Sale of Bankruptcy Assets in the Bankruptcy Process

The main task of the curator is to manage or settle bankruptcy assets as regulated in article 69 paragraph (1) of the Bankruptcy Law, namely the curator's task is to manage or settle bankruptcy assets. To understand the curator's duties, it is best to know the definition of managing and settling bankruptcy assets first. In the Bankruptcy Law it is clearly stated that what is meant by curator is the Inheritance Property Office or a private person appointed by the Court to manage and settle the assets of the bankrupt debtor under the supervision of a supervisor as regulated in Article 1 number 5 of the Bankruptcy Law and PKPU.

The main task of the curator is very important in the process of managing and settling bankruptcy assets. The curator is responsible for managing the bankrupt debtor's assets, compiling an inventory of assets, supervising financial transactions, securing assets, and settling bankrupt assets to fulfill obligations to creditors. Bankruptcy assets management includes the activities of managing and supervising bankruptcy assets, while bankruptcy assets settlement involves the process of selling assets to pay debts to creditors [11].

Definition of curator at the Inheritance Property Office or an individual appointed by the Commercial Court to manage and settle the assets of a bankrupt debtor under the supervision of a supervising judge. Curators have an important role in the bankruptcy process because they are tasked with managing bankruptcy assets from the beginning to the end of the bankruptcy process, including carrying out asset inventory, securing assets, and settling bankruptcy assets to fulfill obligations to creditors.

Bankruptcy assets management includes activities to manage and supervise bankruptcy assets, which may include managing the debtor's business and payments to creditors [12]. The curator is responsible for managing the bankrupt debtor's assets in a way that is most beneficial to creditors, including ensuring that the value of the assets does not decrease and, if possible, increasing that value.

Settlement of bankruptcy assets is a post-court decision stage process that must be passed by the parties involved in the bankruptcy dispute. This process involves the sale of bankruptcy assets to pay debts to creditors. Settlement can be done in various ways, including continuing the debtor's business, selling bankruptcy assets, or through the sale of bankruptcy assets by a curator. The curator has the obligation to sell the bankruptcy assets at the most profitable price to maximize payments to creditors.

In carrying out their duties, curators are required to work independently and must not have conflicts of interest with debtors or creditors. The appointment of a curator can be proposed by the applicant for bankruptcy in their application but shall obtain approval from the supervisory judge. Curators are also responsible for compiling regular reports that are submitted to supervising judges as part of their administrative duties.

Seeing the important role of the curator in the bankruptcy of a limited liability company, the bankruptcy law also regulates the authority, duties and obligations of the curator. For example, the Curator's authority is stated in article 98 of the Bankruptcy Law, which states that:

"From the start of his appointment, the curator must make all efforts to secure the bankruptcy assets and keep all letters, documents, money, jewelry and other securities by providing receipts."

In this general confiscation status, the curator will attempt to sell the bankrupt debtor's assets to pay the bankrupt debtor's obligations to creditors by taking into account the principles that apply in bankruptcy, such as [9]:

3.1.1. Principle of Creditor Parity and Structured Creditors

The principle of creditor parity emphasizes the equal position of creditors in obtaining payments from bankruptcy assets. This means that all creditors have the same rights to all the debtor's assets, and if the creditor cannot or does not want to pay the debt, then the assets will become the creditor's target. This principle means that all the debtor's assets, whether in the form of movable or immovable goods, as well as assets currently owned by the debtor and goods that will be owned by the debtor in the future, are bound to the settlement of the debtor's obligations. If the debtor has many creditors and the debtor's assets are not enough to pay all creditors in full, the creditors will compete by all means, both halal and non-halal, to get their bills paid off first [13].

Meanwhile, the principle of structured creditors relates to the classification and grouping of creditors according to their respective classes in the bankruptcy process. In bankruptcy, creditors are classified into three types, namely: separatist creditors, preferred creditors, and concurrent creditors. Separatist creditors are creditors who hold material security rights, who can act independently and are not affected by the decision to declare bankruptcy, meaning that their execution rights can still be exercised as if there were no debtor bankruptcy. Preferred creditors are creditors who have the right to collect repayment before other creditors and whose claims are prioritized or privileged over the claims of other creditors. Concurrent creditors are creditors who do not have the right to collect repayment before other creditors and whose receivables are not guaranteed by certain material rights [14].

3.1.2. *Pari Pasu Pro Rata Partee Principle*

The concept of debt repayment based on the creditor parity principle can only be implemented using the *Pari Pasu Pro Rata Partee* principle. It thus can be interpreted as proportional acquisition, which means that the distribution of the debtor's assets to the creditors is carried out jointly without any precedence, and the distribution is carried out proportionally based on the amount of receivables from each creditor [15].

The formulated principle means "together" or "in the same position", which emphasizes that all creditors must be treated equally in terms of dividing the debtor's assets. Meanwhile, *Pro Rata Partee* means "proportionately", which refers to the distribution of debtor assets based on the proportion of each creditor's receivables to the total receivables [16].

Thus, it combines these two aspects to ensure that each creditor gets a share of the debtor's assets in proportion to their receivables, without any discrimination or priority being given to certain creditors. This principle aims to create justice and equality among creditors in the bankruptcy process [17].

Furthermore, the curator is required to carry out general settlement/sale of bankruptcy assets either on behalf of the bankruptcy debtor or on behalf of third parties as regulated in Article 185 paragraph (1) of the Bankruptcy Law and PKPU "All objects (bankruptcy assets) must be sold in public in accordance with the procedures specified in the statutory regulations". Furthermore, Article 185 paragraph (2) explains that "In the event that public sales as intended in paragraph (1) are not achieved, private sales can be carried out with the permission of the Supervising Judge.

Based on Article 185 paragraph (1) of the Bankruptcy Law and PKPU, curators are required to sell bankruptcy assets through public sales, which must be carried out in accordance with the procedures specified in statutory regulations [18]. This public sale is generally carried out through an open auction, which allows all interested parties to submit bids, so that transparency and equal opportunities for all parties are maintained. Article 185 paragraph (2) of the Bankruptcy Law and PKPU provides an alternative if a public sale is unsuccessful, namely a private sale. Private sales can only be carried out with permission from the Supervising Judge. A private sale is usually conducted if an open auction fails to attract sufficient bids or if special circumstances exist that make a public sale impractical or inefficient. Permission from the Supervisory Judge is required to ensure that the private sales process remains transparent and fair, and does not harm the interests of creditors or other parties involved.

The curator shall comply with these two provisions to ensure that the bankruptcy estate settlement process is carried out fairly and in accordance with the law, avoids potential conflicts of interest, and maximizes the value of the bankruptcy estate for the benefit of creditors. In the process of settling or

selling the bankruptcy debtor's assets, the curator is required to first carry out a sale in public through auction. This is in accordance with Article 185 paragraph (1) of the Bankruptcy Law and Suspension of Debt Payment Obligations which states that all objects (bankruptcy assets) must be sold in public in accordance with the procedures specified in statutory regulations [19]. If the public sale through auction fails in attracting sufficient interest or offers, the curator can carry out a private sale. However, these private sales must obtain permission from the Supervising Judge, in accordance with Article 185 paragraph (2) of the same law.

Furthermore, Article 185 paragraph (3) provides space for the curator to propose other efforts to settle the bankruptcy estate if there are still obstacles, if he obtains permission from the Supervisory Judge. This shows flexibility in the bankruptcy estate settlement process, allowing curators to adapt their approach based on the specific situation at hand, if it remains within the applicable legal framework [20].

This entire process is designed to ensure that the bankruptcy estate can be sold in the most effective and fair manner, optimizing returns to creditors while complying with legal regulations.

The execution of bankruptcy assets by the curator is part of the implementation of the court decision. The curator's power of execution over bankruptcy assets has the same legal force as court decisions in general, which means that the curator's action in selling bankruptcy assets is considered a valid and binding legal action. The obligation to conduct a public sale or open auction of bankruptcy assets aims to create a transparent and accountable sales mechanism. Transparency in the sale of bankruptcy assets is very important to ensure that all parties, including creditors and other interested parties, receive clear and complete information regarding the sales process. This also helps in achieving the best price for the bankruptcy estate, which in turn will maximize returns to creditors.

Public sales via open auction allow all interested parties to participate in the bidding process, thereby creating healthy and fair competition. It also reduces the risk of collusion, favoritism or abuse of authority that may occur if sales are conducted behind closed doors or without clear and open procedures.

Thus, the public sale of bankruptcy assets by a curator is not only a legal obligation but also a best practice that ensures fairness, transparency and accountability in the bankruptcy process. This helps in maintaining public confidence in the bankruptcy legal system and ensures that all parties are treated fairly and equally.

The provisions in Article 185 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law and PKPU) do not apply absolutely, especially in the context of the execution of collateral rights by creditors holding pledges, fiduciary guarantees, mortgage rights, mortgages or collateral rights. over other objects. Based on Article 55 paragraph (1) jo. Article 59 paragraph (1) of the Bankruptcy and PKPU Law, there are certain conditions in which creditors can execute their rights as if bankruptcy had not occurred [21].

Article 55 paragraph (1) of the Bankruptcy and PKPU Law states that creditors holding pledges, fiduciary guarantees, security rights, mortgages, or collateral rights over other objects, can execute their rights as if bankruptcy had not occurred, while still paying attention to the provisions as intended in Article 56, Article 57, and Article 58 of the Law [22]. This means that under certain conditions, the creditor has the right to execute the collateral without having to be bound by the ongoing bankruptcy process.

Furthermore, Article 59 paragraph (1) of the Bankruptcy Law and PKPU confirms that creditors holding rights as intended in Article 55 paragraph (1) must exercise their rights within a period of no later than 2 (two) months after the start of the insolvency situation as intended in Article 178 paragraph (1) [23]. This means that after being declared insolvent, creditors can execute their rights as if bankruptcy had not occurred, namely within a period of 2 (two) months from the end of the stay period.

In this context, the stay period refers to the period of suspension of execution given to bankruptcy debtors to give debtors and creditors the opportunity to reach a debt settlement agreement without having to go through collateral execution. After the stay period ends, if no agreement is reached,

creditors holding collateral rights can continue to execute their rights in accordance with the applicable collateral law provisions, as if the bankruptcy process was not ongoing.

Provisions in the Guarantee Law and provisions in the Bankruptcy and Suspension of Debt Payment Obligations (PKPU) Law offer different perspectives regarding the mechanism for selling bankruptcy assets. Provisions that allow private sales without going through auction. Guarantee law in Indonesia, which is regulated in Law Number 4 of 1996 concerning Mortgage Rights and Law Number 42 of 1999 concerning Fiduciary Guarantees, provides a legal framework for guaranteeing debts using assets as collateral. In this context, private sales are permitted as a mechanism for selling collateral. This means that, with an agreement between the creditor and debtor, the collateral can be sold without having to go through an auction process first. This provision provides flexibility in debt settlement and allows both parties to reach a more profitable and efficient agreement. In contrast, in the context of bankruptcy and PKPU, the process of selling bankruptcy assets tends to be more structured and strictly regulated by law. The curator, appointed by the court, has the authority to manage and settle the bankruptcy estate. However, in practice, curators can also carry out private sales of bankruptcy assets, but this requires approval from the court or under certain conditions permitted by law.

The fundamental difference between the Guarantee Law and the Bankruptcy Law and PKPU lies in the procedures and authority in selling assets. The Guarantee Law provides wider space for negotiations and direct agreements between creditors and debtors, while the Bankruptcy Law and PKPU place the curator as the party who has the main authority in managing and selling bankruptcy assets, with supervision and approval from the court. In some situations, a private sale can produce better results for both parties than an auction. This is especially true in cases where collateral assets have special value or when the market for such assets is very limited. Economic Law Theory offers the perspective that transaction efficiency should be the primary consideration in debt settlement, which supports the flexibility offered by Collateral Law. Although the Guarantee Law is more flexible and allows private sales, the Bankruptcy Law and PKPU offer a more regular structure with court supervision. Both approaches have their respective advantages and disadvantages, depending on the context and specific conditions of the bankruptcy or debt settlement case.

3.2. Auction as Mechanism for Selling Bankruptcy's Assets

Article 185 of the Bankruptcy Law and PKPU stipulates auctions as the main mechanism for selling bankruptcy assets, with the aim of maximizing the sale value and ensuring optimal debt settlement to creditors. Although auctions have advantages in terms of transparency and competition, their effectiveness in achieving optimal results can be influenced by various factors, including market conditions and marketing strategies. Therefore, it is important for curators and auction supervisors to implement best practices and risk mitigation strategies in the auction process to maximize the proceeds from the sale of bankruptcy assets.

Concerning Bankruptcy and Postponement of Debt Payment Obligations (Bankruptcy Law and PKPU) stipulates an auction mechanism as the main method for selling bankruptcy assets. This policy is designed to ensure that the process of selling bankruptcy assets is carried out in an open, transparent manner and produces optimal sale value, to maximize the amount of debt that can be repaid from the sale proceeds [24].

Auction as a mechanism for selling bankruptcy assets is based on the principles of transparency and competition. The principle of transparency ensures that all interested parties, including creditors and potential buyers, have equal access to information about the property for sale. Meanwhile, the principle of competition aims to get the best price for bankruptcy assets through competition between potential buyers. In this context, auctions are considered the most effective method to achieve these two principles, as explained in various legal and economic literature [25].

Article 185 of the Bankruptcy Law and PKPU explicitly regulates that the sale of bankruptcy assets must be carried out through an auction mechanism. This policy has several important implications. First, by requiring the use of auctions, the law seeks to minimize the potential for manipulation and collusion that could harm creditors. Second, auctions are expected to increase efficiency in the sale of bankruptcy assets by attracting many potential buyers, which in turn can increase the selling price.

However, implementing the auction mechanism also faces challenges. For example, in some cases, the auction process can take significant time and expense, which can reduce the amount of funds available to repay creditors. Additionally, in certain situations, there may not be enough interested buyers, which may result in the bankruptcy estate being sold at a price lower than its true market value.

The effectiveness of an auction in achieving optimal sales results is highly dependent on market conditions and the characteristics of the bankruptcy assets being sold. For example, the Directorate General of State Assets at the Ministry of Finance [26], highlighting the importance of risk mitigation and effective marketing strategies in improving bankruptcy estate auction results. This research shows that with proper preparation, auctions can generate significant state revenues from the sale of bankruptcy assets.

Minister of Finance Regulation Number 122 of 2023 concerning Guidelines for Implementing Auctions provides a clear legal framework for implementing auctions in Indonesia, emphasizing the principles of transparency, open competition and achieving the highest prices. Although auctions have the potential to be an efficient resource allocation mechanism, their success in practice often depends on factors such as auction design, access to information, and participant participation.

An auction is a mechanism specifically regulated to facilitate the sale of goods under certain conditions, including in cases of bankruptcy. The formal definition of an auction, as outlined in Article 1 point 1 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 concerning Instructions for Implementing Auctions, offers in-depth insight into the structure and objectives of the auction process.

This regulation describes an auction as a process of selling goods that is open to the public, where price offers can be made in writing and/or verbally, either increasing or decreasing, with the aim of achieving the highest price. This process begins with the announcement of the auction, which aims to ensure transparency and equal opportunities for all interested parties to participate.

Auctions allow sellers to maximize profits from the sale of goods, while buyers get the opportunity to acquire goods at prices, they deem fair based on the personal value or utility they derive from the goods. The basic principles of auctions, which include transparency, open competition and price determination through market mechanisms, support the achievement of optimal results for all parties involved [27]. Minister of Finance Regulation Number 122 of 2023 establishes a clear legal framework for the implementation of auctions in Indonesia. By defining an auction as a process that is open to the public and requires the bidding of increasing or decreasing prices, this regulation emphasizes the importance of transparency and competition in achieving the highest price. Auction announcements, as the first step in this process, play an important role in ensuring that information about the auction is widely available, thereby enabling broad participation from various interested parties.

However, practical implementation of these regulations can pose challenges. For example, although transparency and open competition are considered ideal principles, in practice, access to information and opportunities to participate in auctions may not always be distributed equally. Factors such as technological capacity, access to information, and financial resources may influence the ability of certain parties to participate in an auction.

The success of an auction in achieving the highest price often depends on factors such as the clarity of the information provided in the auction announcement, the number and quality of auction participants, and the effectiveness of the bidding mechanism. Research conducted by institutions such as the Ministry of Finance and Bank Indonesia often highlights the importance of good auction design and effective marketing strategies in increasing auction results.

The auction mechanism is a sales method that has several unique characteristics that make it an effective and fair instrument in debt resolution, especially in the context of bankruptcy. One of the main advantages of auctions is their ability to bring together many potential buyers, creating a competitive environment that allows for competition in price bids. With this competition, the selling price obtained tends to be higher, providing profits for the bankruptcy estate and increasing opportunities to fulfill debt obligations more optimally.

Another characteristic that makes auctions a complementary mechanism for bankruptcy is that they are open to the public [28]. This transparency ensures that the sales process is conducted fairly and

impartially, providing equal opportunities for all potential buyers to participate. In addition, this openness also allows public oversight of the auction process, reducing the risk of abuse or fraudulent practices. In the context of bankruptcy, auctions act as an effective "debt collection tool" [15]. By selling the debtor's assets through auction, the curator can collect funds quickly and efficiently to pay debts to creditors. This helps speed up the debt settlement process and provides certainty for creditors in getting payments.

Apart from that, the auction mechanism also guarantees justice for creditors and debtors. For creditors, auctions ensure that debtor assets are sold at fair and competitive prices, so they can obtain more optimal payments. Meanwhile for debtors, auctions provide an opportunity to get a higher selling price compared to private sales, thereby reducing the potential for greater losses. In the context of Indonesian law, auctions are regulated in various statutory regulations, such as *Vendu Reglement* and *Vendu Instructie* which are still in effect today [29]. These regulations provide guidance and a legal framework for the conduct of auctions, ensuring that the process is conducted in an orderly manner and in accordance with the principles of fairness.

Thus, the auction mechanism is an important instrument in debt settlement, especially in the context of bankruptcy. The characteristics of an open, competitive and fair auction make it an effective tool for collecting funds optimally, protecting the interests of creditors and providing justice for debtors. Existing legal arrangements in Indonesia also provide a strong foundation for the implementation of auctions, ensuring that the process is carried out in an orderly manner and in accordance with the principles of justice. In auction practice, there are several principles that must be fulfilled in public sales, namely:

1. The principle of transparency or the principle of publicity

The principle of transparency or the principle of publicity is one of the fundamental principles in conducting auctions in Indonesia. This principle requires that the entire auction process be carried out openly and known to the wider community. This is characterized by the obligation for auction officials to announce the auction in public before the auction is held [30].

Auction announcements are an important stage to ensure disclosure of information to the public. Through this announcement, the public can find out about the auction plan and have the same opportunity to take part in the auction [31].

Announcements must be made in easily accessible media such as newspapers, official websites, or notice boards. The information announced includes the time and place of the auction, description of the items being auctioned, limit price, security deposit, and other auction conditions.

By providing open information, the public can monitor the progress of the auction process and ensure that the auction is carried out according to applicable procedures. This will ultimately encourage the creation of fair, competitive auctions and produce optimal prices [32].

The principle of transparency has a crucial role, especially at the stage of settling bankruptcy assets. The sale of bankruptcy assets is generally carried out through an auction mechanism by the Curator. Transparency in the auction process will help maximize the value of asset sales and the proceeds obtained for the benefit of creditors [33].

The principle of transparency is the basic principle that underlies the implementation of auctions in Indonesia, including in the process of settling bankruptcy assets. The application of this principle through the obligation to announce auctions in public aims to ensure disclosure of information, prevent unfair business competition practices, protect the interests of the parties, and increase public trust. In bankruptcy estate auctions, transparency plays an important role in maximizing the value of asset sales so as to produce an optimal rate of return for creditors. Apart from that, the openness of the auction process also prevents potential fraud and ensures objective and accountable implementation by the Curator.

2. Principle of Legal Certainty.

The principle of legal certainty in auctions is one of the fundamental principles underlying the implementation of auctions in Indonesia, including in the context of settling bankruptcy assets. This principle requires that the auction that has been carried out guarantees legal protection for the interests of the parties involved [2].

The principle of legal certainty has a crucial role, especially at the stage of settling bankruptcy assets. The sale of bankruptcy assets is generally carried out through an auction mechanism by the curator [34].

Legal certainty in the auction of bankruptcy assets will provide protection for the interests of creditors and other interested parties [35]. Through a valid auction that has permanent legal force, the rights of creditors to the proceeds from the sale of bankruptcy assets will be guaranteed [34].

Apart from that, legal certainty also protects auction buyers who have good intentions from potential lawsuits or auction cancellations in the future. This protection is important to attract the interest of auction participants and optimize the proceeds from the sale of bankruptcy assets. Principle of Competition [36].

The principle of competition is one of the main principles in conducting auctions in Indonesia. This principle means that the auction mechanism allows competition between auction participants in offering prices for the items being auctioned. Click or tap here to enter text. This competition will ultimately encourage the formation of optimal prices for the auction items in the auction process, competition occurs through a gradual price offering mechanism, either verbally or in writing. Auction participants will outperform each other in providing the highest price bid to win the auction for the desired item. The auction official's role is to guide and control the course of this price bidding competition.

The principle of competition is very important to implement. Through competition in the auction of bankruptcy assets, it is hoped that an optimal selling price can be obtained to produce a maximum rate of return for creditors. The more auction participants there are, the greater the opportunity to get a high selling price [37].

3. Principle of Efficiency.

The principle of efficiency is one of the important principles underlying the implementation of auctions in Indonesia, including in the context of settling bankruptcy assets. This principle means that the auction process must be carried out quickly and at a certain or scheduled time. The application of the efficiency principle aims to ensure smoothness and speed in auction completion so as to provide certainty for the parties involved.

The principle of efficiency has a crucial role in ensuring that the process of selling assets through auction can be carried out quickly and on time. This is important to minimize costs that arise during the bankruptcy process and avoid potential declines in asset values that could be detrimental to creditors.

Apart from that, the application of the principle of efficiency can also accelerate the overall resolution of the bankruptcy process. The sooner bankruptcy assets can be auctioned off and converted into cash, the faster the process of distributing the proceeds to creditors can be carried out.

4. Principle of Accountability.

The principle of accountability in the implementation of auctions in Indonesia means that the auction process must be carried out by or in the presence of an Auction Officer who is a general official appointed specifically by the Minister of Finance [38]. The existence of an Auction Officer is a key factor in ensuring accountability and responsibility in holding auctions.

The Auction Officer is a public official who is given special authority to carry out auctions based on statutory regulations. There are two types of Auction Officials, namely Class I Auction Officials and Class II Auction Officials. Class I Auction Officials are Civil Servants at the Ministry of Finance who are specially appointed as Auction Officials. They are located at the Directorate General of State Assets (DJKN) and the State Assets and Auction Services Office (KPKNL).

Meanwhile, Class II Auction Officials are other officials appointed to carry out auctions at the request of State/Regional Legal Entities or agencies that are not permitted to conduct their own auctions [39]. In carrying out their duties, the Auction Officer must uphold the principles of accountability, integrity, professionalism and independence [40]. They are legally responsible for the implementation of the auction they carry out. The existence of an Auction Officer who is

specially appointed by the Minister of Finance guarantees accountability in the implementation of auctions in Indonesia. They have clear legal authority and responsibilities and are subject to monitoring and guidance mechanisms in carrying out their duties.

3.3. Legal Certainty for Curators in Clearing or Selling Collateral Objects on Behalf of Third Parties in the Bankruptcy Process

Whereas as previously explained, based on Article 69 paragraph (1) of the Bankruptcy Law and PKPU concerning Bankruptcy and Postponement of Debt Payment Obligations, it is explained that the task of the curator is to manage and settle Bankruptcy assets. The assets of bankrupt debtors, both existing and future there will be in the future. The meaning of bankruptcy in the Bankruptcy Law and PKPU concerning Bankruptcy and Postponement of Debt Payment Obligations does not indicate the essence of bankruptcy, but only shows the consequences of bankruptcy law, namely the general confiscation of the assets of bankrupt debtors [7].

The presence of the concept of bankruptcy as a general confiscation of the assets of bankrupt debtors cannot be separated from the aim of Bankruptcy Law, namely to regulate mechanisms for distributing assets fairly and evenly to creditors in connection with the debtor's bankruptcy situation [41]. The mechanism for distributing these assets is a further regulation in Articles 1131 and 1132 of the Civil Code which further discuss who has the authority to make the distribution and how the distribution is carried out [42]. That as regulated in Article 185 paragraphs (1), (2) and (3) of the Bankruptcy Law and PKPU concerning Bankruptcy and Postponement of Debt Payment Obligations, the assets of the bankrupt debtor which have been included in the bankruptcy court must be sold in public which can be interpreted as a process One of the auctions is through the State Property Service and Auctions (KPKNL).

The settlement or sale of the bankrupt debtor's assets on behalf of the bankrupt debtor or third parties is carried out through an auction process mediated by the KPKNL which is then regulated explicitly in the Regulation of the Minister of Finance of the Republic of Indonesia Number 213/PMK.06/2020 concerning Instructions for Implementing Auctions which was later amended by the Regulation of the Minister of Finance Republic of Indonesia Number 122 of 2023 concerning Instructions for Implementing Auctions. Furthermore, regarding the settlement of bankruptcy assets through auction, it is categorized as mandatory auction with the type of execution as regulated in Article 2 paragraph (2) and Article 3 letter g of a quo Minister of Finance Regulation.

Regarding the settlement or sale of collateral on behalf of a third party in the bankruptcy process, if you refer to the Attachment to the Regulation of the Minister of Finance of the Republic of Indonesia Number 213/PMK.06/2020 concerning Instructions for Implementing Auctions, especially point B number 4 relating to documents which are special requirements delivered at the time of the auction consists of "original and/or photocopy of proof of transfer of rights or other document stating that the assets belong to the Bankrupt, in the event that the assets are still written to belong to a third party, unless the object of the auction belongs to another party which is guaranteed with material rights to cover the Bankrupt's debts."

Furthermore, in the Attachment to the Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 concerning Instructions for Implementing Auctions, especially in point B number 7 relating to documents which are special requirements in number 4 it is explained "original and/or photocopy of proof of transfer of rights or other documents stating assets is the property of the bankrupt, in the event that the assets are still written to belong to a third party." That the author can conclude that before the Regulation of the Minister of Finance of the Republic of Indonesia Number 213/PMK.06/2020 concerning Instructions for Implementing Auctions was amended by Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 concerning Instructions for Implementing Auctions, the settlement or sale of collateral objects in the name of third parties could This is done on condition that it can be proven that the auction object belonging to a third party is guaranteed with material rights to cover the bankrupt's debts.

However, since the enactment of Minister of Finance Regulation Number 122 of 2023 concerning Instructions for Implementing Auctions, selling collateral objects on behalf of third parties has become

difficult because Auction Officials have referred to the latest Minister of Finance Regulation. Furthermore, so that the curator team can sell the collateral object in the name of a third party, the Curator can replace the document stating the transfer of rights to the third party with a Decision/Determination from the Supervisory Judge which essentially states that the collateral object in the name of the third party is bankruptcy property. the management and settlement of which is carried out by the curator. The information from the Curator of PT Fajar Berseri (In Bankruptcy) the implementation/implementation of Minister of Finance Regulation Number 122 of 2023 concerning Auction Implementation Instructions has not yet been implemented in all KPKNL. For example, at KPKNL Pangkal Pinang, the auction requested by the curator for bankrupt assets registered in the name of a third party can be carried out without being accompanied by documents that can serve as proof of the transfer of rights between the third party and the bankrupt debtor. However, on the other hand, at KPKNL Palembang and KPKNL Jakarta IV, auctions for bankrupt assets registered in the name of third parties cannot be carried out if they are not accompanied by documents that can serve as proof of the transfer of rights between the third party and the bankrupt debtor, so this inconsistency creates uncertainty regarding settlement/ sale of bankruptcy assets in the name of a third party in the bankruptcy process.

Therefore, to realize legal certainty, it is necessary to make firm and clear rules that regulate that the curator can sell collateral objects on behalf of third parties who are included in the bankruptcy estate without having to be accompanied by proof of the transfer of rights between the bankruptcy debtor and the third party, with complete the required documents, such as:

1. Statement letter from the bankruptcy debtor that the assets are assets belonging to the bankruptcy debtor.
2. A statement letter from the owner of the collateral object that the person concerned is handing over the asset as collateral.
3. Commercial Court Decision or Determination of the Supervisory Judge.

Furthermore, if there are firm and clear rules then legal certainty regarding the curator's authority in implementing the sale of collateral objects on behalf of third parties in the bankruptcy process can be achieved.

4. Conclusion

There The curator has a central role in the bankruptcy process, especially in carrying out the management and settlement of bankruptcy assets. The main task of the curator is to carry out administration, which includes saving, managing and safeguarding bankruptcy assets, as well as settlement, which includes selling bankruptcy assets to pay off debts to creditors. In carrying out their duties, curators are given broad authority by law, but must still pay attention to bankruptcy principles such as the creditor parity principle and *Pari passu pro rata parte*. However, the curator also has a big responsibility and can be held accountable for errors or omissions that cause losses to the bankrupt's assets. Therefore, the curator is required to work professionally, independently and with integrity in carrying out the management and settlement of the bankrupt's assets for the benefit of the parties. party to the bankruptcy process.

Auction as a mechanism for selling bankruptcy assets has a very important role in the bankruptcy process. Article 185 of the Bankruptcy Law and Suspension of Debt Payment Obligations requires the sale of bankruptcy assets through an open auction to ensure transparency, fair competition and optimal selling prices. The auction of bankruptcy assets must comply with fundamental principles such as openness, legal certainty, competition, efficiency and accountability. An open and competitive auction process allows broad participation from potential buyers, creating competition in price bids which ultimately results in maximum sales value. This is very important to protect the interests of creditors by maximizing the level of debt repayment from the sale of bankruptcy assets. In addition, the existence of an Auction Officer who is specially appointed by the Minister of Finance guarantees accountability and responsibility in holding auctions for bankruptcy assets.

Although auctions have potential as an efficient resource allocation mechanism, their success in practice often depends on factors such as auction design, access to information, and participant

participation. Therefore, implementing best practices and risk mitigation strategies in the auction process is very important to optimize the results of the sale of bankruptcy assets and protect the interests of all parties involved. There is ambiguity in the curator's authority in implementing the sale of collateral objects on behalf of a third party in the bankruptcy process. This is due to changes in the Minister of Finance Regulation regarding the document requirements that must be completed to conduct an auction for assets belonging to third parties.

Prior to the enactment of Minister of Finance Regulation Number 122 of 2023, curators could sell collateral objects on behalf of third parties provided that it could be proven that the object was pledged as collateral to cover the debt of the bankrupt debtor. However, after the new regulations came into force, selling assets belonging to third parties became difficult because auction officials referred to the latest regulations which required proof of the transfer of rights to the assets to the bankrupt debtor.

Another problem that arises is the lack of uniformity in the implementation of the new regulations in various State Property and Auction Service Offices (KPKNL). Some KPKNLs can still carry out auctions of assets belonging to third parties without proof of transfer of rights, while other KPKNLs refuse to carry out auctions without such evidence. This creates legal uncertainty for curators in carrying out their duties.

Transparency: The authors confirm that the manuscript is an honest, accurate, and transparent account of the study; that no vital features of the study have been omitted; and that any discrepancies from the study as planned have been explained. This study followed all ethical practices during writing.

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