



## The Role of Balai Harta Peninggalan as Curator in The Management and Settlement of Bankrupt Assets

**F. Sekar Widiarini\* and Teddy Anggoro**

Master of notary, Faculty of law, Universitas Indonesia  
Pondok Cina, Beji, Kota Depok

\*E-mail: [f.sekar13@gmail.com](mailto:f.sekar13@gmail.com)

### **Abstract**

*When an application for Bankruptcy occurs by the Debtor or Creditor, as well as the parties authorized to file a bankruptcy application, the role of the Curator is needed as the administrator and performs the settlement of the bankruptcy estate. In Law Number 37 of 2004 concerning Bankruptcy and Postponement of Obligation for Payment of Debt, it provides a definition that the Curator is the Balai Harta Peninggalan or an individual who is appointed by the Court to manage and settle the assets of the Bankrupt Debtor under the supervision of the Supervisory Judge. In current practice, the role of Balai Harta Peninggalan as Curator in Bankruptcy seems to have diminished since the emergence of the role of Private Curator. In order to use the services of a Curator, the appointment of a Curator to manage and settle the bankruptcy estate may be requested by the Debtor or Creditor in Bankruptcy for appointment. However, when the Debtor or Creditor does not apply for the appointment of a Curator to manage and settle the bankruptcy estate, the Supervisory Judge will appoint the Curator from the Balai Harta Peninggalan to manage and settle the bankruptcy estate belonging to the Bankrupt Debtor. As a result of this arrangement, the role of Balai Harta Peninggalan as Curator becomes noticeably limited, because only when the Debtor or Creditor does not apply for the appointment of a Curator, the role of the Balai Harta Peninggalan as Curator will emerge. So, in this paper, the writer wants to know how the role of Balai Harta Peninggalan is in managing and settling bankrupt assets, which later can be the basis for deciding whether to use the services of Balai Harta Peninggalan as Curator or the services of a Private Curator in the management and settlement of bankrupt assets.*

**Keywords:** Bankruptcy; Curator; Balai Harta Peninggalan; Management and Settlement of Bankrupt Assets.

### **A. Introduction**

The rapid development of the economy and trade causes more and more problems of receivable debt that arise in society. The phenomenon of debtors no longer being able to pay their debts often occurs and causes disputes between debtors and creditors. Various ways can be done in solving the problem of receivable debt, one of which is through Bankruptcy.

In addition to resolving it by means of asset sales by debtors, the settlement of debt debt disputes through Bankruptcy is currently one of the most in-demand options, especially during the Covid-19 Pandemic. This condition can be seen from the statistics of bankruptcy cases and delays in debt payment obligations (PKPU) issued by 5 (five) District Courts in Indonesia, namely PN Central Jakarta, PN Medan, PN Semarang, PN Surabaya, and PN Makassar. The statistics show that insolvency cases increased by 6.06% (six zero comas six percent) from 124 (one hundred and twenty-four) applications in 2019 (two thousand

nineteen) to 132 (one hundred and thirty-two) cases in 2020 (two thousand twenty) cases in 2020 (two thousand twenty) cases.<sup>1</sup>

The bankruptcy statement itself changes a person's legal status to be incapable of committing legal acts, controlling, and taking care of his wealth since the statement or bankruptcy verdict was declared. The Bankruptcy Verdict to the Debtor applies the principle of zero-hour principle, in which the ruling is effective as of 10:00 a.m. on the date the verdict is read. The form of settlement of receivable debts through Bankruptcy is regulated by law article Number. 1 of 1998 concerning Amendments to the Law on Insolvency and has been determined to be Law No. 4 of 1998. Furthermore, it was renewed by Law No. 37 of 2004 concerning Insolvency and Delay of Debt Payment Obligations. In the Law, it is stated that Bankruptcy is a general confiscation of all the wealth of debtors in bankruptcy..<sup>2</sup>

According to Kartono, in the book *Bankruptcy and Withdrawal of Payments*, when the Debtor is no longer able to pay his debts, all his property is confiscated for sale, and the proceeds from the sale are used for repayment of his debts. The proceeds from the sale are distributed to all creditors in a balanced manner, according to each Creditor's small amount of receivables, except among its Creditors there is a valid reason to come first.<sup>3</sup> From this situation, Bankruptcy is used as one of the good efforts to avoid the seizure of debtor property by its Creditors. This is because, in Bankruptcy, debtor debt settlement is based on several principles, namely the Principle of Balance, the Principle of Business Continuity, The Continuity of Justice, and the Principle of Integration.<sup>4</sup>

The main condition of a Debtor declared bankrupt is that the Debtor has at least 2 (two) Creditors and does not pay off one of his debts that have fallen in time. Bankruptcy statements may be requested by one or more Creditors, Debtors, or public prosecutors in the public interest.<sup>5</sup> But keep in mind that bankruptcy does not exempt a person who has been declared bankrupt from his obligation to pay his debts. At first the main purpose of the establishment of the Bankruptcy Law itself was to protect creditors from losses that could occur because debts from debtors could not be paid off. Meanwhile, in the bankruptcy process, the management and settlement of the problem of non-payment of debtors to their Creditors, is carried out by a Curator, who is under the supervision of a Supervisory Judge.<sup>6</sup> Curators in Bankruptcy can be a Heritage Center (BHP) or individuals appointed by the Court, under the supervision of a Supervisory Judge.<sup>7</sup>

When it has been declared that a Debtor is in a state of Bankruptcy, all the wealth of the Bankruptcy Debtor is taken care of and settled by a Curator who is under the supervision of the Supervisory Judge. Curator himself, is defined in the Bankruptcy Law and Delay of Debt Payment Obligations as a Heritage Property Hall or a company person appointed by the Court

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<sup>1</sup> Rezha Hadyan, "Penyelesaian Kasus Kepailitan Tak Melulu Soal Penegakan Hukum," *Kabar24 Bisnis.Com*, last modified 2021, <https://kabar24.bisnis.com/read/20210906/16/1438352/penyelesaian-kasus-kepailitan-tak-melulu-soal-penegakan-hukum>.

<sup>2</sup> *Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*.

<sup>3</sup> Kartono, *Kepailitan Dan Pengunduran Pembayaran* (Jakarta: Penerbit Pradnya Paramita, 1974).

<sup>4</sup> *Penjelasan Umum Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*, n.d.

<sup>5</sup> Sutan Remy, *Hukum Kepailitan, Memahami Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan* (Jakarta: Pustaka Utama Grafiti, 2002).

<sup>6</sup> *Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*.

<sup>7</sup> Susanto Adi Nugroho, *Hukum Kepailitan Di Indonesia Dalam Teori Dan Praktik Serta Penerapan Hukumnya* (Jakarta: Penerbit Prenadamedia Group, 2018).

to manage and clean up the property of the Bankruptcy Debtor under the supervision of a Supervisory Judge.<sup>8</sup>

Before the presence of the latest law on Insolvency and PKPU, the Heritage Treasure Hall became the only party authorized as Curator. However, since the establishment of Law No. 1 of 1998, it is stipulated that those who can become Curators are the Heritage Hall and other curators (Private Curators).<sup>9</sup> In the Bankruptcy Law and PKPU, curators are heritage halls and individuals under the supervision of supervisory judges. The term Curator itself was only known when the establishment of Perpu Number 1 of 1998 concerning Amendments to the Law on Insolvency jo Law No. 4 of 1998 concerning Amendments to the Law on Insolvency into Law. Elyta Ras Ginting mentioned that there are 3 (three) differences between the Heritage Hall as Curator and Other Curators. Become a Compulsory Individual Curator:

1. "Have expertise in the field of Bankruptcy which is used to manage and clean up the property of debtors of Bankruptcy and registered as a Curator at the Ministry of Law and Human Rights of the Republic of Indonesia;
2. Appointed by the Bankruptcy Applicant, in which case can be appointed by the Debtor or Creditor himself in the Bankruptcy application. The Panel of Judges shall appoint a Curator who has been appointed by the Debtor or Creditor;
3. The reward for services to an Individual Curator becomes the personal property of the Curator appointed by the Panel of Judges. It is used as income or professional fee for the services he has provided to manage and clean up the debtor's property. The income is calculated in accordance with applicable regulations.

While the Heritage Hall (BHP) as Curator is:

1. Technical implementation unit of the Directorate General of General Legal Administration at the Ministry of Justice and Human Rights of the Republic of Indonesia.
2. Management and endowment of bankruptcy if in the event of a Debtor or Creditor does not appoint a Curator and apply to the Panel of Judges;
3. Civil Servants, whose service rewards or as well as the cost of managing and clearing the property of the Bankruptcy Debtor will enter the Administration of Non-Tax State Revenue (PNBP)."<sup>10</sup>

A Debtor, Creditor, or party who applies for a Bankruptcy statement may appoint a Curator to carry out the management and/or enforcement of the Bankruptcy Property. However, when the parties do not submit a proposal for the appointment of curators, the Panel of Judges will appoint the Heritage Treasure Hall as a curator in bankruptcy.<sup>11</sup> Towards the above presentation, the author wants to discuss the role of the Heritage Hall as Curator in Bankruptcy in addition to the role of Private Curator proposed by Creditors and Debtors. Later, this article discusses the Heritage Hall itself which plays the role of Curator in Bankruptcy. It's hoped that, through this article, the Debtors, Creditors, and parties who are going through the Bankruptcy process can have an idea of the role owned by the property and heritage agency in Bankruptcy.

<sup>8</sup> Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang, n.d.

<sup>9</sup> Muhammad Najib, "Kedudukan Dan Peranan Balai Harta Peninggalan Dalam Mengurus Dan Membereskan Harta Pailit," *Jurnal Hukum dan Kenotariatan* 2, no. 1 (2018): 32.

<sup>10</sup> Elyta Ras Ginting, *Hukum Kepailitan: Pengurusan Dan Pemberesan Harta Pailit* (Jakarta: Sinar Grafika Offset, 2019).

<sup>11</sup> Ginting, *Hukum Kepailitan: Pengurusan Dan Pemberesan Harta Pailit*.

## **B. Literature review**

Primary legal material is legal material that is authoritative, meaning it has authority.<sup>12</sup> Peraturan perundang-undangan yang berkaitan dengan permasalahan yang disampaikan, yaitu:

1. Civil Code
2. Criminal Code Procedure;
3. Law No. 37 Of 2004 Concerning Suspension And Payment;
4. Government Regulation No. 26 of 1999 concerning Basic Rates of Non-Tax Types of State Revenue.

Second, legal material is the form of all publications who was related to the law and official documents that include textbooks, legal dictionaries, legal journals, and comments on court decisions.<sup>13</sup> In this case, all these things are related to "the role of the heritage hall as a curator in the management and delivery of bankruptcy property."

## **C. Research Methods**

This journal is used normative juridical law research where the law is conceptualized as is written in the laws and regulations (referred to as law in books) or the law is conceptualized as a rule or norm that is a benchmark of human behavior. This normative legal research is based on primary and secondary legal materials, the name of research refers to the norms contained in the laws and regulations, especially the Bankruptcy Law. In connection with the type of research used is normative juridical, then the approach used is the statutory approach (statute approach), which in this case is Law No. 34 of 2004 concerning Bankruptcy and Delay of Debt Payment Obligations. In addition to the statutory approach, a historical approach is also used, which provides an overview of the history of the Heritage Hall.

## **D. Result And Discussion**

### **1. Bankruptcy In General**

Accordance in with Articles 1131 and 1132 of the Civil Code (KUHPer), when a Debtor neglects to fulfill his obligations, his Creditors are granted the right to make sales and auctions of property from the debtor which then the proceeds from the sale and auction must be divided in a draw to all Creditors by the burden of receivables of each Creditor.

Bankruptcy itself was according to Article 1 number 1 of Law No. 37 of 2004 concerning Bankruptcy and Delay of Debt Payment Obligations, Bankruptcy (hereinafter referred to as UUPK) is "a general confiscation of all the wealth of the Bankruptcy Debtor whose management and enforcement is carried out by the Curator under the supervision of the Supervisory Judge, The application for bankruptcy statement, submitted to the Commercial Court. After the ruling declaring the fall of bankruptcy, the Debtor loses his right to exercise control and management of his property."<sup>14</sup> Furthermore, the management of the debtor's property is bankrupt and the settlement of all his debts will be carried out by a Curator appointed by the Court..<sup>15</sup>

In Bankruptcy, not only the applicant's debt is paid but what is paid is the entire debt of the declared bankrupt person to all relevant parties. The payment of the debt is distinguished

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<sup>12</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Perdana Media Group, 2010).

<sup>13</sup> Peter Mahmud Marzuki, *Penelitian Hukum*.

<sup>14</sup> *Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*.

<sup>15</sup> *Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*.

based on the type of receivable, which is whether it includes debts guaranteed with a treasury guarantee, or privileged debts, or ordinary debts. Creditors who hold a treasury guarantee will be the first order to be taken into account to get debt payments. Furthermore, it is followed by creditors who hold privileges, and finally, creditors who do not include holders of material rights, nor holders of privileges. However, in the circumstances determined by a receivable there is a Creditor who holds the privilege precedence of the Creditor who holds the right of the sovereign, then the position of the special Creditor is higher than the Creditor holder of the sovereign rights.<sup>16</sup>

### **1.1 Result of the Bankruptcy Statement Verdict**

Since the Bankruptcy Statement Verdict was handed down by the Judge, a Bankruptcy Debtor has lost his right to manage and control his property. Management and mastery is held by a Curator, both Private Curators and Curators of the Heritage Hall. In Article 22 of Law No. 37 of 2004 concerning Insolvency and Delay of Debt Payment Obligations excludes:

- 1) Objects, including animals, supplies, medical devices, bedding, foodstuffs for 30 (thirty) days that are important to the Debtor;
- 2) Everything the Debtor obtains from his employment (to the extent determined by the Supervisory Judge);
- 3) Money given to the Debtor to fulfill his obligation to provide a living.

Not included in the wealth of debtors who will transfer their mastery and management to a Curator. Debtors are still allowed to commit legal acts that if judged can increase their wealth. If one day, the law enforcement even harms the bankruptcy effort, then the Curator can cancel the legal action committed by the Debtor.

During the bankruptcy, the claim for the acquisition of fulfillment of the engagement on the bankruptcy property submitted by the debtor can only be done by registering for matching.<sup>17</sup> A lawsuit filed by the debtor during bankruptcy, at the request of the defendant, the case must be suspended in order to provide the defendant with the opportunity to call the curator in taking over the case against the period specified by the judge. The lawsuit, as far as aiming to obtain the fulfillment of the obligations of the Bankruptcy Property and the case is ongoing, fell for the sake of the law with the verdict of the Bankruptcy statement against the Debtor.<sup>18</sup>

The bankruptcy ruling resulted that any determination of the court's implementation of any part of the Debtor's wealth that had begun before bankruptcy, must be stopped immediately and since then there is no ruling that can be implemented or also by holding the Debtor hostage. All seizures that have been made are deleted and if necessary the Supervisory Judge must order their removal. By not reducing the enactment of the provisions as intended in Article 93 of the Bankruptcy Law and PKPU, debtors who are in detention must be abolished immediately after the bankruptcy statement verdict is pronounced.

### **1.2 Curator's Duties in Bankruptcy**

Following Article 24 of Law No. 37 of 2004 concerning PKPU, since the bankruptcy statement ruling, the Bankruptcy Debtor has lost his right to control and manage his wealth included in the bankruptcy property. The ruling is valid from 00:00 local time.<sup>19</sup> As a result of the bankruptcy verdict, the debtor's bankruptcy property must be controlled and taken care

<sup>16</sup> Remy, *Hukum Kepailitan, Memahami Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan*.

<sup>17</sup> *Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*.

<sup>18</sup> *Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*.

<sup>19</sup> *Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*.



of by someone better able to take care of the bankruptcy property belonging to the Bankruptcy Debtor. Who will next take care of the wealth belonging to the Bankruptcy Debtor?

Referring to Article 69 of Law No. 37 of 2004 concerning PKPU, the task to carry out the management and/or provision of bankruptcy property is carried out by a Curator. In carrying out these duties, a Curator does not have to obtain approval from or submit advance notice to the Debtor or one of the Debtor's organs. While the Curator intended in Article 68 of Law No. 37 of 2004 concerning PKPU is the Heritage Hall or other Curators. Balai Harta Peninggalan is a Technical Implementation Unit located under the territory of the Ministry of Law and Human Rights. For the requirements to become a Curator other than Balai Harta Peninggalan is someone domiciled in Indonesia who has special skills needed in order to take care of and / or clean up bankruptcy property. Such special skills are those who follow and pass curator education. In addition, he must also be registered with the ministry whose scope of duties and responsibilities in the field of law and legislation.

## 2. Balai Harta Peninggalan

The Dutch entered Indonesia in 1596. The main purpose of the Dutch arrival to Indonesia was to trade. In addition to the Netherlands, many foreign traders also come to trade in Indonesia, such as foreign traders from China, England, Portugal, and Pakistan. Because they felt competing with these foreign traders, the Dutch established a trade association in 1602. The trade association was named *Vereenigde Oost Indische* Company, or commonly called VOC. In addition to conducting trade activities, the VOC itself has the goal to carry out colonization in the areas they occupy.<sup>20</sup>

Before the emergence of special regulations governing Bankruptcy, Bankruptcy was regulated in Book III of the Kuhd (Code of Trade Law). But in the end the rule was revoked from the KUHD and made a regulation of its own that regulates The Law. The Bankruptcy Law in Indonesia is derived from the Bankruptcy Law in the Netherlands. The basic concept of Indonesian Bankruptcy is listed in *Failisements-Verordening*, Staatsblad 217 of 1905 and Staatsblad 348 of 1906. When there was a monetary crisis in Indonesia in 1998, a Government Regulation in Lieu of Law (Perpu) No. 1 of 1998 concerning Amendments to the Law on Insolvency was established as Law No. 4 of 1998 on Insolvency. Through the development of the economy after the monetary crisis, a new Bankruptcy Law was regulated, namely Law No. 37 of 1998 concerning Insolvency and Delay of Debt Payment Obligations, which is valid until now.<sup>21</sup>

Entering the heyday of the VOC, the Heritage Hall was formed in 1624, under the name Wees End Boedelkamer (currently called the Heritage Hall). It was founded in Jakarta on October 1, 1624. The original purpose of the establishment of the BHP was to represent the interests of the heirs of the VOC members who were in Nederland in terms of managing the relics left by the VOC members. In carrying out his duties, Wees End Boedelkamer was given an instruction, namely:

1. "On July 16, 1625, 49 articles were established governing the organization and duties of the organization and its duties. *Wees End Boedelkamer*;
2. In 1642, a rule was made that was not far from the rule in 1625;
3. In 1818, Staatsblad Number 72 was created after the restoration of Dutch rule in Indonesia. The content is not much different from the previous regulations;

<sup>20</sup> Departemen Kehakiman Republik Indonesia; Direktorat Jenderal Hukum Perundang-Undangan, "Himpunan Peraturan Perundang-Undangan Balai Harta Peninggalan," in *Buku I*, n.d., 9-13.

<sup>21</sup> Susanto Adi Nugroho, *Hukum Kepailitan Di Indonesia Dalam Teori Dan Praktik Serta Penerapan Hukumnya*.

4. In 1872, Staatblaad No. 166 was made about the instructions of Wees End Boedelkamer in Indonesia, which is still valid today..<sup>22</sup>

In addition to the 4 (four) instructions above, *Wees End Boedelkamer* also has a household rule or position rule called *Huishoudelijk Regeling of Dienstreglement*, which is still valid today. In carrying out the financial arrangements of Wees End Boedelkamer, regulated in Staatblaad 1897 Number 231 which came into force on January 1, 1898. *Wees End Boedelkamer* representatives have been in Indonesia since 1678, starting in the Banda area. Then in 1691 in Palembang, 1695 in Ambon and Ternate, 1696 in Makassar, 1725 in Banten, 1727 in Jepara, 1739 in Padang and Cirebon, 1763 in Semarang, 1764 in Timor, 1809 in Surabaya, and 1827 in Bengkulu.<sup>23</sup>

Currently *Wees End Boedelkamer* is better known as Balai Harta Peninggalan (referred to BHP). After the end of the Dutch occupation of Indonesia, BHP has changed its purpose to represent and take care of the interests of people or entities who due to law or rulings or court determinations cannot carry out their own interests based on applicable laws and regulations.<sup>24</sup> Balai Harta Peninggalan itself is a technical implementation unit located within the Ministry of Law and Human Rights of the Republic of Indonesia which is located and directly responsible to the Director General of General Legal Administration through the Director of Civil Affairs.

Since the establishment of the regulation on Bankruptcy and Delay of Debt Payment Obligations in Indonesia with Law No. 37 of 2004 concerning PKPU, BHP's role appears in article 70, namely BHP is as a Curator in Bankruptcy who has the task to carry out the management and / or provision of bankruptcy propert..

### 3. The Role of the Heritage Hall as Curator in Bankruptcy

In Law No. 37 of 2004 concerning Bankruptcy and Delay of Debt Payment Obligations, Article 1 paragraph (7) stipulates that the court that has the right to examine and decide bankruptcy cases is a special court called the Commercial Court. This Commercial Court is located in the general court, namely the District Court. A Debtor is declared Bankrupt when eligible:

1. Have two or more Creditors;
2. The debtor does not pay at least one debt that has fallen for a period of time..<sup>25</sup>

In the bankruptcy process, it is preceded by a request for a bankruptcy statement by interested parties. The bankruptcy application is submitted to the court through the clerk of the District Court where the Commercial Court is located. When the bankruptcy application has been submitted, the Registrar will register the application into the case register within 1 x 24 hours. After that, for 2 x 24 hours the Chief Justice will study the bankruptcy application to set the day of the hearing. Upon the determination of the day of the hearing, the parties will be called by the Chief Justice to attend the bankruptcy statement examination hearing. The examination must be held no later than 20 (twenty) days from the time the bankruptcy application is registered.

If there is an application from the Debtor for acceptable reasons, it can be delayed a maximum of 25 (twenty-five) days. If in the examination of the bankruptcy case it is proven

<sup>22</sup> Perundang-Undangan, "Himpunan Peraturan Perundang-Undangan Balai Harta Peninggalan."

<sup>23</sup> Perundang-Undangan, "Himpunan Peraturan Perundang-Undangan Balai Harta Peninggalan."

<sup>24</sup> Kepala Balai Harta Peninggalan dari masa ke masa, "Sejarah Balai Harta Peninggalan Jakarta," *Kemenkumham*, <https://bhpkjarta.kemenkumham.go.id/index.php/profil/sejarah-singkat>.

<sup>25</sup> *Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*.

simply that the Debtor is in a state of stopping paying, the Judge will hand down the bankruptcy verdict. The ruling was delivered in a hearing open to the public. The bankruptcy case must be decided no later than 60 (sixty) days from the date the application is registered.<sup>26</sup>

No later than 3 (three) days, the Court shall submit the Judge's decision to the Debtor, Creditor, Curator, and Supervisory Judge with a recorded letter.<sup>27</sup> The court's decision contains the basis of the ruling and contains the appointment of curators and supervisory judges as long as requested by the Debtor and Creditors. However, if the Debtor and Creditor do not appoint a Curator and Supervisory Judge, then automatically the Heritage Treasure Hall will act as the Curator.

The regulations governing the duties of the Heritage Treasure Hall, namely::

1. *Staatsblad* 1872 No. 166;
2. *Staatsblad* 30 March 1903 No.14;
3. *Staatsblad* 1827 No. 231;
4. *Staatsblad* 1927 No. 382;
5. Civil Code;
6. Bankruptcy Law Number 37 of 2004;
7. Decree of the Minister of Justice of the Republic of Indonesia Number M.02-UM.01.06 of 1993 concerning the Determination of Environmental Legal Services Costs of the Ministry of Justice's Heritage Hall.

While the task of the Heritage Treasure Hall is:

1. As Supervisory Guardian (Article 366 of the Civil Code);
2. As a Temporary Guardian (Article 332 of the Civil Code);
3. As a Supervisory Supervisor (Article 499 of the Civil Code);
4. The property administrator of the person who was not present (Article 463 of the Civil Code);
5. Collector or Curator of the property of the person declared bankrupt (Article 5 jo. Article 69 paragraph (1) of the Bankruptcy Law);
6. Child abusers who are still in the womb (Article 348 of the Civil Code);
7. Registration and opening of a will (Article 42 OV S. 1848 Number 10);
8. Creation of certificate of inheritance for foreign easterners except Chinese (Article 14 paragraph (1) Instuctie Voor Reglement Landmeters S. 1916 Number 517).

In carrying out its duties as Curator in Bankruptcy, the Heritage Treasure Hall is in charge of managing and clearing the debtor's property in bankruptcy. The goal is that the debtor's property is not transferred to parties who can cause harm to the Creditors of the bankruptcy debtor. Since the bankruptcy verdict was read, the Debtor is no longer entitled to perform management duties for the bankruptcy property. Debtors, Creditors, and third parties interested in the bankruptcy process are given protection by the appointment of a Curator as the party who carries out the management and delivery of bankruptcy property..<sup>28</sup>

The provisions in Article 16 are affirmed in Article 26 paragraph (1) which states that all lawsuits derived from the rights and obligations included in the bankruptcy property, filed by or against the Curator. If the Debtor or Creditor does not submit a proposal for the appointment of another Curator to the court, then the Heritage Hall will act as curator. A

<sup>26</sup> Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang.

<sup>27</sup> Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang.

<sup>28</sup> Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang.



Curator appointed in the bankruptcy process, must be independent and have no conflict of interest with the Debtor or Creditors.<sup>29</sup>

According to the old Bankruptcy Law, the obligation as a Curator was carried out by the Heritage Hall or abbreviated as BHP. BHP is a special agency under the Department of Justice that is responsible for handling the issue of supervision of the public.<sup>30</sup> The task of the Heritage Hall in the Provision of Bankruptcy Property is:

1. Applying to the Court and the Supervisory Judge to be able to sell at auction or under the hands of all debtor's bankruptcy property.
2. Every sale, both by auction and under the hand must first get permission from the Supervisory Judge. The permit is a determination in which it also provides distribution to taxi drivers who number 4 (four) people for fixed goods. As for immovable goods, there is no need to be sworn in by the Supervisory Judge because the Heritage Treasure Hall can also be submitted to become a permanent taxi driver to the Local Government.
3. Compiling a list of divisions for the approval of the Supervisory Judge and announcing the list of divisions in the newspaper.<sup>31</sup>
4. Carrying out division according to the division list, namely by making payments according to the division list, after the grace period.<sup>32</sup>

Basically, the Heritage Hall itself serves as: Guardianship (*Vodgdij*); The ability (*Curatele*); Absence (*Afwezigheid*); Property that has no power (*Onbeheerde Nalatenschappen*); Registration and opening of a closed will (olographic testamen); Issuance of Certificate of Rights of Inheritance (referred to SKHW) especially for non-Chinese Foreign Eastern descendants; Management in PKPU and Curator in Kepailitan; Third-party money management

Then, for the working area of BHP based on Presidential Decree No. 97 of 1999 concerning the Establishment of a Commercial Court, namely:

1. Jakarta, with working areas of DKI Jakarta, West Java, Banten, Lampung, South Sumatra, Bangka Belitung, Jambi, West Kalimantan;
2. Semarang, with the working area of Central Java and Yogyakarta Special Region;
3. Surabaya, with working areas of East Java, East Kalimantan, South Kalimantan, Central Kalimantan, North Kalimantan (Expansion from Central Kalimantan);
4. Medan, with working areas of North Sumatra, Aceh, Riau, Riau Islands, West Sumatra, Bengkulu; and
5. Makassar, with working areas of South Sulawesi, Central Sulawesi, West Sulawesi, North Sulawesi, Bali, Papua, West Papua, Maluku, North Maluku, NTB, Gorontalo, NTT.

Balai Harta Peninggalan acts as Curator since 1905, namely since the enactment of the Bankruptcy Regulation (*Faillissementverordening*), *Staatsblad* 1905 Number 217 jo. *Staatsblad* 1906 Number 348 which was valid from 1905 to 1998. Due to the monetary crisis that occurred in 1997, the Government issued a Government Regulation in Lieu of Law No. 1 which was passed into Law No. 4 of 1998, where there are other curator elements besides curators of heritage halls. So that since the enactment of Law No. 4 of 1998, BHP is not the only Curator who manages the management and enforcement of Bankruptcy Property, but

<sup>29</sup> *Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang.*

<sup>30</sup> Jerry Hoff, *Undang-Undang Kepailitan Di Indonesia (Indonesia Bankruptcy Law), Terjemahan Kartini Muljadi* (Jakarta: Tatanusa, 2000).

<sup>31</sup> *Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang.*

<sup>32</sup> *Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang.*

can be done by other Curators or Individual Curators. From 1905 to 1998, the bankruptcy case was referred to the District Court. That's where the Heritage Hall, in addition to those in the 5 Provinces above, was also formed in almost every regency and city. This is to follow up on the bankruptcy rulings in the courts of the region.

So when there was a bankruptcy case, the Court directly appointed the Heritage Hall as the only Curator. But since the establishment of Law No. 4 of 1998, the element of Private Curators has emerged. Then in 1999, the Government issued Presidential Regulation No. 97 of 1999 which was regulated in the establishment of a Commercial Court in Ujung Pandang District Court, Medan District Court, Surabaya District Court, Jakarta District Court, and Semarang District Court. Thus, since 1999 the bankruptcy case must be filed with the 5 Commercial Courts in accordance with the territory.

The status of this Relics Hall is basically for the sake of the law. When the Bankruptcy is submitted by the Debtor, Creditors, or other parties concerned do not submit the proposal for the appointment of the Curator, then for the sake of the law, the Panel of Judges must appoint BHP as the Curator. This is worth remembering because BHP's own task is to carry out the decision and determination of the Court Of Justice. The decision and determination is the basis of BHP in carrying out the task of managing the Debtor's Bankruptcy Property.

BHP's authority as a Curator in Bankruptcy is actually not much different from the authority of private curators / individual curators. The similarities between the BHP Curator and the Private Curator are in his authority, obligations and obligations, duties and responsibilities. The difference is only in the rights that BHP Curators have with Private Curators / Individual Curators. The right of private curators is to receive a service/fee reward based on Article 76 of Law No. 37 of 2004 concerning Insolvency and PKPU, the amount of which is determined based on Permenkumham. BHP's right to get a service/ fee reward from the results of its duties as Curator in Bankruptcy, not given directly to each member of the Heritage Property Center but entered into the administrative Non-Tax State Revenue (PNBP).

In Article 15 of the Bankruptcy Law and PKPU, this is the basis why BHP's role in Bankruptcy is needed. This article provides an arrangement that if in Bankruptcy there is no appointment of Curators by Debtors, Creditors, or other parties concerned, then BHP must be appointed to carry out its duties as Curator of Insolvency.

In fact, bankruptcy is feared by many business actors. This is because all the property of the Bankruptcy Debtor is confiscated in general by the Curator. Bankruptcy debtors cannot immediately manage and enforce their own property when the bankruptcy verdict has been handed down. When the peace fails, then Bankruptcy can be one of the last resorts in resolving the debt debt dispute between the Bankruptcy Debtor and its Creditors. In Bankruptcy the principle of going concern and the principle of justice itself is preserved. Because all Creditors have the same rights and demands, it must be arranged the distribution of debt payments properly in accordance with the rights that should be received by each Creditor. This is in line with the practice in Bankruptcy, because all the rights of all creditors are protected.

One of the obligations of the Curator in Bankruptcy is to announce the existence of Bankruptcy. In Law No. 34 of 2007 concerning Insolvency and PKPU, the announcement that must be carried out by the Curator starts from the announcement of bankruptcy (Article 15 paragraph (4) of the Bankruptcy Law and PKPU), then when the Bankruptcy there is peace then the peace decision must be announced by the Curator, until the process of determining the bill list must also be announced. In addition, the list of tagian divisions and the summoning of all Creditors is also one of the obligations of a Curator in the Bankruptcy process. The

contents of the announcement have been regulated in Law No. 37 of 2004 concerning Insolvency and PKPU.<sup>33</sup>

#### **4. The Role of the Heritage Center in the Management and Delivery of Bankruptcy Property**

The responsibilities of BHP Curators are different from those of Private Curators. The responsibility of the Heritage Treasure Hall as Curator, in addition to being responsible to creditors, debtors, and making periodic reports to supervisory judges, Balai Harta Peninggalan also has responsibility to the Ministry of Law and Human Rights of the Republic of Indonesia. BHP made the same report to the Ministry of Law and Human Rights, as reported to the Supervisory Judge. As for private curators, personal responsibility to debtors, creditors, and supervisory judges. For audits, BHP is internally by the Inspectorate of the Ministry of Law and Human Rights of the Republic of Indonesia, externally by the Audit Board of the Republic of Indonesia. Even when indications of fraud arise, the Corruption Eradication Commission can also step in to conduct audits to BHP. The cost of the Bankruptcy process is also based on the Regulation of the Minister of Finance on Minimum Cost Standards.<sup>34</sup> In the management of bankruptcy property, BHP has duties, namely:

1. Declaring bankruptcy after receiving a bankruptcy determination or decision from the Commercial Court that falls within the relevant BHP working area. The announcement was posted in two daily newspapers appointed by the Supervisory Judge within five days of the verdict being established.<sup>35</sup>
2. Recording and registering the debtor's property is bankrupt. In addition, for items that are considered fast and rotten, must be separated from other items and can be sold as soon as before the verification meeting, in accordance with the permission of the Supervisory Judge.
3. Requesting information from the Bankruptcy Debtor about the causes of bankruptcy as a basis for consideration to continue the business of the Bankruptcy Debtor and other information that can facilitate the duties and authority of BHP as Curator.
4. Send a letter to the agency related to the Bankruptcy Debtor.
5. Issuing bills to debtors and creditors to pay their debts accompanied by proof of bill.
6. Create a list of Temporary Debtors or Creditors.
7. Submit to the Supervisory Judge regarding the day and date of the verification meeting.
8. Make a fixed list of receivable debts authorized by the Supervisory Judge. The fixed list of receivables is affixed to the Court of funds tau the local Heritage Hall Office so that it can be seen by the Debtor or Creditor.
9. Continuing the Debtor's business with the approval of the Supervisory Judge.<sup>36</sup>
10. Submit a report to the Supervisory Judge regarding the implementation of duties as Curator.

Meanwhile, in the case of the provision of bankruptcy property, BHP is tasked with:

1. Applying to the Court and The Supervisory Judge to sell at auction or under the hands of all or part of the property of the Bankruptcy Debtor.<sup>37</sup>

<sup>33</sup> Dulyono, "Peran BHP Dalam PKPU Dan Kepailitan" (Materi Webinar PKPU dan Kepailitan Series 2 oleh SIP Corp. Episode 6, 2021).

<sup>34</sup> Dulyono, "Peran BHP Dalam PKPU Dan Kepailitan."

<sup>35</sup> Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang.

<sup>36</sup> Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang.

<sup>37</sup> Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang.

2. Compile and announce a list of divisions in newspapers, with the approval of the Supervisory Judge.
3. Carrying out payments in accordance with the list of divisions after the resistance or the decision for it.
4. Announcing the end of bankruptcy in the State Gazette of the Republic of Indonesia and newspapers, after the payment was made.

In addition to being guided by the Civil Code and Law No. 37 of 2004, BHP in carrying out its duties and authorities is also guided by Stbl 1872 Number 166 concerning Instructions for Heritage Halls in Indonesia. One of the differences between the Curator of the Heritage Hall and the Private Curator is the arrangement in Article 78 Stbl 1872 Number 166 which stipulates that the proceeds of sales, cash, and all receipts carried out in accordance with Article 107 of the Bankruptcy Law, are deposited into BHP's coffers on the Debtor's account.

#### **5. Curator of the Heritage Hall**

For fees received by the Curator, regulated in Article 76 of the Bankruptcy Law Number 37 of 2004. Furthermore, it is guided by the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 18 of 2021 concerning Guidelines for Rewards for Services for Curators and Administrators. For curators of the Heritage Center, there are their own provisions in the laws and regulations governing non-tax state revenues that apply to the Ministry of Law and Human Rights. Until now there has been no new regulation governing the amount of fees for services received by the Heritage Hall, so it still uses Government Regulation No. 26 of 1999 dated May 25, 1999 concerning the Basic Rate of Non-Tax State Revenue Types Applicable to the Department of Justice..

In the annex to Government Regulation No. 26 of 1999 regulates the costs associated with the management of property in the management of BHP as well as costs related to the settlement of insolvency. Sales of fixed goods, the reward received is 2.5% of the sales proceeds, while for moving goods it is also 2.5% of the sales proceeds. In the bankruptcy settlement, the advisory received by BHP is as follows:

1. "In terms of ending with peace:
  - a. Boedel value up to 50 billion, the acquisition of service rewards for BHP is 4% of the debtor's wealth;
  - b. Boedel value of more than 50 billion, the acquisition of service rewards for BHP is 2% of the debtor's wealth.
2. In terms of ending up outside the peace:
  - a. Boedel value up to 50 billion, the acquisition of service rewards for BHP is 8% of the debtor's wealth;
  - b. Boedel value of more than 50 billion, the acquisition of service rewards for BHP is 4% of the debtor's wealth.
3. In the event that the bankruptcy statement is rejected at the Level of Cassation or Review, the acquisition of service rewards for BHP is 1% of the Debtor's property as the applicant or 1% of the bill if the Creditor is the applicant."<sup>38</sup>

The provisions of Article 72 of Law No. 37 of 2004 concerning Bankruptcy and Delay of Debt Payment Obligations, regulate in general regarding the curator's responsibility for his errors or omissions in carrying out management duties and/or enforcement that cause losses to bankruptcy property. However, these provisions have not been accompanied by sanctions

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<sup>38</sup> *Lampiran Peraturan Pemerintah Republik Indonesia Nomor 26 Tahun 1999, Nomor VII Tentang Jenis Penerimaan Negara Bukan Pajak Khusus Untuk Penerimaan Balai Harta Peninggalan, n.d.*

given to the Heritage Heritage Hall as curators who are proven to have committed their mistakes and negligence in carrying out management duties and / or enforcement that cause losses to bankruptcy property. In connection with the article, the Curator may be sued and obliged to pay damages for negligence, especially due to deliberate errors that cause interested parties to bankruptcy property to suffer losses, especially in Concurrent Creditors..

The loss when the reduced bankruptcy property decreases in value, thus the Konkuren Creditors get less than what should be received from the proceeds of the sale of bankruptcy property if the value of the bankruptcy property is not reduced as a result of the curator's actions. Curators can also commit acts against the law. Therefore the Curator is personally responsible for losses suffered by third parties. The act of the Curator harming the insolvent property and third party is an act beyond the authority of the curator given to him by law, cannot be charged on the insolvent property, and is the responsibility of the curator personally.<sup>39</sup>

Currently, there is also no minimum limit of debt that can be requested for bankruptcy. This is also not accompanied by the distinction of which curator will take care of or clean up the insolvency property, whether the Heritage Hall as a government institution or a Private Curator requested by creditors and debtors. BHP's role as Curator is less than optimal due to the arrangements in Article 15 paragraph (2) of the Bankruptcy Law and Delay of Debt Payment Obligations, where in the event that creditors or debtors do not submit proposals for the appointment of Curators to the Court, the Court will appoint BHP as Curator. BHP's role in this case becomes less than optimal in providing protection of civil rights for Creditors and Debtors.<sup>40</sup>

Balai Harta Warisan as one of the organs in bankruptcy aims to provide guarantees of civil rights from creditors and debtors. However, this goal seems to have not run optimally at this time. This is due to the lack of strong role of BHP as State Curator. Because in Article 15 paragraph (2) of the KPKPU Law, the existence of BHP is limited only when the Creditor or Debtor does not submit a proposal for the appointment of curators to the Court, then BHP is appointed and appointed by the Court to become a Curator in Bankruptcy. The designers of the Academic Text on Changes to the KPKPU Law felt that the arrangement limited the role of the State in protecting the civil rights of creditors and debtors.<sup>41</sup>

## E. Conclusion

Based on the discussions that have been stated above, the role of the Heritage Center in Bankruptcy is to take care of and clean up the property of the Bankruptcy Debtor. When the Debtor, Creditor, or party entitled to apply for bankruptcy does not submit a proposal for the appointment of the Curator in his bankruptcy case, the Heritage Property Center will be appointed by the Panel of Judges to carry out his duties as Curator. In its arrangements by the Bankruptcy Act, the author concluded that BHP's role in Bankruptcy is restricted, only when the parties to the Bankruptcy do not submit a proposal for the appointment of a Curator. It

<sup>39</sup> Imran Nating, *Peranan Dan Tanggung Jawab Kurator Dalam Pengurusan Dan Pembersihan Harta Pailit* (Jakarta: Rajawali, 2004).

<sup>40</sup> Kementerian Hukum dan Hak Asasi Manusia Badan Pembinaan Hukum Nasional, *Naskah Akademik Rancangan Undang-Undang Tentang Perubahan Atas Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*, 2018.

<sup>41</sup> Kementerian Hukum dan Hak Asasi Manusia Badan Pembinaan Hukum Nasional, *Naskah Akademik Rancangan Undang-Undang Tentang Perubahan Atas Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*.



has not been arranged regarding the boundaries and in what specific terms, the Heritage Treasure Hall can appear as a Curator in Bankruptcy, resulting in the role of the Heritage Treasure Hall as a Curator in Bankruptcy is less effective.

The author concluded the need for the Law to provide arrangements regarding the maximum amount of debt that will be for the sake of the law of the Heritage Hall appointed by the Panel of Judges as the Curator who will take care of and clean up the debtor's bankruptcy property. This is done to provide a fair division of duties between the Curator of the Heritage Hall and the Private Curator. Laws and other regulations regarding Bankruptcy should also be able to strengthen the role of the Heritage Heritage Hall as Curators representing the Government to provide protection, both to Creditors and Debtors. Therefore, up to the debt limit with a specified amount, both bankruptcy is filed voluntary and involuntary by the Debtor or Creditor, they cannot submit a proposal for the appointment of curators, but when the application for bankruptcy statement is granted by the Judge, then for the sake of law appointed the Heritage Treasure Hall as curator to carry out the management and provision of bankruptcy property.

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