

Obstacles Faced by The Curator, As Well As The Efforts Made by The Curator In Conducting Actio Pauliana Against Bankruptcy Assets

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Abstract : The formulation of the problem in this writing is how the rules of law governing the implementation of Actio Pauliana against bankruptcy assets, what factors are obstacles, as well as the efforts made by the curator in conducting Actio Pauliana against bankruptcy assets (based on Case Study decision Number: 1/Pdt.Sus-Actio Pauliana/2022 / Fr.Commerce. Mdn Jo. Number 32/Rev.Sus PKPU/2021 / Fr. Commerce.Mdn). In addition, how is the role of the curator in conducting Actio Pauliana against bankruptcy assets (based on a case study of decision Number: 1/Pdt.Sus-Actio Pauliana/2022 / Fr. Commerce.Mdn Jo. Number 32/Rev.Sus PKPU/2021 / Fr. Commerce.Mdn). The type of research that will be used in the writing of the thesis is empirical juridical research. The results of the study of factors that become obstacles, in conducting Actio Pauliana against bankruptcy assets based on decision Number: 1 / Pdt.Sus-Actio Pauliana/2022 / Fr. Commerce.Mdn Jo. No. 32 / Pdt.Sus Pkpu/2021 / Fr. Commerce.Mdn: 1. Juridical Aspect, 2. Non-Juridical Aspects: The Role Of The Curator In Conducting Actio Pauliana Against Bankruptcy Assets Based On Decision Number: 1 / Pdt.Sus-Actio Pauliana/ 2022 / Fr.Commerce. Mdn Jo. Number 32/Rev.Sus Pkpu/2021 / Fr.Commerce.Mdn: in doing Actio Pauliana, the curator must be able to prove that the legal action that has been done by the insolvent debtor/party that is closely related to the insolvent debtor is something that comes from the insolvent debtor and can harm or reduce the value of the insolvent boedel.

Keywords : Role; Curator; Actio Pauliana; Bankruptcy Estate

Abstrak : Perumusan masalah dalam penulisan ini adalah bagaimana aturan hukum yang mengatur tentang pelaksanaan Actio Pauliana terhadap harta pailit, faktor-faktor apa saja yang menjadi hambatan, serta upaya yang dilakukan kurator dalam melakukan Actio Pauliana terhadap harta pailit (berdasarkan Studi Kasus Putusan Nomor: 1/Pdt.Sus-Actio Pauliana/2022/PN.Niaga. Mdn Jo. Nomor 32/Pdt.Sus PKPU/2021/PN. Niaga.Mdn). Selain itu bagaimana peranan kurator dalam melakukan Actio Pauliana terhadap harta pailit (berdasarkan Studi Kasus Putusan Nomor: 1/Pdt.Sus-Actio Pauliana/2022/PN. Niaga.Mdn Jo. Nomor 32/Pdt.Sus PKPU/2021/PN. Niaga.Mdn). Jenis penelitian yang akan digunakan dalam penulisan tesis adalah penelitian yuridis empiris. Hasil Penelitian Faktor-faktor yang menjadi hambatan, dalam melakukan Actio Pauliana terhadap harta pailit berdasarkan putusan Nomor:1/Pdt.Sus-Actio Pauliana/2022/Pn. Niaga.Mdn Jo. Nomor32/Pdt.Sus Pkpu/2021/Pn. Niaga.Mdn: 1. Aspek Yuridis, 2. Aspek Non Yuridis: Peran Kurator Dalam Melakukan Actio Pauliana Terhadap Harta Pailit Berdasarkan Putusan Nomor: 1/Pdt.Sus-Actio Pauliana/ 2022/PN.Niaga. Mdn Jo. Nomor 32/Pdt.Sus Pkpu/2021/Pn.Niaga.Mdn: Dalam melakukan Actio Pauliana kurator harus dapat membuktikan bahwa perbuatan hukum yang telah dilakukan oleh debitor pailit/pihak yang berhubungan erat dengan debitor pailit adalah suatu hal yang berasal dari debitor pailit dan dapat merugikan atau mengurangi nilai boedel pailit.

Kata Kunci : Peranan, Kurator, Actio Pauliana, Harta Pailit

INTRODUCTION

The development of the global economy has an influence on the development of law, especially commercial law which is the driving force of the economy. In order to adjust to the global economy, Indonesia revised all its economic laws. However, it cannot be denied that changes to Indonesia's economic law were also made due to pressure from world bodies such as the WTO, IMF, and World Bank. The field of law that has undergone revision or change, among others, is bankruptcy law. Bankruptcy law in Indonesia is a legacy of the Dutch colonial government that adheres to the continental European legal system. When viewed from its development, bankruptcy law received a fairly strong influence from the Anglo Saxon legal system. Continental European legal system is not applied purely in bankruptcy law in Indonesia.

Etymologically, the term bankruptcy comes from the word bankrupt. The term bankruptcy in Dutch comes from the term *failliet* which has a double meaning, namely as a noun and adjective. In French, bankruptcy comes from the word *faillite* which means strike or payment congestion, while people who strike or stop paying in French are called *lefailli* with the verb *faillir*, which means to fail.

In English it is known the word to fail with the same meaning, in Latin it is called *failure*. In English-speaking countries, the notions of bankruptcy and insolvency are represented by the words *bankrupt* and *bankruptcy*. Bankruptcy and the delay or withdrawal of surseance payments are commonly associated with debt problems. Receivables between someone who can be called a debtor with those who have funds called creditors. Problems will arise if the debtor has difficulty returning the debt, in other words the debtor stops paying the debt. The state of stopping paying a debt can occur due to inability to pay or unwillingness to pay.

Bankruptcy, *bankruptcy*, a state of the debtor declared by a judge's decision that he is in a state unable to pay his debts. The legal procedure to settle debts of a debtor declared bankrupt is known as *bankruptcy proceeding* or *bankruptcy procedure*. Bankruptcy is a situation where the debtor does not make payments on debts from creditors. Such a situation is caused by the difficulty of the financial condition (financial distress) of the debtor's business that has suffered a setback.

Bankruptcy terminology is often understood incorrectly by the general public. Some of them consider bankruptcy as a verdict that smells of criminal acts and is a legal defect on the subject of law because bankruptcy must be avoided and avoided as much as possible. Bankruptcy is a priori considered as a failure caused by the fault of the debtor in carrying out his business, causing the debt to be unable to be paid. Therefore, bankruptcy is often identified as debt collection or evasion of rights that should be paid to creditors.

Based on the provisions of Article 1 Paragraph 1 of Bankruptcy Law No. 37 of 2004 concerning bankruptcy and PKPU States: Bankruptcy is a general encumbrance on all property of a bankrupt debtor whose management and settlement is carried out by the curator under the supervision of a supervisory judge as provided for by this law. In connection with the definition of bankruptcy as stipulated in the provisions of Article 1 Paragraph 1 of the Bankruptcy Law Number 37 of 2004 concerning bankruptcy and PKPU, Imran Ning explained that bankruptcy is a process in which a debtor who has financial difficulties to pay his debts is declared bankrupt by the court, in this case the Commercial Court, because the debtor cannot pay his debts. According to Sutan Remy Sjahdeini, PKPU is an effort made by debtors to avoid bankruptcy or an attempt to avoid liquidation of assets when the debtor has or will be in a state of insolvency.

When entering the business world, if the debtor is unable or unwilling to pay his debts to creditors (due to difficult economic situations or forced circumstances), the debtor can apply for a postponement of debt repayment obligations to resolve the problem. The debtor or creditor may also apply for a declaration of bankruptcy in the hope that the negligent debtor will be declared bankrupt by the judge through his decision.

The purpose of the bankruptcy declaration is actually to obtain a general seizure of the debtor's property (all property is seized/frozen) for the benefit of all those who owe it (creditors). In principle, bankruptcy is a joint effort to obtain payment for fellow creditors fairly. In the structure of civil procedural proceedings, bankruptcy is included in the category of forms of application, that is, an application for bankruptcy filed by a debtor or creditor with the aim of

obtaining a declaration of bankruptcy by a court that is constitutive for both the debtor and the creditor, that is, a decision declaring a person or business entity in a state of bankruptcy.

The purpose of bankruptcy law is to satisfy the interests of both creditors and debtors. It aims to determine whether the interests of creditors can be protected in the implementation of bankruptcy law in Indonesia through the decisions of the judiciary. The purpose of bankruptcy law is to protect the concurrent creditor in order to obtain his rights in connection with the entry into force of the guarantee principle. The bankruptcy law also guarantees that the division of the debtor's property among his creditors is related to the entry into force of the guarantee principle. Bankruptcy law also guarantees that the division of the debtor's property among his creditors.

One of the duties of the curator is to find and collect bankruptcy assets as much as possible as a guarantee of debts to creditors to then be sold and used as payment of debtors' debts to creditors. However, in reality, many insolvent debtors are not cooperative by hiding their property or committing legal acts that harm the interests of creditors and bankrupt assets as referred to in Article 41 of the bankruptcy law and PKPU including by making a separation agreement, so that debt payments to creditors cannot be fulfilled.

In this condition, the bankruptcy law and PKPU entitle the curator to be able to make efforts to overcome the actions of the debtor who is not cooperative by hiding his property or doing legal actions that should not be done by the debtor, one of which is transferring his property by making a separation agreement so that it causes losses to the bankrupt's property, namely by canceling the actions of the bankrupt debtor. One attempt to protect creditors in bankruptcy is with the *Actio Pauliana*. The *Actio Pauliana* has since been regulated in Article 1341 of the Civil Code (Civil Code). *Actio Pauliana* is the right granted to a creditor to advance the annulment of any act that the debtor is not obliged to perform, while the debtor knows that by his act the creditor was harmed. This right is a protection provided by law for creditors for the actions of debtors that may harm creditors.

The application of aspects of *Actio Pauliana* should take into account aspects of tort. This is due to the insolvent debtor doing as contained in the theory of unlawful acts or can be said to be an act of bad faith. *Actio Pauliana* although theoretically and normatively available in bankruptcy, but in practice it is not easy to file a lawsuit *Actio Pauliana* until granted by a judge. The instrument of annulment of the debtor's legal act in *Actio Pauliana* is much more complicated and in practice there are many and very rare lawsuits for annulment of the debtor's legal act in *Actio Pauliana* that the judge grants. The reason for the rejection of the *Actio Pauliana* lawsuit in bankruptcy is because there is a difference in perception among commercial judges at both the first and Supreme Court level regarding: whether the actions or transactions carried out by the debtor constitute fraud, to the detriment of creditors and therefore an application for cancellation of the *Actio Pauliana* can be submitted.

Based on Article 2 Paragraph (1) UUKPKPU, three conditions are required for determine a state of bankruptcy, namely: the existence of two or more creditors, overdue debts, and collectable debts. This means that bankruptcy law becomes a dispute resolution institution against debtors who have two or more creditors where one of the debts has been proven to be due and can be collected. To avoid fraud committed by the debtor, the PKPU law gives the curator the right to apply for cancellation for non-mandatory legal actions taken by the insolvent debtor. In the legal Sciences the act is known as *Actio Pauliana*. The meaning of this *Actio Pauliana* itself is the right granted by law to a creditor to apply to the court for the cancellation of all actions that are not required to be carried out by the debtor against his property that is known by the debtor the action harms the debtor *Actio Pauliana* is regulated in Article 1341 of the Civil Code (Civil Code).

The article provides that which determines that any creditor may apply for the annulment of any non-obligatory act committed by the debtor in any name to the detriment of the creditors insofar as it can be proved that when the act was committed both the debtor and the party with or for whom the debtor acted knew that the act was detrimental to the creditors. In UUKPKPU, the regulation on *Actio Pauliana* itself is regulated in Article 41 to Article 50 which is the implementation provision of what is regulated in Article 1341 of the Civil Code. The bankruptcy decision is a court decision that results in a general seizure of all the assets of the insolvent debtor, both existing and future ones. The management and settlement of insolvency is carried out by the

curator under the supervision of the supervisory judge with the main purpose of using the proceeds from the sale of the property in proportion (prorate parte) and in accordance with the creditor structure

The dominant role of the curator is to act as a solution to the bankruptcy problem experienced by the debtor, where the curator does not act in the interests of the applicant, but in the interests of the bankruptcy budel. This means that the role of the curator does not merely prioritize the interests of creditors, but must also be fair to the debtor as experiencing bankruptcy, the position of the curator is certainly higher than the debtor, meaning that the curator fully has the right to regulate the management and settlement of bankruptcy assets if a cooperation has been established. In the case of bankruptcy that has occurred, the curator is not entirely free in the management and settlement of bankruptcy assets. The curator is constantly under the supervision of the Supervising Judge. The duty of the Supervising Judge is to supervise the management and settlement of insolvent property, which is the duty of the curator (which is carried out by the curator). The supervisory judge assesses the extent to which the implementation of the duties of managing and clearing bankruptcy property carried out by the curator can be accounted for by the debtor and creditor.

In this effort, the curator filed a lawsuit *Actio Pauliana* to the Commercial Court of Medan to declare the bankruptcy debtor's legal act that registered the deed of marriage agreement on the agreement of separation of property to the Department of Population and civil registration at the time of the debtor in a state of PKPU is invalid and unenforceable so that the joint property can be identified by the curator and then entered into bankruptcy property, seized and used as debt security to creditors and then sold to pay the debts of the debtor to the creditors. In this condition, the role of the supervisory judge is needed, therefore the curator submits a report to the supervisory judge regarding the state of the bankruptcy property and the performance of his duties every three months. Given the severity of the task carried out by the curator in the management and settlement of bankruptcy assets, a curator must always be in touch with the supervisory judge to consult or simply get input. This is done to achieve the goal of success of a bankruptcy declaration, therefore the supervisory judge and curator must be interconnected as partners.

RESEARCH METHODS

The type of research that will be used in the writing of the thesis is empirical juridical research. Empirical juridical research is meant by other words which is a type of sociological legal research and can be mentioned by Field Research, which examines the applicable legal provisions and what has happened in people's lives.

RESULTS AND DISCUSSION

Basically, humans have the right from birth, but not all humans have the authority and ability to do legal acts. People who can do legal acts are people who have grown up and or are married. The size of maturity is 21 years or married, while people who are not capable of doing legal acts are: 1. Immature people; 2. People who are placed under guardianship; 3. A woman who is married (article 1330 of the Civil Code). Based on these provisions, the classification of people in law who are declared incapable of exercising their rights and obligations consists of immature people and those who are placed under guardianship (curatele). Guardianship is a situation in which a person because of his personal qualities is considered incompetent in traffic law, because it is considered incompetent, so in order to guarantee and protect his rights, the law allows a person to be able to act as a representative of a person under guardianship.

Guardianship is regulated by Article 433 of the Civil Code up to Article 462 of the Civil Code, where according to the provisions of Article 433 of the Civil Code, there are 3 reasons for guardianship, namely: 1) extravagance (*verkwisting*); 2) weak intellect (*zwakheid van vermogen*); 3) lack of thinking memory pain (*krankzinnigheid*), stupid (*onnozelheid*), and stupid accompanied by frequent tantrums (*razernij*). Referring to the provisions of Article 433 of the Civil Code, where one of the reasons for guardianship is waste, guardianship in civil law construction is different from guardianship in bankruptcy. Guardianship is basically intended to protect the incompetent

party, by taking care of the party's personal and property as stipulated in Article 433 of the Civil Code. While the bankruptcy process aims to ensure the existence of a process of fulfillment of obligations and / or distribution of assets of the debtor declared bankrupt to its creditors, where the declaration of bankruptcy by the court, then by law the debtor loses the right to take care of the property as the provisions of Article 24 paragraph (1) of Law Number 37 of 2004.

The Guardian is called the curator (curator), which is a person/an entity entrusted with the task of replacing/taking care of the interests of a/legal entity that is under his forgiveness. Curator in bankruptcy means a body that replaces the position of the person/legal entity declared bankrupt, in order to take care of the rights and obligations of the bankrupt. Thus, the curator has rights and obligations as well.

The position of the curator, which plays an important role in the occurrence of bankruptcy, is a legal consequence of the bankruptcy declaration decision from the Commercial Court which then provides duties for the curator in carrying out his duties and authorities. The curator, who is a person who is authorized to carry out the management and settlement of bankruptcy assets, is appointed by a Commercial Court judge on the proposal for the appointment of a curator by the debtor, creditor or authority such as Bapepam, the Minister of Finance, Bank Indonesia and the prosecutor's Office. When talking about the position must be the basis of any action that can be done or is the right to do the action. Similarly, the position of a curator who is the basis in carrying out the duties and obligations and normative authority in the task of cleaning up and managing bankruptcy property according to UUKPKPU. A curator in carrying out his duties should not take arbitrary actions that pass through the corridors of law and need to pay attention to several things such as whether he has the authority to carry out these actions, then whether his actions are in accordance with the circumstances and the right conditions with regard to economic and business factors, whether in carrying out, then it should also be considered whether the action requires certain procedures, such as holding a meeting with a certain quorum and must also be in a hearing attended/led by supervisory judges, as well as curators in carrying out certain actions must also pay attention to the proper way in terms of law, social and Customs in society.

The position of curator in UUKPKPU is very important related to centric tasks as one of the parties in bankruptcy. As an inventory of authority, the duties and responsibilities of the curator based on UUKPKPU have justified all legal actions of the curator in charge of managing and clearing bankruptcy assets. the curator in carrying out his duties must uphold independence and be free from all forms of intervention by interested parties. The curator has been authorized to conduct the management and settlement of bankruptcy assets since the bankruptcy declaration decision, even though the decision was filed for Cassation (Article 16 of Law Number 37 of 2004 on bankruptcy and PKPU). This is a legal consequence of the "immediate " nature of the bankruptcy declaration decision, although it does not mean that the curator can carry out the management and settlement actions as he pleases "bankruptcy law in theory and practice", explaining that in order to carry out his actions, the curator must pay attention to, among others: 1. Whether he is authorized to do so. 2. Is it a good time to take that action. 3. Whether the action required prior approval or permission of the participation of certain parties. 4. Whether against such actions perform certain procedures. 5. It must be seen how feasible it is from a legal, customary and social point of view in carrying out certain actions.

It is also important in his position as curator, is related to the imposition of bankruptcy property with a pledge, fiduciary, mortgage, then there is a need for approval from the supervisory judge. This does not mean a limitation on the authority of the curator but rather to protect against hypotension losses that will impact the payment of the debtor's obligations to creditors. Duties and authority of the curator is relatively heavy, as stated in Article 69 paragraph (1) of Law No. 37 of 2004 that the duty of the curator is to conduct the management and/or settlement of bankruptcy assets. Furthermore, it is stated in Article 15 Paragraph (3) of Law Number 37 of 2004 that the curator must be independent, not have a conflict of interest with the debtor or creditor, and is not handling bankruptcy cases and delays in debt repayment obligations of more than 3 (three) cases.

What is meant by "independent and has no conflict of interest " is that the existence of the curator does not depend on the debtor or creditor, and the curator does not have the same economic

interests as the economic interests of the debtor or creditor. According to Sutan Remy Sjahdeini, it is considered that there has been a conflict of interest if it occurs, among others, the following things: 1. The curator becomes one of the creditors; 2. The curator has a family relationship with the controlling shareholder or management of the debtor company; 3. The curator has a stake of more than 10% in one of the creditor companies or in the debtor company; 4. The curator is an employee, member of the Board of directors, or member of the Board of Commissioners of one of the creditor companies or in the debtor company. In principle, the curator has been authorized to conduct the management and settlement of bankruptcy assets since the bankruptcy declaration decision from the Commercial Court, although the decision was filed for legal remedies, namely Cassation as provided for in Article 16 Paragraph (1) of Law Number 37 of 2004. This is a legal consequence of the "immediate" (*uitvoerbaar bij voorraad*) nature of the bankruptcy declaration decision as stipulated in Article 8 paragraph (7) of Law Number 37 of 2004. Although the law stipulates that curators can already carry out their duties and authorities after the bankruptcy declaration decision by The Commercial Court, it does not mean that curators can carry out Management and settlement actions at their own will.

The duty of the curator is to carry out the management and/or settlement of the bankruptcy assets from the date the bankruptcy decision is pronounced even though the decision is submitted for Cassation or judicial review. In carrying out the duties, the curator does not have to obtain approval from or deliver prior notice to the debtor including taking any action to increase the value of the bankruptcy property. From the commencement of his appointment, the curator shall carry out all efforts to secure the insolvent property and keep all letters, documents, money, jewelry, Securities and other securities by providing a receipt.

In the bankruptcy process, obstacles are often encountered that hinder the course of the bankruptcy process until the implementation of the bankruptcy decision. This obstacle can cause legal uncertainty because with the slow implementation of the bankruptcy decision, it can lead to irregularities in the implementation of the bankruptcy, whereas Law No. 4 of 1998 adheres to the principle of fairness (taking into account the interests of the balance between creditors and debtors), fast (limited period of settlement of cases both at the first level, Cassation and judicial review), and effective (without the decision having definite force, the decision can be implemented). Obstacles usually come from debtors who have bad intentions or who do not have the desire to pay off their debts can be in the form of, embezzlement of investment when the curator will record the debtor's property, the debtor immediately moves his property to another place so that when the recording is held by the curator it turns out that the debtor does not have any property anymore.

The unprofessionalism of the curator in taking care of the assets of debtors who have been declared bankrupt is another obstacle factor. This may happen because the curators are on average law graduates who do not have the ability to manage the company, because in addition to mastery of the legal field should the curators also have the ability to manage a business, especially those related to bookkeeping audits. The expectation of profit as expected is the ultimate goal of business activities, but not all business actors can achieve success as expected, various factors that cause failure in running a business.

Failure in running a business on any scale always leaves conflicts, especially those related to debts and receivables (*undisputable dept*) such conflicts arise due to bankruptcy so that the company is unable to repay loans to creditors. Robintan Sulaiman and Joko Prabowo stated that the points of improvement of the bankruptcy law include important aspects that are considered necessary to realize the first, improvement around the terms and procedures for requesting a bankruptcy statement. Second, the improvement of arrangements that are additional provisions on interim measures that can be taken by the parties concerned, especially creditors on the debtor's property before the bankruptcy declaration decision. Third, strengthening the functions of curators and improvements that allow the functioning of the provision of these services in addition to institutions that have been known, namely The Heritage Hall. Fourth, the affirmation of legal remedies that can be taken against the decision of the bankruptcy statement, that for this reason it can be submitted directly to the Supreme Court. Fifth, in order to smooth the bankruptcy process

and safeguard interests fairly, in order to complete it, it is also emphasized that there is a mechanism for suspending the implementation of rights among creditors who hold mortgage, pledge or other collateral. Sixth, improvements are also made to the provisions on deferral of payment obligations as stipulated in the second chapter of the bankruptcy law. Seventh, the affirmation and establishment of a special judiciary that will resolve insolvency in general.

The difficulties found to detect the existence of bankruptcy debtor assets include the minimum level of participation of customers, police, prosecutors and banks, because they do not understand bankruptcy law. For example, there is no common view in terms of Duty relations with Commercial Court judges and supervisory judges as well as related external parties such as banking, Directorate General of taxes, and Directorate General of State receivables and auctions. For example, curators experience obstacles in accessing the accounts of insolvent debtors at banks, with the reason that there are bank secrecy provisions. This causes cooperation with banks related to blocking accounts belonging to insolvent debtors does not go well. The curators have a dilemma. If the curator does not apply for a block, it will be reprimanded by Bank Indonesia and threatened with criminal sanctions, but when applying for a block, the bank does not heed the curator's request. Likewise, there is a provision on the expiration of tax collection rights for ten years which will make it difficult for curators because they have to wait until the expiration period before they can share the settlement results with concurrent creditors.

Judging from some of the implementation of the duties and authority of the curator in carrying out the management and/or very much cleaning can cause various possible problems. The implementation of these tasks and authorities are often not in accordance with the implementation in the field, there are obstacles that have an impact on the course of settlement of bankruptcy boedel.

The following below are some of the inhibiting factors experienced by the curator in carrying out the duties and authority to manage and / or resolve bankruptcy property:

1. Juridical Aspect Regarding Article 74 paragraph (1) of the bankruptcy law and postponement of debt payment obligations which reads “that the curator must submit a report to the supervisory judge about the state of the bankruptcy estate and the performance of his duties every 3 (three) months, in the article scheduled that the curator for 3 (three) months must provide a report on the management and settlement of, however, in its implementation in the field many curators who can not carry out their duties for 3 (three) months give a report to the supervisory judge. This is because Article 74 paragraph (3) which states that the supervisory judge can extend the period of time as referred to in Paragraph (1) ” from the sound of the article does not explain in detail how the supervisory judge gives an extension of time, often in the field the curator only gives a report orally by telling it while if the curator asks for an extension of time, the supervisory judge also only gives permission to the curator orally or not in writing with words Please continue the process.
2. Non Juridical Aspects a. Management level 1) the insolvent debtor is not cooperative so as to obtain all the data of the curator of difficulties and the curator cannot maximally secure all the assets of the bankrupt, this results in the provisions of Article 98 of the bankruptcy law and the postponement of debt payment obligations which reads: Since the start of his appointment, the curator must carry out all; 2) in its implementation, the curator often cannot fully control the bankruptcy assets because the debtor does not want to get out of the bankruptcy assets or it can be said that the curator cannot empty the assets so that further emptying is needed, because in Article 99 paragraph (1) of the bankruptcy law and the delay in debt payment obligations explain that the curator can request the sealing of the bankruptcy assets to the court, based on the reasons for securing the bankruptcy assets, through the supervisory judge the contents of the article in the field often experience obstacles, the curator is hampered by this process because in this stage of sealing there are also no criminal elements.
3. The Bank does not want to provide information about the debtor's bank accounts, in accordance with the provisions of Article 21, Article 1 Number 1, Article 24, Article 98, Article 108 of the bankruptcy law and the postponement of debt repayment obligations in all of these articles explains that the debtor by law lost his right to control and manage his wealth included in the

bankruptcy, but in its implementation, it is not uncommon for banks not to know about the bankruptcy of the debtor and it is not uncommon for the bank to reject the bankruptcy.

4. at the time of matching receivables as stipulated in Article 113 of Law No. 37 of 2004 concerning bankruptcy and postponement of debt repayment obligations, which in the article states the deadline for filing bills, tax verification, and the place, time of the meeting of creditors.
5. many creditors are late in submitting bills due to ignorance of advertisements or newspapers and state gazettes of the Republic of Indonesia which results in the deadline for submitting bills not being matched backwards and not in accordance with the provisions of Article 133 of the bankruptcy law and postponement of debt repayment obligations.

From some of the obstacles above, it can be seen that the obstacles that generally occur are caused by the process of implementing the settlement and management of bankruptcy assets where the bankruptcy debtor and creditors cause new problems that cause the slow process of bankruptcy. The curator, who is a person appointed by the court to carry out the management and arrangement of the bankruptcy assets of the debtor, must carry out his duties in accordance with applicable laws and regulations. When carrying out its duties, the curator also has responsibility for errors or omissions that result in losses to the bankrupt's property when carrying out the task of managing or arranging the bankrupt's property in question, as intended in Article 72 of the UUKPKPU. So many duties and responsibilities imposed on the curator cause not a few obstacles faced by the curator, such as non-cooperative actions and other actions of a psychological nature carried out by insolvent debtors and insolvent creditors.

In the face of uncooperative attitudes of debtors in bankruptcy proceedings, the curator is not always willing to take legal actions including *Actio Pauliana* to obtain assets hidden by the debtor due to the need for efforts to find and collect data as evidence in carrying out *Actio Pauliana*, in addition, the curator must spend a lot of money considering the amount of costs that must be incurred in litigation in the Commercial Court. Because of the process of suing the Commercial Court over these assets, the bankruptcy process will also require a longer time so that the curator must spend longer to complete 1 bankruptcy case. Given that the curator in carrying out their duties can only handle 3 cases simultaneously, so that the curator can not handle other bankruptcy cases due to the ongoing case process.

The curator certainly encountered various obstacles that hinder the bankruptcy process, one of which is the uncooperative attitudes of debtors in the bankruptcy process. Debtors often make attempts to complicate the bankruptcy process, one of which is to hide their assets. As in the case raised in this thesis, after the debtor was sentenced to bankruptcy on April 11, 2022 by The Commercial Court at the Medan District Court, the curator experienced many obstacles in carrying out the duties and responsibilities of the curator including when the curator tried to find the debtor's property that would be a debt guarantee for the payment of the debtor's debts to creditors. In doing settlement treasure bankrupt Ferry SP Sinamo, SH., MH (in bankruptcy) Mr. Hadi Yanto himself had received threats from the debtor himself, this was an obstacle that the curator had obtained since the beginning of the settlement of Ferry SP bankruptcy. Sinamo, SH., MH (in bankruptcy) but the curator still carry out their duties and responsibilities in implementing the cleanup. After the curator collects data on the debtor's assets, the curator prepares a list of temporary assets for Ferry SP's bankruptcy assets. Sinamo, SH., MH (in bankruptcy) based on some data obtained by the curator in the curator's efforts both during the PKPU and bankruptcy process.

After the curator compiled and submitted a list of temporary assets for the bankrupt Ferry SP. Sinamo, SH., MH (in bankruptcy) to the debtor, the debtor sends a response letter to the list of temporary assets on Ferry SP's bankruptcy assets. Sinamo, SH., MH (in bankruptcy) and expressed objections and denied the temporary asset list with various objections, including : 1. The debtor only recognizes some assets that are in the temporary Asset list for Ferry SP's bankruptcy assets. Sinamo, SH., MH (in bankruptcy). 2. Some assets are in the name of the debtor's wife, and between the debtor and the debtor's wife there has been a marriage agreement for the separation of property as the marriage agreement deed No. 1 dated August 7, 2017 made at the Notary Office of Roy Victor Rahmad Dwisanta Purba, SH., M.Kn Notary in Langkat regency. 3. Some assets were sold to third

parties. 4. Some assets are registered in the name of the debtor's child. 5. Some assets do not belong to the debtor. 6. Several assets were sold to Zona Mobil on November 4, 2020.

With the existence of these objections, it becomes a new obstacle for the curator in securing and sealing the bankruptcy assets, so the curator must make other efforts to prove the debtor's objections. After the curator received a rebuttal letter, the curator again made various efforts in carrying out his duties in the bankruptcy process by sending letters to various agencies and financial institutions, but in carrying out his duties and Responsibilities The Curator often faces obstacles in making arrangements both from the debtor himself and from external parties.

The obstacles experienced by the curator include : 1) Department of Population and Civil Registration Pematang Siantar The curator sent a notice of bankruptcy debtor Ferry SP. Sinamo, SH., MH (in bankruptcy) and application for registration of marriage certificate no. 1 dated August 7, 2017 between Ferry SP. Sinamo with Hennawati Saragih. This is based on Article 29 paragraph (1) of Law No. 1 of 1974 jo. Supreme Court Decision No. 69 / PUU-XIII/2015 year 2015 which states : "At the time, before or during the marriage of the two parties by mutual agreement may enter into a written agreement certified by an employee of the marriage registrar or notary, after which the contents shall also apply to third parties as long as the third party is involved" In coordinating with Dukcapil Pematang Siantar, the curator did not immediately get an answer to the curator's letter. The curator must repeatedly coordinate with Dukcapil Pematang Siantar by explaining the duties and authorities of the curator in the bankruptcy process, because bankruptcy is a very rare thing even known by Dukcapil Pematang Siantar. 2) Bank The curator sent a letter requesting printing of the debtor's current account to several banks where the debtor has an account to check the mutation of the debtor's account. However, the curator again encountered obstacles because, the bank does not necessarily provide the debtor's checking account to the Curator so that the curator again explained about the duties and authority of the curator in the bankruptcy process including to secure the bankruptcy assets by identifying all debtor accounts to avoid losses on bankruptcy assets due to the actions of the debtor who deliberately transferred the bankruptcy assets based on the law and the determination of the supervisory judge. The curator must conduct intense coordination with several banks, including Bank Mandiri, Bank Sumut, and Bank BRI. In addition to coordinating with the pematang siantar branch office, the curator also coordinates with the Head Office of Bank Sumut, Bank Mandiri and Bank BRI to be able to obtain the debtor's current account so that the curator can identify the mutation of the debtor's account and prove that the assets denied by the debtor can be proven that the acquisition comes from the debtor's property which is bankruptcy property. 3) Manunggal Satu Atap Administration System (Samsat) The curator also coordinates with the Manunggal Satu Atap Administration System Office (Samsat) to check the history of ownership of bankruptcy assets in the form of movable objects (motor vehicles) identified by the curator as belonging to the debtor. Not much different from banks, curators also have to coordinate intensely with The One-Stop administrative system (Samsat) to be able to obtain data on the debtor's vehicle. 4) Pematang Siantar National Land Agency and Medan National Land Agency Based on the objections submitted by the debtor on several assets owned by the debtor, the curator coordinated with the National Land Agency Pematang Siantar and Medan National Land Agency to obtain data on ownership of land rights owned by the debtor so as to refute the debtor's denial letter on the list of assets while ferry SP bankruptcy assets. Sinamo, SH., MH (in bankruptcy).. 5) cost In addition to the difficulty of obtaining data and information that prove that the debtor's actions have harmed the bankrupt's assets, the curator must also experience obstacles in terms of financial due to the large costs incurred by the curator in performing Actio Pauliana, so it is not uncommon for curators to discourage the intention to perform Actio Pauliana to obtain more bankruptcy assets. 6) finding witnesses in the trial In addition to collecting evidence proving that the debtor's actions have harmed the bankrupt's assets, the curator must also find witnesses who know and want to testify in court to prove the debtor's actions that have harmed the bankrupt's assets.

In the face of various obstacles faced by the curator in making bankruptcy settlement, the curator still adheres to the laws and regulations and the determination of the supervisory judge so that the curator continues to carry out his duties and responsibilities in the bankruptcy process.

CONCLUSION

Factors that become obstacles, in conducting Actio Pauliana against bankruptcy assets (based on Case Study decision Number: 1 / Pdt.Sus-Actio Pauliana/2022 / Fr. Commerce.Mdn Jo. No. 32 / Pdt.Sus-PKPU/2021 / Fr. Commerce.Mdn): in the bankruptcy process, there are often obstacles that hinder the course of the bankruptcy process until the implementation of the bankruptcy decision. This obstacle can cause legal uncertainty because with the slow implementation of the bankruptcy decision, it can cause irregularities in the implementation of the bankruptcy. Here are some of the inhibiting factors experienced by the curator in carrying out the duties and authority to manage and/or settlement of bankruptcy assets: 1) the bankruptcy debtor is not cooperative so that to get all the data the curator of difficulties and curators cannot maximally secure all bankruptcy assets, 2). The debtor commits legal actions that harm the bankrupt's assets such as: a. A marriage contract, b. Transfer ownership of bankrupt property to his son and daughter-in-law, c. Selling the property to a third party. 3). The Bank does not provide information about the debtor's bank accounts, 4). At the time of matching receivables as in the provisions of Article 113 of Law No. 37 of 2004 on bankruptcy and postponement of debt repayment obligations, which in the article states the deadline for filing bills, tax verification, and the place, time of the meeting of creditors. 5). Many creditors are late in submitting bills due to ignorance of advertisements or newspapers and state news of the Republic of Indonesia which results in the deadline for submitting bills not being matched backwards and not in accordance with the provisions of Article 133 of the bankruptcy law and postponement of debt repayment obligations. Efforts made by the curator in conducting Actio Pauliana against bankruptcy assets (based on a case study of decision Number: 1 / Pdt. Sus-Actio Pauliana/2022 / Fr. Commerce.Mdn Jo. No. 32 / Pdt.Sus-PKPU/2021 / Fr. Commerce.Mdn): the efforts made by the curator in overcoming obstacles when carrying out their duties and authorities in managing and/or clearing bankruptcy assets are as follows : 1. Request the determination of the supervisory judge to secure and seal the bankruptcy property 2. Write to financial institutions by attaching the determination of the supervisory judge to secure bankruptcy assets, 3). Browse the LHKPN KPK website to obtain information on the debtor's property report.

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