

Legal Certainty of Payment of Receivers' Fees in the Event That Bankruptcy is canceled by the Court



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ABSTRACT: This research examines the implementation of payment of curatorial services in the event of annulment by the Court of the Supreme Court Decision. This study also describes the legal certainty of payment of curatorial fees from the side of the curator, debtor and creditor. Normative research is research that refers to legal norms contained in legislation and court decisions. The author uses the 1945 Constitution, Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 18 of 2021 concerning Guidelines for Fees for Curator and Management Services. The results of this study are that the payment of curatorial services in the event that it is canceled by the Court on the Supreme Court Decision has been regulated in the Applicable Laws that regarding curatorial fees has been regulated in Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations and in Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 18 of 2021 concerning Guidelines for Service Fees for Curators and Suspension of Debt Payment Obligations as a technical regulation governing curatorial fees. In practice, it is the Panel of Judges that determines the amount of the curator's fee after the application for the determination of the curator's fee is submitted by the Curator to the Court.

KEYWORDS: legal certainty, fees, receivership, bankruptcy.

INTRODUCTION

The Ministry of Law and Human Rights has just issued Minister of Law and Human Rights Regulation No.18 of 2021 concerning Guidelines for Fees for Curators and Administrators (“Peraturan Menteri Hukum dan Hak Asasi Manusia Fees for Curators”). Minister of Law and Human Rights Yasonna Laoly said that this regulation was issued to provide certainty and benchmarks for the provision of service fees for curators and administrators in order to support the improvement of the business climate that prioritizes the principles of peace and business continuity.¹ This regulation exists to provide certainty and benchmarks for the provision of fees for receivers and administrators in order to support the improvement of the business climate that emphasizes the principles of peace and business continuity, it is necessary to regulate the guidelines for fees for receivers and administrators. The purpose of the issuance of the Peraturan Menteri Hukum dan Hak Asasi Manusia on Curator's Fees is to provide certainty and benchmarks for the provision of services for curators and administrators in order to support the improvement of the business climate that emphasizes the principles of peace and continuity of the business world.

Regarding the duties of the curator himself, Law Number 37 Year 2004 on Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law), Bankruptcy does not clearly regulate the limits of his duties and authority. The Bankruptcy Law in Article 69 number 1 only regulates that the Curator's duty is to manage and/or administer the bankruptcy estate. There is no further explanation regarding what is meant by “management of bankruptcy assets” or “administration of bankruptcy assets”, mentioned in the explanation of the Article as “quite clear”.² In carrying out its duties, the Curator does not have to obtain the consent of or give prior notice to the debtor or any of the debtor's organs, although in circumstances outside bankruptcy, such consent or notice is

¹ Fitri Novia Heriani, 2021, Penjelasan Kemenkumham Terkait Penurunan Fee Pengurus dan Kurator, sebagaimana diakses pada link [Penjelasan Kemenkumham Terkait Penurunan Fee Pengurus dan Kurator \(hukumonline.com\)](https://hukumonline.com) pada tanggal 29/05/2023

² Bimo Putro, 2015, Pelaksanaan Tugas Dan Kewenangan Hakim Pengawas Dalam Mengawasi Pengurusan Dan Pemberesan Harta Pailit Di Pengadilan Niaga Surabaya”, Skripsi Fakultas Hukum Universitas Brawijaya, Malang, sebagaimana diakses pada link <https://media.neliti.com/media/publications/35571-ID-pelaksanaan-tugas-dankewenangan-hakim-pengawas-dalam-mengawasi-pengurusan-dan-p.pdf> halaman 6

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required, and the Curator may make loans from third parties, to increase the value of the bankruptcy estate.³ That is how the Curator conducts the arrangement of the Debtor's property which is through the bankruptcy route.⁴

Bankruptcy is a commercial solution to get out of the debt and credit problems that plague a debtor, where the debtor no longer has the ability to pay these debts to his creditors. Thus, if the inability to pay overdue obligations is based on the debtor, then the step to apply for the determination of bankruptcy status against himself (voluntary petition for self bankruptcy) becomes a possible step, or the determination of bankruptcy status by the Court against the debtor if it is later found that the debtor is no longer able to pay his debts that are due and collectible (involuntary petition for bankruptcy).⁵ With the existence of bankruptcy, the duties and authority to manage the assets of the bankrupt debtor are transferred to the Curator and the Management. So that there is no more uncooperative attitude from either the Debtor or the Creditor in arranging debts and receivables.⁶

The definition of Bankruptcy according to the Bankruptcy Law is a general confiscation of all assets of the Bankrupt Debtor whose management and management is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law. Bankruptcy or insolvency is a condition where the debtor has difficulty in paying his debts to creditors, so bankruptcy means a process when a debtor is declared bankrupt by the court because he has financial difficulties to pay his debts.⁷

Therefore, the legal consequences of a bankruptcy declaration by the Court result in the debtor who is declared bankrupt losing all "civil rights" to control and manage the assets that have been included in the bankruptcy estate. This can be seen from the authority of the curator to manage and or administer the bankruptcy estate.⁸ The administration of bankruptcy assets is the main task of the curator as the party authorized to manage and administer bankruptcy assets, as mandated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. According to Jerry Hoff, the purpose of bankruptcy is to pay creditors what they are entitled to in accordance with the order of their claims. Therefore, the curator must act in the best interest of the creditors, but the curator must also take into account the interests of the bankrupt debtor.⁹

During the administration of the bankruptcy estate, the Curator is entitled to a curator's fee. Regarding the curator's fee, according to the Bankruptcy Law, the fee is paid after the bankruptcy is over. The end of the bankruptcy is of course after the assets are sold and the claims of the creditors are paid. Fees that may be taken upfront by the curator are operational costs of asset disposal or fees for the sale of assets.¹⁰ However, the problem is when the bankruptcy declaration is canceled by the Court Decision, even though the Curator has carried out his duties and authority after the Bankruptcy Decision is read. As happened in the case of Telkomsel where Telkomsel was declared bankrupt by the Commercial Court although in the end the bankruptcy decision was canceled by the Supreme Court, but the Curator's responsibility does not stop even though the bankruptcy decision is canceled at the Cassation or Review level. The Supreme Court then decided that the cancellation of the bankruptcy petition cannot be restored to its original state and is binding on all parties. Therefore, the actions of the curator during the management of the bankruptcy estate remain binding forever. So if in the future mistakes are found, then in accordance with Article 72 of the Bankruptcy Law, the Curator is still responsible for errors or omissions that result in losses in carrying out the task of managing and / or administering bankruptcy assets. Similar to Telkomsel, the same thing happened in the bankruptcy of KSP Intidana where the bankruptcy of KSP Intidana has been canceled by the Supreme Court so that here the Curator has worked to manage the bankruptcy assets of KSP Intidana for 114 (one hundred and fourteen) days.

The case began when the Bankruptcy Petitioners, namely Ivan Dwi Kusuma Sujanto et al, filed a request for the cancellation of peace at the Commercial Court at the Semarang District Court and requested to appoint and appoint Curators namely Anastasius Wahyu Priyo Utomo, Amanda Rizki Hutama, Eko Roesanto Fieryanto, Victor Sandi Quartia, Bambang Muntaha, and Iwan Budisantoso. Then on March 22, 2022, the Semarang District Court rejected the application of the Bankruptcy Petitioners. The

³ Raymond Hutagaol, Kedudukan Kurator Dalam Kepailitan, sebagaimana diakses pada link [Kedudukan Kurator Dalam Kepailitan \(hukumkepailitan.com\)](http://www.hukumkepailitan.com) pada tanggal 29/05/2023

⁴ Ida Bagus Adi Wiradharma dan Ida Ayu Sukihuman, Perlindungan Hukum Terhadap Kurator Dalam Melaksanakan Tugas Pengurusan dan Pemberesan Harta Debitur Pailit, Jurnal Hukum Universitas Udayana, Bali, halaman 1

⁵ Leonardus, Rad Fridsel; Novitasari, Kedudukan Hukum Kreditur Yang Tidak Terverifikasi Dalam Undang Undang Kepailitan. Jurnal Hukum: Hukum Untuk Mengatur Dan Melindungi Masyarakat. Volume 6 Nomor 3 Desember 2020, halaman 250-264

⁶ Heru Sugiyono, 2023, "Problematics of Property Companies Experiencing Bankruptcy", *International Journal of Multicultural and Multireligious Understanding*, Vol. 10 No. 8, hlm. 209-222, <http://dx.doi.org/10.18415/ijmmu.v10i8.4857>.

⁷ Ivida Dewi Amrih Suci dan Herawati Poesoko, Hak Kreditur Separatis Dalam Mengeksekusi Benda Jaminan Debitur Pailit, Laksbang Pressindo, Yogyakarta, halaman 63

⁸ Lihat ketentuan Pasal 16 ayat (1) dan Pasal 69 ayat (1) Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang.

⁹ Imran Nating, Peranan dan Tanggung Jawab Kurator dalam Pengurusan dan Pemberesan Harta Pailit, Rajagrafindo Persada, Jakarta, 2005, halaman 71

¹⁰ Asra Darma Putra, Tinjauan Yuridis Terhadap Pengurusan dan Pemberesan Harta Pailit oleh Kurator dalam Penyelesaian Perkara Kepailitan Berdasarkan Undang-undang Nomor 37 Tahun 2004, SKRIPSI UIN, halaman 8

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reason why the Panel of Judges rejected the application was because the Panel of Judges was of the opinion that the Respondent could only be said to be negligent or in default in making payments when due in January 2026, thus the Panel of Judges concluded that the application was premature.

Then on May 31, 2022, a Cassation Petition was filed by the Bankruptcy Petitioner and then the Petition was granted which finally the Intidana Savings and Loan Cooperative was declared bankrupt with all its legal consequences. The Semarang District Court then granted the Bankruptcy Petition and appointed Curators, namely Anastasius Wahyu Priyo Utomo, Amanda Rizki Hutama, Eko Roesanto Fieryanto, Victor Sandi Quartia, Bambang Muntaa, and Iwan Budisantoso. The basis for its consideration to become bankrupt is that the Panel of Judges is of the opinion that the *judex facti's* consideration which states that it is premature because it is not yet time to file is wrong because the calculation should have matured in January 2021.

Then a Request for Reconsideration was filed by the Bankruptcy Respondent, namely Intidana Savings and Loan Cooperative on August 24, 2022 which was then decided on October 13, 2022 by the Supreme Court Decision Number 43 PK/Pdt.Sus-Bankruptcy/2022 ("Bankruptcy Review Decision") which canceled the Indonesian Supreme Court Decision Number 874K/Pdt.Sus-Bankruptcy/2022 dated May 31, 2022 ("Bankruptcy Decision") that Intidana Savings and Loan Cooperative returned to its original state and was not in a state of bankruptcy. In its consideration, the Panel of Judges was of the opinion that the Plaintiffs did not have legal standing as applicants or plaintiffs because the Plaintiffs were members of the cooperative. From the 2 (two) Decisions, both the Supreme Court Decision at the cassation stage and the Supreme Court Decision at the review stage, that the 2 (two) Decisions have the same basis of consideration and different implications. The Supreme Court Decision at the cassation stage resulted in KSP Intidana in a state of bankruptcy while the Supreme Court Decision at the reconsideration stage restored the state of KSP Intidana in a bankrupt position to not bankrupt. However, it does not cancel or nullify the Curator's rights while performing his professional duties.

Thus, from July 27, 2022 (date of receipt of the copy of the Bankruptcy Decision) until November 18, 2022 (date of receipt of the copy of the Bankruptcy Review Decision) the Curator Team has carried out activities in connection with its duties and responsibilities for 114 (one hundred and fourteen) days. That is the reason why the Curator Team then submitted an application for the determination of the curator fee to the Court, namely because since the Supreme Court Decision was read, the Curator had carried out his professional duties until the Supreme Court Decision was canceled. Based on these reasons, on January 13, 2023, Stipulation Number 1/Pdt.Sus-Cancellation of Peace/2022/PN Niaga Smg jo. Number 10/Pdt.Sus-PKPU/2015/PN.Niaga.Smg jo. 10/Pdt.Sus-PKPU/2015/PN.Niaga.Smg which stated that it granted the request of the KSP Intidana Curator Team (In Bankruptcy) mentioned above in part and required that:

1. The Bankruptcy Applicants shall pay receivership fees in the amount of 20% (twenty percent) or Rp. 2,736,000,000.00 (two billion seven hundred thirty six million rupiah) jointly and severally and pay bankruptcy management costs in the amount of 25% (twenty five percent) or Rp. 1,121,020,717.00 (one billion one hundred twenty thousand seven hundred million seventeen rupiah) jointly and severally.
2. The Bankruptcy Respondent shall pay the receivership fee of 80% (eighty percent) or Rp. 10,944,000,000.00 (ten billion nine hundred forty four million rupiah), bankruptcy management fee of 75% (seventy five percent) or Rp. 3,363,062.151.00 (three billion three hundred sixty-three million sixty-two thousand one hundred fifty-one rupiah), the cost of transferring bankruptcy assets amounting to 43,130,685.00 (forty-three million one hundred thirty thousand six hundred eighty-five rupiah), as well as the cost of reserves for working hours of the curator team amounting to Rp. 1,584,000,000.00 (one billion five hundred eighty-four million rupiah).

That in the determination of the curator's fee, the basis for the Panel of Judges to decide the calculation of the Curator's fee is based on the Peraturan Menteri Hukum dan Hak Asasi Manusia on Curator's Fees and considering the opinion of Elyta Ras Ginting in the book *Bankruptcy Law, Management and Administration of Bankruptcy Assets* page 412 that in charging bankruptcy fees and curator's fees to the Bankruptcy Applicant and Debtor in a balanced comparison must be addressed carefully and in an exceptional manner.¹¹

Based on Article 3 paragraph (1) letter c of the Peraturan Menteri Hukum dan Hak Asasi Manusia Curator's Fees that in the event that the application for bankruptcy declaration is rejected at the cassation or judicial review level, the amount of service fees is charged to the applicant for bankruptcy declaration or the applicant and the Debtor whose amount is determined by the Panel of Judges while still considering Article 4 paragraph (2) Peraturan Menteri Hukum dan Hak Asasi Manusia Curator's Fees which stipulates that:

(2) The level of complexity of the bankruptcy handled, the ability, and the rate of working hours of the Curator as referred to in paragraph (1) shall be determined based on:

- a. length of service as Curator;

¹¹ Imam Haryanto, Muthia Sakti, Herdandi Irsyad Bhagaskara, Sita Narawita Puteri, dan Yoshiro Emillio Lumban Tobing, 2024, "Rekonstruksi Hukum Pembangkit Listrik Tenaga Surya Berdasarkan Analisis Ekonomi". *Bina Hukum Lingkungan* 6 (3):317-34. <https://bhl-jurnal.or.id/index.php/bhl/article/view/219>.

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- b. the amount or number of bankruptcy cases completed;
- c. the value of bankruptcy assets that have been handled;
- d. matters related to the Curator's track record during the process of management
- e. and administration;
- f. the number of Creditors;
- g. the location of the bankruptcy assets handled; and
- h. the reasonableness of time attributed in carrying out the work.

Legal considerations in the determination of curator fees state that in addition to the length of service, the number of bankruptcy cases handled, track record, and reasonableness of time, it can be explained that on average the Curator Team are Curators who have professional experience and a length of service of more than 4 (four) years, with a track record of never committing errors or omissions or violating the principle of independence, and throughout the process of managing the bankruptcy case a quo Creditor Meetings including the Receivables Matching Meeting and Tax Verification have been carried out successfully. In addition, asset safeguarding, banking blocking, change of banking specimens, overbooking of banking accounts, implementation of bill registration, payment of over heat, termination of employment, and others which are part of the duties and authority of the Curator Team have also been carried out in order to ensure the principles of balance, the principle of business continuity, the principle of justice, and the principle of integration in the management of the case a quo which indicates the level of ability of the Curator Team in carrying out its duties and authority.

However, in fact, in the determination of the curator's fee, the author finds that there are errors in assessing the ability and working hour rate of the Curator concerned, the period of work as a curator, the amount or number of bankruptcy cases that have been handled, matters related to the Curator's track record during the management and administration process and related to the reasonableness of the time attributed in carrying out the work. The author finds that there is a mistake in calculating actual working hours as stipulated in Article 3 paragraph (3) of Peraturan Menteri Hukum dan Hak Asasi Manusia 18, but instead uses the calculation of working hours in one day multiplied by the bankruptcy period. Then there is a mistake in assessing the reasonableness of the time attributable to carrying out work according to Article 4 paragraph (2) Peraturan Menteri Hukum dan Hak Asasi Manusia, in terms of accepting the inclusion of Saturdays and Sundays which have become common knowledge as holidays and also including August 17 which is a national holiday in the calculation of days used to carry out work. In addition, there was also a mistake in basing the working period of the curators who when appointed as curators in the Intidana bankruptcy case only had a working period of between 1 (one) year and 3 (three) years.

In addition, the author also found the fact that the Supreme Court Decision Number 874K/Pdt.Sus-Bankruptcy/2022 (KSP Intidana Bankruptcy Decision) existed due to the criminal act of bribery to judges based on the Bandung District Court Decision Number 23/Pid.Sus-TPK/2023/PN. Bdg dated May 30, 2023 which consequently harmed the Intidana Savings and Loan Cooperative/Bankruptcy Applicant and the Bankruptcy Applicants because they had to pay for the Curator's services with a fantastic value even though the facts that caused the bankruptcy were revealed due to the existence of criminal acts against the law and the existence of acts that were not in good faith.

Based on the description above, the author is interested in examining "Juridical Review of Payment of Curator's Fees for a Bankruptcy that has been Cancelled Based on Court Decision" because the calculation of payment of curator's fees does not provide a sense of justice and certainty for the Bankruptcy Applicant and the Bankruptcy Respondent. Therefore, through this research, the author hopes to provide benefits for entrepreneurs, academics, legal practitioners, and the wider community as well as add insight into how curator fees are in norms and practices.

Based on the above background, the problem formulation in this study is as follows How is the implementation of payment of curatorial services in the event that it is canceled by the Court on the Supreme Court Decision?

RESEARCH METHODS

This research is normative juridical research (also known as doctrinal legal research), meaning that a study that relies on laws and regulations supported by literature studies relevant to the issues discussed is then analyzed and concluded in writing. Normative research is research that refers to legal norms contained in laws and court decisions. The author uses the 1945 Constitution, Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 18 of 2021 concerning Guidelines for Fees for Curator and Management Services, and others in analyzing this research.

The approaches used by the authors are case approach, statutory approach and conceptual approach. The case approach is used so that the author directly knows this case and parses the entire chronology of the case so that this research can create a contribution to science not only limited to legal theory but also in practice. Then the Statute Approach is used to complete the analysis of this research. And finally the conceptual approach is used to provide the actual concept and the relationship between *das sein* and *das sollen* in this research. With these 3 (three) approaches, the author can examine how the basis for calculating the fees for curator

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and administrator services that provide a sense of justice and certainty for the Bankruptcy Applicant, Bankruptcy Respondent and Curator / Administrator.

DISCUSSION

IMPLEMENTATION OF PAYMENT OF RECEIVERSHIP FEES IN THE EVENT THAT THE BANKRUPTCY VERDICT IS ANNULLED BY THE COURT BASED ON THE DECISION OF THE SUPREME COURT.

1. Law of the Republic of Indonesia Number 37 of 2024 concerning Bankruptcy and Suspension of Debt Payment Obligations states that the Curator continues to be paid even though the Bankruptcy Decision is canceled.

Law of the Republic of Indonesia Number 37 Year 2004 on Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as ("Bankruptcy Law")) does still open cassation or judicial review for Debtors who have been bankrupted, but against the cassation appeal, the Bankruptcy Law does not eliminate the right for the Curator to collect his fees from Creditors and Debtors because the Curator has actually carried out his professional duties since the bankruptcy decision was received until the bankruptcy decision was canceled. The Bankruptcy Law does not explain in detail how the calculation of the Curator's fees will be made, but regulates that the details of the calculation will be decided by the Panel of Court Judges in accordance with the details submitted by the Curator and hearing the considerations of the Supervisory Judge. This has been regulated in Article 17 of the Bankruptcy Law which states that (with bold additions):

"Article 17

- 1) *The curator shall announce the decision of cassation or judicial review canceling the bankruptcy decision in the State Gazette of the Republic of Indonesia and at least 2 (two) daily newspapers as referred to in Article 15 paragraph (4).*
- 2) *The panel of judges who annul the bankruptcy verdict shall also determine the bankruptcy fee and the Curator's service fee.*
- 3) *The costs as referred to in paragraph (2) shall be charged to the applicant for bankruptcy declaration or to the applicant and the Debtor in a ratio determined by the panel of judges.*
- 4) *For the implementation of the payment of bankruptcy fees and Curator's fees as referred to in paragraph (2), the Chief Justice of the Court shall issue an execution order upon the request of the Curator.*
- 5) *In the event that the bankruptcy declaration is annulled, any possible settlement shall be null and void."*

Based on the description of the Article, a curator fee must be calculated and determined by the Panel of Judges based on a Court Decision with permanent legal force or *inkracht*. This is a form of guarantee to the Curator that his work will be paid by Creditors and Debtors even in the event that the Court Decision declaring Bankruptcy has been canceled. The Panel of Judges determines a curator's fee based on the technical regulations under which the *Peraturan Menteri Hukum dan Hak Asasi Manusia* of curator's fee is still used. According to the author, although the stipulation cannot always be accepted by the parties, the stipulation must be carried out and can be executed by the Court. The execution process is carried out so that what is the right of the Curator is not aborted by Parties who are not in good faith. Because the Curator and the Team have worked hard in calculating the bankruptcy assets. Therefore, all of their hard work and expenses must be returned intact in order to maintain the integrity of the Curator profession in a practical world.

The Curator profession in the Bankruptcy Law as stipulated in Article 1 point 5 of the Bankruptcy Law is the *Balai Harta Peninggalan* or an individual appointed by the Court whose task is to manage and organize the assets of the Debtor declared bankrupt under the supervision of the supervisory judge. The responsibility of the Curator in managing and settling the Debtor's bankruptcy assets is very large. To become a Curator, an advocate must meet the criteria, namely through a curator education and a curator professional examination conducted comprehensively by the Indonesian Association of Curators and Administrators. The Curator's duty to organize and manage the Debtor's bankruptcy assets begins when the Court Decision declares a corporate entity bankrupt.

At the time of implementation, namely when the Court appoints the Curator to carry out the management and management of the bankrupt property, at that time the Debtor is no longer entitled to carry out the management and management of the bankrupt property because there has been a transfer of responsibility since the Court Decision declares bankruptcy and appoints the Curator. At that time, the status and responsibility of the Debtor in fulfilling his debt has ended and at that time the Curator began to take responsibility for managing and cleaning up the Debtor's bankruptcy property. It is at that point that the Curator begins to conduct an assessment of the bankruptcy estate. As it is the Curator who conducts the assessment, it is the Curator who details the expenses incurred in conducting the assessment as part of his fee which will be submitted to the Court for consideration by the Panel of Judges.

At the time of implementation, the Panel of Judges will examine the details submitted by the Curator whether they are in accordance with the guidelines for curatorial fees. Because although the Curator has the right and authority to propose the curator's fees, the Panel of Judges also has the right and authority to assess the reasonableness of the details proposed by the Curator. If the result is reasonable, the Panel of Judges will grant the Curator's request, but if the result is unreasonable, the Panel of Judges will

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calculate according to the value of reasonableness that the Panel of Judges in the case. Then that calculation will be the rule of the curator's service fee to be implemented and executed by the relevant parties.

In practice, midway through the process, if the Court makes a decision that annuls the Bankruptcy Decision, then by law the Bankruptcy Decision becomes void and at that time the corporate entity must return to its original state, but in principle this does not negate or nullify the curator's fees that have been running. Since the verdict annulling the bankruptcy verdict is read out and handed over to the curator, at that time the curator must stop carrying out his work and by law the curator's service fee must also stop. This is as stipulated in Article 75 of the Bankruptcy Law which states that: "The amount of the Curator's fee is determined after the bankruptcy has ended".

Based on this article, the Curator has the right to submit a request for compensation for curatorial services to the Court so that when a bankruptcy is declared over, at that time the duties and functions of the Curator have also ended. In practice, the Curator can still apply for compensation for his services as long as he manages the bankruptcy estate, namely from the time the copy of the Bankruptcy Decision is received by the Curator until the copy of the Decision on Cancellation of Bankruptcy is also received by the Curator. Then after the Curator submits the application to the Court, it is then the turn of the Panel of Judges to review the application based on the applicable legal provisions in Indonesia. In determining the guidelines for the amount of service fees for the Curator, the Minister whose scope of duties and responsibilities are in the field of law and legislation considers the level of ability or expertise of the Curator and the level of complexity of the case. This is as stipulated in Article 76 of the Bankruptcy Law which states that: "The amount of service fee to be paid to the Curator as referred to in Article 75 shall be determined based on the guidelines stipulated by a Decree of the Minister whose scope of duties and responsibilities is in the field of law and legislation."

Therefore, the Ministry of Law and Human Rights of the Republic of Indonesia issued a guideline for Curator and Administrator fees through Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 18 of 2021 concerning Guidelines for Curator and Administrator Fees (hereinafter referred to as ("Peraturan Menteri Hukum dan Hak Asasi Manusia Curator Fee")) in order to implement the mandate of Article 76 of the Bankruptcy Law. This is so that the Panel of Judges has a reference to assess the reasonableness of the curator's fee requested by the Curator. The purpose of the guidelines is to provide certainty and justice for the Curator, Creditors and Debtors. The guidelines are the basis for determining the compensation for curatorial services. Therefore, with the stipulation of the curator's fee, the Creditor and the Debtor *mutatis mutandis* will have a legal obligation to hand over the amount of money as decided in the decision. There are no other legal remedies against the stipulation. This is as stated in Article 91 of the Bankruptcy Law which states that:

Article 91:

"All decisions regarding the management and/or administration of bankruptcy assets shall be made by the Court in the last instance, unless this Law provides otherwise."

2. Analysis of the Implementation of Calculation of Curator's Fees Based on Peraturan Menteri Hukum dan Hak Asasi Manusia on Curator's Fees.

a. Implementation of Calculation of Curator's Fee Based on the Regulation of the Minister of Law and Human Rights Curator's Fee

Prior to the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 18 of 2021 concerning Guidelines for Fees for Curators and Administrators ("Regulation of the Minister of Law and Human Rights on Curator Fees"), there were several changes from time to time. In the past, the curator's fee was regulated in the Ministerial Decree of the Ministry of Justice Number M.09-HT.05.10 of 1998 concerning Guidelines for the Amount of Service Fees for Curators and Administrators Article 1 and Article 6 as well as Appendices I and II explicitly stated that the rights regarding Curator's Fee, Additional Curator and Replacement Curator are determined based on the comparison of the value of the debtor's assets under management.

Therefore, in order to provide certainty and benchmarks for the amount of fees for curators and administrators, the Government replaced the Minister of Law and Human Rights Regulation Number 1 of 2013 concerning Guidelines for Fees for Curators and Administrators as amended by the Minister of Law and Human Rights Regulation Number 23 of 2014 concerning Amendments to the Minister of Law and Human Rights Regulation Number 1 of 2013 concerning Guidelines for Fees for Curators and Administrators because it was no longer in accordance with legal developments and legal needs of the community, Finally, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 11 of 2016 concerning Guidelines for Fees for Curators and Administrators was made, but it was again amended by Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 2 of 2017 concerning Amendments to Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 11 of 2016 concerning Guidelines for Fees for Curators and Administrators.

Minister of Law and Human Rights Regulation 11/2016 stipulates that the limit for the amount of debt up to IDR 50 billion gets a management fee of 5%; above IDR 50 billion up to IDR 250 billion gets a fee of 3%; above IDR 250 billion up to IDR 500 billion gets a fee of 2%; and above IDR 500 billion gets a fee of 1% of the total debt bill. Regulation of the

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Minister of Law and Human Rights 11/2016 states that for debts up to Rp50 billion, a management fee of 8%; above Rp50 billion up to Rp250 billion, a fee of 6%; above Rp250 billion up to Rp500 billion, a fee of 4%; and above Rp500 billion, a fee of 2% of the total debt bill. This then became the judge's guideline in calculating the curator fee at that time.

Furthermore, the Ministry of Law and Human Rights revised the fees for curators and administrators through Minister of Law and Human Rights Regulation 2/2017, so that the implementation of the percentage for the value of the arrangement up to IDR 50 billion applies a curator fee of 7.5%; above IDR 50 billion to IDR 250 billion applies a fee of 5.5%; above IDR 250 billion to IDR 500 billion is subject to a fee of 3.5%; and above IDR 500 billion applies a fee of 2 percent of the total proceeds of the bankruptcy estate which takes months.

In terms of the amount of fees in bankruptcy cases that end in peace, Minister of Law and Human Rights Regulation 2/2017 regulates the maximum fee received by the curator at 5.5 percent. This is stated in Article 5 letter a which reads: *“Service Fee for the Management is determined as follows: a. in the event that the postponement of debt payment obligations ends with peace, the amount of service fees for the Management is charged to the Debtor based on an agreement with the Management determined by the panel of judges, with a maximum provision of 5.5% (five point five per hundred) of the value of the debt to be paid.”*¹²

The Ministry of Law and Human Rights then issued the Regulation of the Minister of Law and Human Rights on Curator's Fee which regulates curator's fees which then becomes the legal basis for the Panel of Judges in deciding on curator's fees. Based on Article 1 point 3 of the Regulation of the Minister of Law and Human Rights on Curator's Fees, Service Fees are fees that must be paid to the Curator or Administrator after the bankruptcy or postponement of debt payment obligations ends. In practice, the Curator's Fees will be paid after the Curator has completed his duties either due to the completion of the work or due to the Decision of Cancellation of Bankruptcy from the Court that has permanent legal force.

Since the Regulation of the Minister of Law and Human Rights on Curator's Fee comes into force, the implementation of the Regulation of the Minister of Law and Human Rights Number 11 of 2016 on Guidelines for Curator's Fee (State Gazette of the Republic of Indonesia Year 2016 Number 371); and the Regulation of the Minister of Law and Human Rights Number 2 of 2017 on Amendment to the Regulation of the Minister of Law and Human Rights Number 11 of 2016 on Guidelines for Curator's Fee (State Gazette of the Republic of Indonesia Year 2017 Number 513) is no longer implemented because it has been revoked and declared invalid.

b. Implementation of Calculation of Fees for Curator and Administrator Services Based on the Regulation of the Minister of Law and Human Rights Curator Fee.

In practice, the determination of the amount of service fees for the Curator and the Management will not always be the same in each case. According to Article 3 of the Regulation of the Minister of Law and Human Rights on Curator's Fee, the amount of Service Fee for Curator is determined as follows:

- 1) *in the event that the bankruptcy is terminated by settlement, the Service Fee shall be calculated as a percentage of the value of the debts payable by the Debtor;*
- 2) *in the event that the bankruptcy ends with a settlement, the Service Fee shall be calculated as a percentage of the settlement value of the bankruptcy estate excluding debts; or*
- 3) *in the event that the petition for bankruptcy declaration is rejected at the cassation or judicial review level, the amount of the Service Fee shall be borne by the petitioner for bankruptcy declaration or the petitioner and the Debtor, the amount of which shall be determined by the panel of Judges.*

Based on the provisions of the Article, the Panel of Judges is authorized to determine the amount of compensation for the services of the Curator and the Management to the Applicant and the Debtor depending on the situation and conditions of the Company. Therefore, in its implementation, the Panel of Judges will calculate the reasonableness of the curator fee application submitted by the Curator in the application for the determination of curator fees based on the Regulation of the Minister of Law and Human Rights on curator fees. The Panel of Judges will consider the application in accordance with the details set out in the appendix to the Regulation of the Minister of Law and Human Rights on Curator's Fees which sets out the percentage amount of the curator's fee. In practice, the amount of fees will also be calculated based on the rate of working hours used with a maximum total of Rp. 4,000,000.00 (four million Rupiah) per hour in the sense that it does not exceed a certain percentage value of the value of the bankruptcy estate.

The Panel of Judges will consider the curator fee application with Article 5 of the Regulation of the Minister of Law and Human Rights on curator fees which states that the amount of Service Fees for temporary Curators is determined as follows: a. in the event that the bankruptcy petition is granted, the amount of service fee is determined by the panel of Judges by considering the results of the first meeting of Creditors; or b. in the event that the bankruptcy petition is rejected, the

¹² Fitri Novia Heriani, *Penjelasan Kemenkumham Terkait Penurunan Fee Pengurus dan Kurator sebagaimana diakses pada link [Penjelasan Kemenkumham Terkait Penurunan Fee Pengurus dan Kurator \(hukumonline.com\)](http://Penjelasan.Kemenkumham.Terkait.Penurunan.Fee.Pengurus.dan.Kurator.(hukumonline.com))* tanggal 1 Desember 2023

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amount of service fee is determined by the panel of Judges. The amount of service fee is also determined based on the level of complexity of the work, ability, and working hour rate of the temporary Curator concerned.

Thus, in practice, the determination of the amount of service fee must be made by considering the work done, the level of complexity of the bankruptcy handled, the ability, and the working hour rate of the Curator concerned. These matters will be determined in the Legal Basis of fees, namely the Determination of curator fees. What is meant by the legal basis of fees is a determination made by the Panel of Judges. The curator's fee in an annulled bankruptcy case will be determined by the Panel of Judges as stipulated in Article 17 paragraph (2) of the Bankruptcy Law and Article 3 paragraph (1) letter c of the Regulation of the Minister of Law and Human Rights 18 which reads as follows:

- Article 17 paragraph (2) of the Bankruptcy Law:

The panel of judges that annuls the bankruptcy declaration also determines the bankruptcy fees and the fees for the services of the Curator.

Explanation: *The determination of bankruptcy fees is made by the Panel of Judges of the Court that decides the bankruptcy case based on the details submitted by the Curator after hearing the consideration of the Supervisory Judge.*

- Article 3 paragraph (1) letter c:

“in the event that the petition for bankruptcy declaration is rejected at the cassation or judicial review level, the amount of Service Fee shall be charged to the petitioner for bankruptcy declaration or the petitioner and the Debtor, the amount of which shall be determined by the panel of Judges.”

The parties charged with paying fees for the curator are the applicant and the debtor. Fees for curators are charged to applicants and debtors in accordance with the provisions of Article 17 paragraph (3) of the Bankruptcy Law which reads as follows:

“The costs as referred to in paragraph (2) shall be borne by the applicant for bankruptcy declaration or by the applicant and the debtor in a ratio determined by the panel of judges.”

The value of fees in bankruptcy that is canceled is guided by the Minister's decision in accordance with the provisions of Article 76 of the Bankruptcy Law in this case the Regulation of the Minister of Law and Human Rights on curator's fees in Article 3 paragraph (3) and Article 3 paragraph (4) of the Regulation of the Minister of Law and Human Rights on curator's fees has regulated that fees are given only for working hours used at a maximum hourly rate of Rp4,000,000.00 (four million rupiah), the following reads the regulation:

- Article 3 paragraph (3) Regulation of the Minister of Law and Human Rights Curator's Fee:
The amount of Service Fees as referred to in paragraph (1) letter c is calculated based on the rate of used working hours.
- Article 3 paragraph (4) Regulation of the Minister of Law and Human Rights Curator's Fee:
The rate of used working hours as referred to in paragraph (3) is a maximum of Rp4,000,000.00 (four million rupiah) per hour provided that it does not exceed a certain percentage value of the value of bankruptcy assets.

c. Implementation of Calculation of Fees for Curatorial Services in the Event of Bankruptcy Decision Canceled by the Court

- 1) Curator's fees are calculated based on the number of days worked by the curator.

The procedure stated in the Stipulation of Curator's Fee uses the provisions of Permenkumham curator's fee, thus the law used is in accordance with the applicable legal rules, namely Permenkumham curator's fee. Article 3 paragraph (3) of the Permenkumham fee curator explicitly states "working hours used" as the basis for the calculation of fees, this shows that the Permenkumham fee curator requires only time that is actually used for management purposes to be given fees, thus the calculation of fees is assessed to the hours actually used by not calculating the number of days.

- 2) Curator's fees are calculated based on the number of hours worked by the curator.

The determination of the amount of hourly fee has been strictly regulated in Article 4 paragraph (1) of Permenkumham 18 by considering the work done, the level of complexity of the bankruptcy handled, the ability, and the working hour rate of the Curator concerned. The procedure for assessing the level of complexity of the bankruptcy handled, the ability, and the hourly rate of the Curator has been regulated in Article 4 paragraph (2) determined based on:

- a) length of service as Curator;
- b) the amount or number of bankruptcy cases completed;
- c) the value of bankruptcy assets that have been handled;
- d) matters related to the Curator's track record during the process of management
- e) and administration;
- f) the number of Creditors;

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- g) the location of the bankruptcy assets handled; and
- h) the reasonableness of time attributed in carrying out the work.

3. Problems Arising During the Implementation of Calculation of Fees for Curatorial Services in the Regulation of the Minister of Law and Human Rights on Curatorial Fees.

a. In Practice, the Calculation of Curator's Fee Does Not Always Go Smoothly

In practice, the payment of management fees in PKPU cases does not always run smoothly. Although it looks like getting paid with a fantastic figure, in fact the payment process often experiences various obstacles. There are even administrators who have to give up the right to their services because the debtor is no longer able to pay. Determining the fee figure for administrators certainly cannot be done arbitrarily or evenly. Rafles said there are certain variables that are taken into consideration by the management and also the debtor to agree on the amount of the fee. Rafles also has his own standards when negotiating fees, namely using an hourly basis calculation. The same thing was also conveyed by bankruptcy law practitioner Resha Agriansyah. When he was a board member in various PKPU cases, negotiations were indeed carried out when determining the amount of fees. In that conversation, said Resha, it was not only discussing fees but also determining the payment mechanism agreed by the debtor, whether it could be done in cash or in installments. Of course, there is a guarantee that the fee will be paid by the debtor.¹³

b. Example of Curator Fee Implementation in the Bankruptcy Case of PT Telkomsel

Determination of Curator Fee in the Bankruptcy of PT Telkomsel, the Panel of Judges used the old legal basis that has been declared invalid, namely Decree No. M.09-HT.05.10 of 1998 concerning Guidelines for the Amount of Service Fees for Curators and Administrators, therefore PT Telkomsel filed an objection to the determination, because according to PT Telkomsel it should be used is the Minister of Law and Human Rights Regulation No. 1 of 2013, because the decision of the Panel of Judges came out after the issuance of the Minister of Law and Human Rights Regulation No. 1/2013. In the bankruptcy decision in the Commercial Court, although the determination of the Curator's fee was based on Kepmenkeh No. 9 of 1998, but if we look at the ruling of the relevant Court Determination, it is not in accordance with the provisions of Article 2 Paragraph (1) of Kepmenkeh No. 9 of 1998, which imposes the Curator's fee only on the Debtor.

If it is to be in accordance with Kepmenkeh No. 9 of 1998, then the Court Stipulation should only charge the Curator's fee to PT Telekomunikasi Selular as the Debtor, but the Court should also charge the Bankruptcy Petitioner, PT Prima Jaya Informatika, to pay half of the Curator's fee of Rp 146,808,000,000. If Stipulation Number 48/PAILIT/2012/PN.Niaga.Jkt.Pst Jo Number 704K/Pdt.Sus /2012 is observed from the perspective of the Debtor and the Bankruptcy Petitioner, there will also be injustice. For the Debtors, for example, considering that they are burdened with the Curator's fee of Rp 146,808,000,000. Even though Telkomsel did not become bankrupt/canceled bankruptcy based on the cassation decision, they are still subject to curator's fees. For the Applicant for Bankruptcy Statement, the determination of the fees to be paid in the amount of Rp 146,808,000,000 is unfair considering that initially they requested Telkomsel's bankruptcy on the basis of receivables worth only Rp.5,260,000,000, but they were burdened with curator's fees amounting to almost 28 (twenty-eight) times the debt that should have been paid.

4. Legal Analysis of the Implementation of Payment of Fees for Curatorial Services in the Event of Bankruptcy Decision Canceled by the Court Based on the Supreme Court Decision.

According to the author, the Regulation of the Minister of Law and Human Rights on curator fees has provided legal certainty to the public. According to Van Apeeldorn "legal certainty" has two sides, the first is the side that the law can be determined in concrete matters. This means that parties seeking justice (justiabellen) want to know what the law is (ininkonkret) in a particular case before they litigate. Second, legal security, meaning protection for the parties against the arbitrariness of judges. So "legal certainty" means that the rule of law must be clear and provide protection to the litigants. In this case, according to the author, the existence or birth of this Minister of Law and Human Rights Regulation provides legal certainty because it provides concrete guidelines for judges to assess the value of curator and administrator services.

According to the author, legal certainty is one of the important elements in a state of law, and Indonesia is a state of law, as has been emphasized in Article 1 paragraph (3) of the 1945 Constitution. Therefore, legal uncertainty due to the enactment of Article 17 paragraph (2), Article 18 paragraph (3), Explanation of Article 59 paragraph (1), Article 83 paragraph (2), Article 104 paragraph (1), Article 127 paragraph (1), Article 244 and Explanation of Article 228 paragraph (6) of the Bankruptcy Law is also contrary to the nature of the State of Indonesia as a state of law; Article 1 paragraph (3) of the 1945 Constitution states as follows: "(3) The State of Indonesia is a state of law". Article 28D (1) of the 1945 Constitution provides as follows: "(1) Every person shall have the right to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law".

¹³ Hukum Online, Blak – Blakan Pengurus Soal Fee Dalam Perkara PKPU, sebagaimana diakses pada link [Blak-blakan Pengurus Soal Fee dalam Perkara PKPU \(hukumonline.com\)](http://Blak-blakan.Pengurus.Soa.Fee.dalam.Perkara.PKPU.(hukumonline.com)) tanggal 1 Desember 2023

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According to Hans Kelsen, legal certainty exists because legal norms that have been formulated in the law determine sanctions for violating the law. Jan Michael Otto details that legal certainty in the material sense includes the availability of clear, consistent and accessible legal rules, issued by and recognized as the (power) of the state, government agencies that apply these legal rules consistently and also submit and obey them, citizens principally adjust their behavior to these rules, judges (judiciary) are independent and impartial in applying these legal rules consistently when they resolve disputes and court decisions are concretely implemented.

Because bankruptcy costs can be incurred every day during the bankruptcy process and may be incurred even the day after the bankruptcy declaration is pronounced. This is a concern for the Curator because the soaring and uncertain costs can be detrimental to the Curator if there are no clear guidelines in regulating. There are things that measure whether a curator's fee is large or small. It depends on the conditions when the bankruptcy occurs. The existence of guidelines will provide legal certainty. However, the problem is whether it provides justice for the parties or not. Because the law is not only about legal certainty but about benefit and justice.

Justice is one of the most discussed legal objectives throughout the course of legal philosophy. The purpose of law is not only justice, legal certainty but also involves legal expediency. Ideally the law should accommodate all three. In the opinion of Ulpianus, justice is the will that continuously and permanently gives to each what is his right, justice gives to everyone what is his right. The formulation explicitly recognizes the rights of each citizen.¹⁴ Thus, according to the author, the calculation of the curator fee must prioritize a sense of justice for the parties, not only certainty. The calculation is not only calculated formally but must also be seen materially in order to provide a sense of legal justice. For those who have obligations, they must immediately fulfill their obligations and for those who have rights, they are entitled to immediately get their rights.

Calculations that provide a sense of justice must look at the cause of the Bankruptcy Decision whether the Bankruptcy Decision was born due to an illegal act committed by the Judge who decided or not. That should also be an indicator. Then, there should still be legal remedies for the determination of curator fees that do not provide a sense of justice for the parties. Because Judges can be mistaken, therefore there must be a comparison for a determination that is wrong and mistaken. A lawsuit for the annulment of the Curator Fee Stipulation should be filed with a request to change the value of the curator's rights, namely the management fee, the cost of submitting bankruptcy documents and assets, the cost of reserving working hours, and the curator fee that does not provide legal certainty and justice.

Therefore, this mistake opens the door to conduct a judicial review ("PK") based on Article 24 paragraph (1) of the Judicial Power Law and Article 39 paragraph (1) of the Judicial Power Law, but in the PK effort can only request the cancellation of the Curator Fee Determination which if granted then the Curators can submit a new application, PK can be filed within 30 days after the Curator Fee Stipulation is officially notified, considering that currently the notification related to the Curator Fee Stipulation to the Applicant is notified by the Curators, it can be considered that the Applicants have not received official notification. Errors in the assessment open the door to file a lawsuit for annulment, in this lawsuit can be requested for the cancellation of the Curator Fee Determination as well as asking the Panel of Judges to determine the Curator fee. The inclusion of this provision in the Consumer Protection Law is a recognition of the important role it plays. By granting this right of action to the annulment of the Curator Fee Determination, the legal framework recognizes the capacity to act as an advocate for the collective interests of the Curator fee.¹⁵

CONCLUSION

From the descriptions above, the author can conclude that the payment of curatorial services in the event that the Court annuls the Supreme Court Decision has been regulated in the Applicable Laws that regarding curatorial fees has been regulated in Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations and in Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 18 of 2021 concerning Guidelines for Service Fees for Curators and Suspension of Debt Payment Obligations as technical regulations governing curatorial fees. In practice, it is the Panel of Judges who determines the amount of the curator's fee after the application for the determination of the curator's fee is submitted by the Curator to the Court. In practice, an application for curator fees can only be submitted when the work has been completed or because the work has stopped midway because the Bankruptcy Decision is canceled. Therefore, the calculation of the curator's fee must consider the period of work as a curator, the amount or number of bankruptcy cases that have been handled, the value of bankruptcy assets that have been handled, matters related to the Curator's track record during the management and administration process, the number of Creditors, the location of the bankruptcy assets handled and the reasonableness of the time attributed to carrying out the work.

¹⁴*Ibid*

¹⁵ Imam Haryanto, Suherman Suherman, Muthia Sakti, dan Ibrahim Hanif Khalilullah, 2024, "Unleashing the Power of Class Action Lawsuits: Redefining Justice for Insurance Policyholders in Indonesia". *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal*, Vol. 4 No. 1, hlm. 1-14. <https://doi.org/10.15294/ipmhi.v4i1.75668>.

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