



Analysis of The Regulation of The Curator's Professional Code of Ethics in Carrying Out His Duties as the Person in Charge of a Bankrupt Company According to The Applicable Law in Indonesia

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Article Info	Abstract
<p><i>Keywords: Law Enforcement, Indonesian National Policy, International Missions, Professional Ethics, Professional Codes of Ethics.</i></p>	<p><i>This text explores various aspects of law enforcement and professional ethics in Indonesia. It highlights the participation of law enforcement agencies, including the Indonesian National Police, in international missions and their role in maintaining public order, enforcing laws, and upholding justice. The discussion focuses on the organization of the police force, including Police Regional Commands, and the presence of multiple law enforcement agencies with overlapping jurisdiction in maritime zones. The significance of ethical norms and professional codes of ethics is emphasized, along with their role in guiding the conduct of professionals in their respective fields. The role of a curator in managing bankruptcy assets under the supervision of a supervisory judge is also discussed, outlining the pivotal phases of the bankruptcy process and the collaboration between the supervisory judge and the curator in ensuring effective asset management and administration. However, it doesn't replace ongoing ethical consideration. Effective codes require profession-based creation, not top-down imposition, to embody profession-specific ideals. In Indonesia, diverse professions uphold distinct ethical codes aiming to enhance service quality, deter unprofessional conduct, and foster a positive environment. The curator profession exemplifies this with its code overseen by the Indonesian Curators and Administrators Association (IKAPI), guiding roles, duties, and authorities.</i></p> <div data-bbox="1209 1375 1378 1435"></div> <p data-bbox="815 1451 1386 1473"><i>This is an open access article under the CC-BY-SA license.</i></p>

INTRODUCTION

In Indonesia, the role and function of law enforcement are crucial in realizing the principles of the rule of law. The 1945 Constitution of the Republic of Indonesia affirms that Indonesia is a state of law, and law enforcement plays a significant role in upholding this principle (La Ode Restele et al., 2022). Indonesia's primary law enforcement agency is the Indonesian National Police (POLRI), responsible for enforcing law and order throughout the country. The Indonesian National Police is an independent organization under the direct auspices of the President of Indonesia. The Indonesian National Police is involved in various law enforcement and policing duties, including maintaining public order and security.

They also participate in international missions, such as providing security for United Nations missions. The police force in Indonesia is financed, directed, and organized by the central government. They have their territorial organization, Police Regional Commands (Polda), responsible for specific jurisdictions. In addition to the Indonesian National Police, other law enforcement agencies in Indonesia perform policing duties for specific public services. These agencies are under the supervision and training of the Indonesian National Police. However, there have been criticisms regarding the presence of multiple maritime law enforcement agencies in Indonesia, which sometimes overlap in authority in the marine zone of the country.

The ethical norms of various professional groups, including law enforcement, are formulated as professional codes of ethics. These codes of ethics guide the behavior and conduct of professionals in their respective fields.

Ethical norms, along with legal norms, contribute to the establishment of order in society. Overall, law enforcement, including the Indonesian National Police, plays a crucial role in upholding the rule of law in Indonesia. They are responsible for maintaining public order and security, enforcing laws, and ensuring justice for the community. The ethical norms and professional codes of ethics guide the behavior and conduct of law enforcement professionals in their duties (Trisna et al., 2022).

A professional code of ethics is a norm established and accepted by a professional group, which directs or gives instructions to its members on how they should act and, simultaneously, ensures the moral quality of the profession in the eyes of society (Chang et al., 2022). The search results provide information on various professional codes of ethics in Indonesia, such as the Advocate Professional Code of Ethics, the Public Accountant Professional Code of Ethics, the Counselor Code of Ethics, the Police Professional Code of Ethics, and the Medical Code of Ethics. These codes of ethics guide the behavior and conduct of professionals in their respective fields, such as advocates, public accountants, counselors, police officers, and doctors (Aini et al., 2020).

Generally, it provides instructions to its members to practice the profession. However, it can be stated that the general principles formulated in a profession will vary. Professional codes of ethics are the product of applied ethics, subject to change and amendment, the result of self-regulation of the profession concerned, effective if imbued, the formulation of human moral norms, a benchmark for the actions of group members and an effort to prevent unethical behavior for its members.

The curator has a major role in managing and administrating bankruptcy assets for the benefit of creditors and the debtor itself. In Article 1 point 5 of Law Number 37 on Bankruptcy and PKPU, the definition of "Curator is the Bankruptcy Hall or an individual appointed by the Court to manage and organize the assets of a bankrupt debtor under the supervision of a supervisory judge by the Law.

Concurrently, the curator emerges as a crucial figure, wielding the authority to effectively manage and administer the intricate web of bankruptcy assets. This intricate task is undertaken with an acute awareness of the intricate legal and financial dimensions surrounding the bankruptcy property. This critical partnership between the supervisory judge and the curator forms the bedrock of the bankruptcy process, ensuring its efficient and equitable progression.

The necessity for such dual oversight becomes clear when considering the core rationale for their involvement. Following the declaration of bankruptcy, the legal framework dictates that the incapacitated bankrupt debtor is divested of their capacity to oversee, manage, and administer the intricate matrix of bankruptcy assets. Hence, the supervisory judge and curator stand as the pillars of competence and authority, stepping into the void left by the debtor's diminished legal capacity.

Ultimately, this intricate interplay between the supervisory judge and the curator exemplifies a concerted effort to safeguard the integrity of the bankruptcy process. Their coordinated actions address the inherent complexities while upholding the principles of equity and legal integrity. As the bankrupt debtor's capacities are legally curtailed, the supervisory judge and curator emerge as the embodiment of legal oversight, ensuring adherence to due process and the rightful management of bankruptcy affairs.

In general, the task or obligation of the curator is to manage and organize the bankruptcy property; this is determined in Article 16 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. The implementation of the management and administration of the bankruptcy property is handed over to a curator appointed by the Court, supervised by a supervisory judge appointed by a Court judge.

Based on the description described above, the author seeks to formulate several problems: What is a curator, and what are his duties and powers? What is the Curator's Responsibility for Violation of the Code of Ethics?

RESULT

Duties and Authority of the Professional Curator

Based on the provisions of Article 1 number 5 of Law Number 37 of 2004 concerning Bankruptcy and PKPU, it states that a curator is an estate agency or an individual appointed by the court to manage and organize the assets of a bankrupt debtor under the supervision of a supervisory judge. According to S. Wojowasito, quoted from Annalisa Yahanan, curators are appointed to supervise bankrupt goods, people who carry out accurately, and members of the university supervisory commission.

It can be concluded that a curator is a person appointed to supervise bankrupt goods that arise from the legal consequences of bankruptcy decisions because the debtor does not have the right to manage his property in the bankruptcy decision or the future, then the curator has the task of being able to supervise the bankrupt goods.

The Commercial Court usually appoints the curator simultaneously with the bankruptcy petition. The creditor or the judge usually makes the appointment of the curator. Still, in practice, the judge often continues to appoint the creditor and only accepts the curator proposed by the bankruptcy applicant or respondent after explaining the basis for the rejection (Board, 2021).

This renders many proposed receivers null and void due to the rejection, and the appointment of the receivers by the judge is made. Naturally, some receivers manage dozens of cases, while others repeatedly nominated by creditors are only accepted for an apparent reason. As one of the professionals in the administration of bankruptcy assets, the Bankruptcy Law should provide a definite explanation, especially about the procedures for the appointment of curators by the Commercial Court.

Duties and Authority of Curator

Based on the provisions of article 69, paragraph (1) of law number 37 of 2004 concerning bankruptcy and PKPU, it is explained that the curator has the task of managing and administering the bankrupt debtor's assets and is not monopolized by the bankruptcy center.

The estate agency does not monopolize it as the only curator. Still, the possibility is also opened for other parties to participate as curators for the debtor's bankruptcy estate, provided that the party has the criteria as described in Article 70 paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and PKPU, namely:

- Individuals domiciled in Indonesia with special skills to manage or clean up the bankruptcy estate.

- Registered with the ministry whose scope of duties and responsibilities are law and legislation (minister of law and human rights).

Before the enactment of government regulation instead of law (PERPU) number 1 of 1998 concerning amendments to the bankruptcy law, which the House of Representatives then enacted, became Law number 4 of 1998 concerning the stipulation of government regulations instead of bankruptcy laws, which became the curator only the estate agency. However, with the enactment of Law No. 37 of 2004 on Bankruptcy and PKPU, in addition to the Bankruptcy Hall, individual persons appointed by the court can act as curators to manage and organize the assets of bankrupt debtors. The Hall of Inheritance is an implementing unit of legal organizers in the field of inheritance, guardianship, and bankruptcy within the Department of Justice, which is under and responsible to the Director General of Law and Legislation through the Director of Civil Affairs. The estate's task is to represent and manage the interests of people who, because of the law or a judge's decision, cannot carry out their interests based on applicable laws and regulations. The curator's duties are generally stated in Article 67 of the UUK, namely, to manage and/or dispose of bankruptcy assets. To perform this primary task, a curator is authorized to:

- be exempted from the obligation or not required to obtain approval and/or give prior notice to the debtor or one of the debtor's organs, although in the circumstances outside of bankruptcy, such approval or notice is required
- may make loans from third parties solely to increase the value of the bankruptcy estate. If, in making a loan from a third party, the curator needs to encumber the bankruptcy estate with a mortgage, pledge, or other collateral right, the loan must first obtain the approval of the supervisory judge.

In the sense of the power granted by law, the curator's authority is a right to carry out the duties (obligations) imposed. According to Salmon, authority can be interpreted as a right. Rights are defined in a narrow sense, Independence, Power and Immunity. In principle, the curator can manage and/or administer bankruptcy property. In this task, the curator must be independent of the debtor and creditors. this is as stipulated in the provisions of Article 15, paragraph 3 of Law Number 37 of 2004 concerning Bankruptcy and PKPU, which states that "the appointed curator as referred to in paragraph (1) must be independent, have no conflict of interest with the debtor or creditors, and not be handling bankruptcy cases and postponement of debt payment obligations for more than 3 (three) cases. The independence of the curator is the most essential requirement that the curator must

meet. According to the Bankruptcy Law, the main tasks and extraordinary powers of the curator are numerous, but there are several essential things, including:

a) Managing and enlarging the bankruptcy estate This task can already be carried out from the date of the bankruptcy declaration, even though the decision is still being appealed or reviewed. The three cases referred to are based on the principle that one curator is allowed to handle 3 (three) cases, so given that they have more than one curator, this office can take more than 3 cases. Another possible consideration is the principle of aggravation, with the limitation that one curator can only handle 3 issues.

a. A curator appointed for special duties under a bankruptcy decree is authorized to act alone to the extent of his/her duties. The curator may also make loans from third parties, stipulating that the loan is taken solely to increase the bankruptcy estate, but must be approved by the supervisory judge. Based on the approval of the committee of creditors, the curator has the authority to continue the business of the debtor who is declared bankrupt even though the decision to declare bankruptcy is filed for cassation or review.

b. The curator may act as plaintiff or defendant This authority is granted by law to act as plaintiff or defendant to claims relating to the bankruptcy estate if the claim is directed at the debtor and results in a punitive sanction against the bankrupt debtor, then the punishment has no legal effect on the bankruptcy estate.

b) The curator may receive a permanent inheritance

According to the provisions of Article 40 paragraph (1), the curator can receive permanent inheritance, as long as the inheritance benefits the bankrupt estate. If accepted, registration of the heritage must be made. Therefore, when the curator has been appointed, the inheritance is transferred directly to the curator, and the heirs do not have any authority over the inherited property.

c) Selling the building of the separatist creditor after 2 (two) months of insolvency

Selling bankruptcy property which is a property that is used as collateral for the debt, if the following conditions are met:

- The asset is under the control of the curator
- Conducted in the context of the debtor's business continuity

- Reasonable protection has been given to the interests of the creditor concerned.
- d) Accepting or rejecting applications
The curator is authorized to accept and reject requests between creditors or third parties to lift the suspension or change the terms of suspension of the execution of execution rights, mortgage rights, pledges, or collateral rights.
- e) Transferring bankruptcy assets
According to Article 107, the curator is authorized to transfer bankruptcy assets before verification but must be approved by the supervisory judge.
- f) The curator must make a description of the bankruptcy estate.

Curator's Liability for Violation of the Code of Ethics

Code of ethics comes from two words: Code and Ethics. Code itself is signs or symbols in the form of terms, writings, or objects agreed upon for a specific purpose, for example, to guarantee news, decisions, or an agreement of an organization. Code can also mean a systematic collection of rules. While the term ethics comes from the Greek language, namely ethos, which means customs, the word ethos is the same as mos and mores in English, which means customs; in Indonesian, mos and mores are interpreted as moral terms. Therefore, ethics and morals have the same meaning and understanding. From these two meanings, it means good behavior from a person or group of people where this behavior is a demand from the conscience of the person concerned and the local community to create justice between individuals and society.

A code of ethics can be seen as a product of applied ethics, resulting from applying ethical thinking to a particular area, namely the profession. But once a code of ethics is in place, ethical thinking does not stop. Codes of ethics do not replace ethical thinking but are always accompanied by honest reflection. For a code of ethics to function correctly, one of the absolute requirements is that the profession itself creates it. A code of ethics will not be effective if it is dropped from above, namely government agencies or other agencies, because it will not be imbued with the ideals and values within the profession.

The existing code of ethics in Indonesia contains moral ethics that should be carried out properly by the ethics of each profession because, usually, each profession has different ethics. The code of ethics aims to enable professionals to provide the best possible services, protect against unprofessional actions, improve the quality of professional service, and maintain a conducive professional environment.

An example of a code of ethics in Indonesia is the code of ethics for the curator profession; in the curator profession, a professional organization oversees the Indonesian Curators and Administrators Association (IKAPI). The curator's code of ethics has two parts: the principles of professional ethics and the Rules of Professional Ethics and Provisions Regarding the Honor Council. The curator's code of ethics is a foundation or basis for the curator's professional code of ethics in Indonesia, which generally has roles, duties, and authorities.

CONCLUSION

In the curator profession, a professional organization oversees the Indonesian Curators and Administrators Association (IKAPI). The curator's code of ethics has two parts: the principles of professional ethics and the Rules of Professional Ethics and Provisions Regarding the Honorary Council. The curator's code of ethics is a foundation or basis for the curator's professional code of ethics in Indonesia, which generally has roles, duties, and authorities. Based on the provisions of article 69 paragraph (1) of law number 37 of 2004 concerning bankruptcy and PKPU, it is explained that the curator has the task of managing and administering the assets of the bankrupt debtor and is not monopolized by the estate agency as the only curator, but also opens the possibility for other parties to participate as curators for the debtor's bankruptcy estate, provided that the party has a charter.

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