

**PRETRIAL BY CURATOR IN BANKRUPTCY PROCESS  
(A REVIEW OF THE CASE OF DECISION NO. 89 /PID.PRAP/2016/PN.JAKSEL)**

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**Abstract**

The curator is a party appointed by law through the Decision of the Commercial Court Judge at the District Court in a bankruptcy case to administer Bankruptcy assets. In Law Number 37 of 2004 concerning Bankruptcy and PKPU, the Curator is tasked with increasing the debtor's bankruptcy assets for the benefit of the Creditors as much as possible, but in carrying out these duties, the Curator can be criminalized by both the Creditors and the Debtors themselves. The Bankruptcy Law and PKPU have not guaranteed legal certainty and protection for curators when carrying out their duties. the bankruptcy application process, namely the process of requesting a decision to declare bankruptcy is regulated in Article 6 to Article 11 of the Bankruptcy Law. An application for bankruptcy can only be submitted at the request of one or more applicant subjects who have the legal standing as regulated in Article 2 of the Bankruptcy Law. This application is addressed to the Chairman of the Commercial Court whose jurisdiction includes the area where the debtor's legal domicile is.

**Keywords:** Pretrial, Curator, Bankruptcy

## INTRODUCTION

Indonesia is a legal state that adheres to the Pancasila legal state system, where the activities of the government and its citizens cannot be separated from the applicable laws and regulations. In everyday life, every legal subject (legal entity or individual) must have experienced financial difficulties. Sometimes the income received is not enough to pay bills to creditors. It could be because the income received was not in accordance with what was planned. For example, due to termination of employment or unpaid receivables, which results in loss of sources of income. Or because the planned expenses can't be fulfilled. For example, an increase in the cost of goods there is a sudden need or excessive and appropriate spending allocation. Popularly, people know this situation as bankruptcy.<sup>1</sup>

According to Black's Law Dictionary, the term bankrupt means indebted beyond the means of payment.<sup>2</sup>In an operational sense, it is stated as a person who cannot meet current financial obligations; an insolvent person.<sup>3</sup>According to the Faillissements Verordening (FV) Staatsblad 1905 No. 217 Jo. Staatblad Number 348 which is meant by bankruptcy is every debtor (Debtor) who is in a state of stopping paying either on his own report or at the request of a person or is more indebted (Creditor) with a judge's decision declared in a state of bankruptcy. Indonesian legislation does not provide an authentic meaning of bankruptcy or insolvency. However, in Article 2 paragraph 1 of Law no. 37 of 2004 concerning Bankruptcy and PKPU, states that a debtor who has two or more creditors and does not pay off at least one debt that has matured and is collectible, is declared bankrupt by a court decision, either at his own request or at the request of one or more creditors.<sup>4</sup>

In relation to the concept of a state of law Pancasila, bankruptcy is a form of procedural justice enforcement where the application of bankruptcy law in Law Number 37 of 2004 concerning Bankruptcy and PKPU is intended to provide legal protection to creditors in obtaining their receivables from debtors, providing legal protection to bankrupt assets. itself as well as legal protection for the debtor through the mechanism of the PKPU and bankruptcy process which is carried out fairly and also the accountability of the curator is a legal protection for the curator as the party who manages the bankruptcy estate. In managing bankrupt assets there are times when the curator experiences various obstacles, one of which is when he commits acts that meet the elements of a criminal act.

Whereas in judicial practice, judges have made several legal discoveries related to other actions of investigators/public prosecutors that may become objects of pretrial. Several other actions by investigators or public prosecutors, including confiscation and determination as suspects, have been accepted as objects in pretrial examination. Decision Number: 04/Pid.Prap/2015/PN.Jkt.Sel dated February 16, 2015 which basically states that the Petitioner's

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<sup>1</sup>Erna Widjajati, *Corporate and Bankruptcy Law in Indonesia*, (Jakarta: Path, 2016), p. 66.

<sup>2</sup>Bryan A. Garner (ed.). *Black's Law Dictionary*, Eight Edition. (St. Paul: West Publishing and Co., 2004), p. 156.

<sup>3</sup>Ibid.

<sup>4</sup>Ibid.

determination as a suspect is invalid and has no legal basis and therefore the aquo determination has no binding force.<sup>5</sup>

In the case of CASE DECISION NO. 89/PID.PRAP/2016/PN.JAKSEL Curator It has been reported to the police then the pretrial application is regulated by the procedure as stipulated in Article 82 of the Criminal Procedure Code. According to Moh. Faisal Salam, after the District Court has received the application for examination of the pretrial case, within three days it has appointed a judge who will preside over the trial and has set a trial day. Pretrial hearings are presided over by a single judge and assisted by a clerk.<sup>6</sup>

## **RESEARCH METHODS**

The research method in this research is normative juridical. The data used is secondary data. In an effort to be able to answer or solve the problems raised in this study, qualitative data analysis methods were used.

## **RESULT AND DISCUSSION**

Indonesia is a constitutional state that has existed since the first period of the enactment of the 1945 Constitution, the explanation of the 1945 Constitution states in number 1 regarding the State Government system: "Indonesia is a country based on law (rechtsstaat)". Next, it is explained that it is not based on mere power (Machtsstaat)". In the 1949 RIS constitution and 1950 UUDS it is stated: "Indonesian legal state which is perfectly sovereign". Article 1 paragraph (1) of the 1949 RIS constitution reaffirms: "...a democratic and unitary state of law". After the re-enactment of the 1945 Constitution, the statement of Indonesia as a legal state in the explanation in point 1 regarding the state government system is valid again. The statement in the third amendment of the 1945 Constitution of 2001 is affirmed in the body, namely Article 1 paragraph (3) by using the term "state of law". Theoretically, the basic understanding of the "state of law" as stated by Mochtar Kusumaatmadja is that power grows on the law and everyone is subject to the law.<sup>7</sup>

Law is all the sanctioned rules governing human behavior which are formed based on an assessment of human behavior which basically depends on the human view that judges earlier about the individual's place in social life. While the state of Pancasila law is a state based on law where government and state activities must comply with laws based on Pancasila values.

In a state of law based on Pancasila, according to Sudikno Mertokusumo, justice must stand equal to legal certainty and benefit. In enforcing the law, three elements that must always be considered must go hand in hand, namely: legal certainty (Rechtssicherheit), expediency (Zweckmassigkeit) and justice (Gerechtigkeit). Sudikno Mertokusumo then argued that the law must be implemented and enforced.<sup>8</sup> Everyone hopes that the law can be enacted in the event of

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<sup>5</sup>Ibid.

<sup>6</sup>Ibid.

<sup>7</sup>Ibid.

<sup>8</sup>Sulardi, and Yohana Puspitasari Wardoyo, Legal Certainty, Benefit and Justice in Child Criminal Cases, Judicial Journal, Malang: Faculty of Law, University of Muhammadiyah, 2015. p. 258.

a concrete event. If it is the law that must apply, it is basically not allowed to deviate: fiat justitia et pereat mundus (even though the world is collapsing, the law must be enforced). That is what legal certainty wants. Legal certainty is a justifiable protection against arbitrary actions, which means that someone will be able to get something that is expected in certain circumstances. The community expects legal certainty, because with legal certainty the community will be more orderly. The law is tasked with creating legal certainty because it aims at public order.

As a country based on law, legal protection means that the law aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can only be done by limiting various interests on the other hand. The interest of the law is to take care of human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected. In relation to legal protection, the Curator based on the provisions of Article 41, Law no. 37 of 2004 concerning Bankruptcy and PKPU, which reads: "For the sake of bankruptcy assets, the Court may request the cancellation of all legal actions of the Debtor in which the declaration of bankruptcy has been pronounced.

Whereas the object of the pretrial examination includes aspects, namely examining the validity of an arrest or detention (Article 79 of the Criminal Procedure Code), examining the legality of a termination of an investigation or prosecution (Article 80) of the Criminal Procedure Code, examination of requests for compensation and or rehabilitation due to illegal arrests or detentions. or as a result of the invalidity of the investigation (Article 81 of the Criminal Procedure Code) and also the examination of the validity of the determination of suspects, searches and confiscations (MK Decision No. 21/PUUXII/2014).

The existence of a Pretrial Institution, as regulated in Chapter X Part One of the Criminal Procedure Code and Chapter XII Part One of the Criminal Procedure Code Jo. Chapter III Duties and Authorities, Article 16 of Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia, is clearly and unequivocally intended as a means of horizontal control or supervision to test the legitimacy of the use of authority by law enforcement officers (ic. investigators/investigators and public prosecutors). ), as an effort to correct the use of authority if it is carried out arbitrarily with other purposes/objectives other than those explicitly stipulated in the Criminal Procedure Code, in order to guarantee the protection of the human rights of everyone, including in this case the Petitioner. Luhut MP Pangaribuan argues: "Pretrial is an innovation (new institution) in the Criminal Procedure Code. Along with other innovations, such as limitations on the arrest and detention process, making the Criminal Procedure Code called a masterpiece. According to Dr. A. Hamzah (1986:10), pretrial is a place to complain about human rights violations. When viewed from the process of forming the Criminal Procedure Code, the intention of establishing a pretrial is as a "translation" of the habeas corpus which is the substance of human rights. In fact, the drafting of the Criminal Procedure Code has been greatly encouraged and referred to in International Human Rights Law which has become International Customary Law." When viewed from the process of forming the Criminal

Procedure Code, the intention of establishing a pretrial is as a "translation" of the habeas corpus which is the substance of human rights. In fact, the drafting of the Criminal Procedure Code has been greatly encouraged and referred to in International Human Rights Law which has become International Customary Law.” When viewed from the process of forming the Criminal Procedure Code, the intention of establishing a pretrial is as a "translation" of the habeas corpus which is the substance of human rights. In fact, the drafting of the Criminal Procedure Code has been greatly encouraged and referred to in International Human Rights Law which has become International Customary Law.”<sup>9</sup>

Whereas according to Article 1 number 10 in conjunction with Article 77 of Law no. 8 of 1981 concerning the Criminal Procedure Code (KUHP) has explicitly regulated the Pretrial. Article 77 of the aquo law states:

“The District Court has the authority to examine and decide, in accordance with the provisions stipulated in this Law regarding:

1. Whether or not the arrest, detention, termination of investigation and prosecution is legal;
2. Compensation and/or rehabilitation for a person whose criminal case is terminated at the level of investigation or prosecution”;

The purpose of pretrial as implied in the explanation of Article 80 of the Criminal Procedure Code is to enforce law, justice, truth through horizontal supervision, so that the essence and pretrial is to supervise the forced actions taken by investigators or public prosecutors against suspects, actually carried out in accordance with the provisions of the law. law, carried out professionally and not actions that are contrary to the law as regulated in the Criminal Procedure Code or other legislation.

Applications that can be submitted in a pretrial examination, apart from the question of whether or not the arrest, detention, termination of investigation or termination of prosecution as well as compensation and/or rehabilitation for a person whose criminal case is terminated at the level of investigation or prosecution (Article 77 of the Criminal Procedure Code) also includes actions other matters as expressly stipulated in the provisions of Article 95 states that:

- 1)A suspect defendant or convict has the right to demand compensation for being arrested, detained, prosecuted, and tried or subjected to other actions, without any reason based on the law or because of an error regarding the person or the law that is applied.
- 2)claim for compensation by the suspect or his heirs for the arrest or detention as well as other actions without reasons based on the law or due to errors regarding the person or the law applied as referred to in paragraph (1) whose case is not submitted to the district court, decided in the pretrial hearing as referred to in paragraph (1). in Article 77.

In this paper reviewing the decision no. 89 /Pid.Prap/2016/PN.Jaksel. In this case the Petitioner is the Curator Team of PT. Metro Batavia (In Bankruptcy), which was appointed and appointed based on the Decision of the Commercial Court at the Central Jakarta District Court No. 77/Pailit/2012/PN.Niaga.Jkt.Pst, dated January 30, 2013. Capacity as Curator Team of PT.

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<sup>9</sup>Luhut MP Pangaribuan, Criminal Procedure Code, Official Letter of Advocate in Court, Jakarta: Papas Sinar Sinanti, 2013, p. 92.

Metro Batavia (In Bankruptcy), the Petitioner carries out his main duties and functions and has the rights, authorities and obligations in accordance with the provisions referred to in Article 98 of Law No. 37 of 2004 concerning Bankruptcy and PKPU which reads: "Since his appointment, the Curator must carry out all efforts to secure the bankruptcy estate and keep all letters, documents, money, jewelry, securities, and other securities by providing a receipt".

According to Law Number 37 of 2004 concerning Bankruptcy and PKPU, the task of the Curator is to administer the bankruptcy debtor; perform bankruptcy estate settlement; securing bankrupt assets and maximizing bankrupt assets. The Petitioners in carrying out their duties as Curators have found data regarding the assets of PT. Metro Batavia (In Bankruptcy) in the form of land and buildings known as the Office of PT. Metro Batavia which is located on Jl. Ir. H. Juanda No. 15, Central Jakarta, Certificate of Building Use Rights No. 2257/Kebon Kelapa on behalf of Yudiawan Tansari as the President Director of PT. Metro Batavia (In Bankruptcy);

It is also known from the data found 8 (eight) days after the International Lease Finance Corporation filed for bankruptcy on December 20, 2012 or 1 (one) month 2 (two) days before the decision on the bankruptcy statement of PT. Metro Batavia said (on January 30, 2013), Yudiawan Tansari on December 28, 2012, has transferred land and buildings known as Jl. Ir. H. Juanda No. 15, Kebon Kelapa Village, Gambir District, Central Jakarta, Certificate of Building Use Rights No. 2257/Kebon Kelapa, to Rio Sulysto (who is the biological nephew of Defendant I) who acts as the Board of Directors of PT. Putra Bandara Mas, based on the Sale and Purchase Deed No. 112/2012 dated December 28, 2012; The actions of the Petitioners in carrying out their duties as a Curator Team, to save assets for the sake of bankruptcy assets based on the Law. Based on Article 41, Law no. 37 of 2004 concerning Bankruptcy and PKPU, which reads: "For the interest of bankruptcy assets, the Court may request the cancellation of all legal actions of the Debtor who have been declared bankrupt which harm the interests of Creditors, which were carried out before the bankruptcy declaration decision was pronounced. The cancellation as referred to in paragraph (1) can only be carried out if it can be proven that at the time the legal action was taken, the Debtor and the party with whom the legal action was carried out knew or should have known that the legal action would result in a loss to the Creditor." the Court may request the cancellation of all legal actions of the Debtor that have been declared bankrupt which harm the interests of the Creditor, which is carried out before the decision on the declaration of bankruptcy is pronounced. The cancellation as referred to in paragraph (1) can only be carried out if it can be proven that at the time the legal action was taken, the Debtor and the party with whom the legal action was carried out knew or should have known that the legal action would result in a loss to the Creditor." the Court may request the cancellation of all legal actions of the Debtor that have been declared bankrupt which harm the interests of the Creditor, which is carried out before the decision on the declaration of bankruptcy is pronounced. The cancellation as referred to in paragraph (1) can only be carried out if it can be proven that at the time the legal action was taken, the Debtor and the party with whom the legal action was carried out knew or should have known that the legal action would result in a loss to the Creditor."

In Article 42, Law no. 37 of 2004, concerning Bankruptcy and PKPU, which reads: If a legal action that is detrimental to the Creditor is carried out within 1 (one) year before the bankruptcy declaration decision is pronounced, while the act is not obliged to be carried out by the Debtor, unless it can be proven otherwise, the Debtor and the party with whoever the act is committed is deemed to know that the act will result in loss to the Creditor as referred to in Article 41 paragraph (2), in the event that the act is carried out by the Debtor who is a legal entity, with or for the benefit of members of the board of directors or management of the Debtor, husband or wife, adopted child, or family up to the third degree of the member of the board of directors or management.

Based on Article 41 Jo. Article 42 of Law no. 37 of 2004 concerning Bankruptcy and PKPU, the Petitioners as Curators have filed a lawsuit against Actio Pauliana against the bankruptcy estate of PT. Metro Batavia (In Bankruptcy) in the form of land and buildings known as Jl. Ir. H. Juanda No. 15, Kebon Kelapa Village, Gambir District, Central Jakarta, Building Use Rights Certificate No. 2257/Kebon Kelapa registered under case No. : 02/Pdt.Sus/Actio Pauliana/2014/PN.Niaga.Jkt.Pst, has been decided by the Panel of Judges of the Commercial Court at the Central Jakarta District Court, on 19 May 2014, with the following verdict:

#### JUDGE

##### I. IN EXCEPTION:

- Rejecting the Exceptions of Defendant I, Defendant II and Defendant III;

##### II. IN THE MATTER OF THE MATTER:

- Reject the Plaintiff's claim in its entirety;
- Sentencing the Plaintiff to pay all costs incurred in this case, which to this day is set at Rp. 616.000,- (six hundred and sixteen thousand rupiah);

Based on the decision of the Commercial Court at the Central Jakarta District Court No.: 02/Pdt.Sus/Actio Pauliana/2014/PN.Niaga.Jkt.Pst, the Curator Team has filed an Cassation and submitted a Memorandum of Cassation dated 22 May 2014.

At the Cassation level the case has also been decided by the Supreme Court with Cassation Decision No. 389 K/Pdt.Sus-Pailit/2014 dated August 11, 2014 Jo. Decision of the Commercial Court at the Central Jakarta District Court No. : 02/Pdt.Sus/Actio Pauliana/2014/PN.Niaga.Jkt.Pst dated May 19, 2014, whose warning reads as follows:

#### JUDGE

1. Reject the appeal from the Cassation Petitioner TURMAN M. PANGGABEAN, SH., MH., ANDRA REINHARD PASARIBU, SH., DR. PERMATA NAULI DAULAY, SH.,MH., & ALBASUKMAHADI, SH., as the Curator Team of PT. Metro Batavia (In Bankruptcy);
2. Sentencing the Cassation Petitioner/Plaintiff to pay court fees within the cassation rate set at Rp.5,000,000.00 (five million rupiah).

The Curator Team has obtained new evidence (novum) as the basis for submitting a request for a judicial review of the Cassation Decision No. 389 K/Pdt.Sus-Pailit/2014 Jo. Decision of the Commercial Court at the Central Jakarta District Court No. : 02/Pdt.Sus/Actio Pauliana/2014/PN.Niaga.Jkt.Pst, in the form of:

- a. Novum I in the form of : Management Statement Letter No. 231/VI/2010, dated June 11, 2010 (PK-1), drawn up and signed by Respondent for Review I submitted to witness DR. Achmad RK, AK.CPA.MM., as Auditor of a Public Accounting Firm who has audited the Financial Statements of PT. Metro Batavia, in the period 2009-2010, 2010-2011", which contains a statement signed by Yudiawan Tansari on page 3.II non-current assets a.fixed assets which reads:

*"All fixed assets as of December 31, 2009 are actually physically and legally owned by the company in accordance with applicable laws and regulations in Indonesia and have been recorded and reported in the financial statements".*

Likewise in the List of Fixed Assets PT. Metro Batavia attached in Novum I (Management Statement Letter No. 231/VI/2010, dated June 11, 2010), which lists the assets / fixed assets owned by PT. Metro Batavia, namely Juanda Building with an acquisition price of Rp. 25,000,000,000,- (twenty five billion rupiah).

- b. Novum II in the form of: First Level Mortgage Certificate with No. 1978/2009 Certificate (PK-2a) and Second Level Mortgage Certificate with No. Certificate 799/2010 (PK-2b), which is also confirmed by the Land Use Rights Book No. 2257/Kebon Kelapa stored at the Central Jakarta Land Office (PK-2c), which is evidence that the land and building certificates are a quo case, namely the Certificate of Building Use Rights No. 2257/Kebon Kelapa, known as Jalan Ir. H. Juanda No. 15, Kebon Kelapa Village, Gambir District, Central Jakarta, has been guaranteed by PT. Metro Batavia (in bankruptcy) at PT. Bank Muamalat Indonesia, Tbk., as of July 21, 2009, based on the Deed of Granting Mortgage (APHT) No. 74/2009 and No. 799/2010, which was made before a Notary / PPAT ARRY SUPRATNO, SH.

That the application for reconsideration has been decided by the Supreme Court of the Republic of Indonesia as referred to in its Decision No. 61/PK/Pdt.Sus-Pailit/2015, dated 31 August 2015, the verdict reads:

#### JUDGE

Granted the request for judicial review from the Petitioners for Judicial Review: TURMAN M. PANGGABEAN, SH, MH, ANDRA REINHARD PASARIBU, SH, Dr. PERMATA NAULI DAULAY, SH, MH, & ALBA SUKMAHADI, SH, canceled the Supreme Court Decision Number 389 K/Pdt.Sus-Pailit/2014 dated 11 August 2014 which affirmed the Commercial Court Decision No.02/Pdt.Sus.Actio Pauliana/2014/PN.Niaga.Jkt .Pst., May 19, 2014;



## JUDGING BACK

1. Granted the Plaintiff's claim in its entirety.
2. Declare Land and Buildings known as Jalan Ir. H. Juanda Number 15, Kebon Kelapa Village, Gambir District, Central Jakarta, Certificate of Building Use Rights Number 2257/Kebon Kelapa, included in the bankruptcy certificate of PT. Metro Batavia (In Bankruptcy).
3. Stating that the legal actions of Defendant I and Defendant II (acting for and on behalf of Defendant III) which diverted Jalan Ir. H. Juanda Number 15, Kelurahan Kebon Kelapa, Kecamatan Gambir, Central Jakarta, Certificate of Building Use Rights Number 2257/Kebon Kelapa, Defendant I and Defendant II (acting for and on behalf of Defendant III) knew or should have known that the legal action would result in loss for the bankrupt bank and creditors is an act against the law.
4. Ordered Defendant I and Defendant II (acting for and on behalf of Defendant III), or other parties in control to vacate Land and Buildings known as Jalan Ir. H. Juanda Number 15, Kebon Kelapa Village, Gambir District, Central Jakarta, Certificate of Building Use Rights Number 2257/Kebon Kelapa, to the Plaintiff as the Curator Team of PT. Metro Batavia (In Bankruptcy). If necessary, the Commercial Court at the Central Jakarta District Court may order the bailiff of the court to be assisted by the Police to vacate and hand over the above-mentioned assets along with their certificates, to Batavia (In Bankruptcy).
5. Ordered Defendant I to return the payment from the sale of land and buildings known as Jalan Ir. H. Juanda Number 15, Kebon Kelapa Village, Gambir District, Central Jakarta, Certificate of Building Use Rights Number 2257/Kebon Kelapa to Defendant II (for and on behalf of Defendant III) and subsequently from Defendant II (for and on behalf of Defendant III) returned money for payment of sales proceeds to Defendant IV and/or to Plaintiff.
6. Ordered the Plaintiff as the Curator Team, for the sake of the bankruptcy estate to continue the sale of land and buildings known as Jalan Ir. H. Juanda Number 15, Kebon Kelapa Village, Gambir District, Central Jakarta, Certificate of Building Use Rights Number 2257/Kebon Kelapa to Defendant IV or other parties.
7. Sentencing the Respondents for Judicial Review/Defendants/Respondents for Cassation, and Co-respondents for Cassation/Co-Defendants/Co-Respondents for Cassation to pay court fees at all levels of court and judicial review, which in the judicial review is set at Rp10,000,000 ,00 (ten million Rupiah);

It can be seen that the Supervisory Judge of PT. Metro Batavia (In Bankruptcy) has also stipulated in Stipulation No. 77-1/Pailit/2012/PN.Niaga.Jkt.Pst dated March 14, 2016, has allowed the Petitioners to implement the Judicial Review Decision No. 61/PK/Pdt.Sus-Pailit/2015, dated August 31, 2015 which is to continue the sale of the land and buildings mentioned above. That the testimony of the Witness Pilot Captain SUYONO SUWITO as a Senior Pilot at PT. Metro Batavia (In Bankrupt) at the Trial at the Commercial Court on Case No. 02/Pdt.Sus/ActioPauliana/2014/PN.Niaga.Jkt.Pst, which states that the land and buildings

in the a quo case were purchased at a cost of Rp. 25,000,000,000,- (twenty five billion rupiah) and the land and buildings are used as the Head Office of PT. Metro Batavia (In Bankruptcy) is in accordance with the two Novums mentioned above and the Special Attachment Evidence for the Annual Income Tax Return which is attached to the Financial Bookkeeping Report / Profit and Loss Balance of PT. Metro Batavia (vide evidence P-16 & P-17/see L-3 & L-4 on page lists fixed assets/assets owned by PT. Metro Batavia, namely Juanda Building with an acquisition price of Rp. 25,000,000,000, - (twenty five billion rupiah) which has been proven at the *Judex Factie Trial*.

From the decision above, the process for applying for a bankruptcy declaration is regulated in Articles 6 to 11 of the Bankruptcy Law. Bankruptcy applications can only be filed at the request of one or more applicant subjects who have legal standing as regulated in Article 2 of the Bankruptcy Law. This application is addressed to the Head of the Commercial Court whose jurisdiction covers the area where the debtor's legal domicile is. The proceedings at the Commercial Court in the bankruptcy petition adhere to a simple evidentiary system as regulated in Article 8 paragraph (4) of the Bankruptcy Law as referred to in Article 2 paragraph (1) of the Bankruptcy Law. The examination of bankruptcy cases at the Commercial Court takes place more quickly because the Bankruptcy Law provides a time limit for the examination of bankruptcy applications.

Based on Article 6 paragraph (3) of the Bankruptcy Law, the application for bankruptcy must be granted if there are facts or circumstances that are simply proven that the requirements to be declared bankrupt as referred to in Article 2 paragraph (1) of the Bankruptcy Law have been fulfilled. A simple proof is commonly called a summative proof. If the application for a declaration of bankruptcy is submitted by a creditor, the proof of the creditor's right to collect is also carried out in a simple manner.

Thus, the process of examining a bankruptcy application is quite simple, without having to follow or be bound by the procedures and evidentiary systems set out in the HIR and RBg. An application for a declaration of bankruptcy can only be submitted at the request of one or more authorized applicants as stipulated in Article 2 of the Bankruptcy Law. This application is addressed to the Head of the Commercial Court whose jurisdiction covers the area where the debtor's legal domicile is. This is regulated in Article 3 of the Bankruptcy Law regarding the relative competence of the Commercial Court, namely:

1. In the event that the debtor has left the territory of the Republic of Indonesia, the court which has the authority to make a decision on the petition for declaration of bankruptcy is the court whose jurisdiction covers the final legal domicile of the debtor.
2. If the debtor is a member of a firm, the competent court is the one whose jurisdiction covers the firm's legal domicile and has the authority to decide.
3. For debtors who are not domiciled in the territory of the Republic of Indonesia but carry out their profession or business in the territory of the Republic of Indonesia, the court that has the authority to decide is the court whose jurisdiction includes the domicile or

head office of the debtor carrying out his profession or business in the territory of the Republic of Indonesia.

4. In the event that the debtor is a legal entity, its domicile is as referred to in its articles of association. The applicant must also include the documents that are the requirements for submission, including:
  - a) a stamped application letter addressed to the Head of the Commercial Court;
  - b) advocate card;
  - c) evidence showing the existence of an engagement (sales and purchase agreements, accounts payable, court decisions, commercial paper, invoices, receipts and others);
  - d) special power of attorney;
  - e) Company Registration Certificate legalized by the trading office;
  - f) Details of unpaid debts;
  - g) Translation in Indonesian by an official (sworn) translator if it involves an agreement in a foreign language;
  - h) Name and address of each debtor/creditor

The process of proof at the Commercial Court in a bankruptcy application adheres to a simple evidentiary system as regulated in Article 8 paragraph (4) of the Bankruptcy Law and Article 2 paragraph (1) of the Bankruptcy Law. The process of proof in the examination of a bankruptcy application is to confirm the existence of facts which are a requirement to be declared bankrupt of a debtor, namely:

1. the existence of debts that have matured and can be collected;
2. the existence of more than one creditor; and
3. there is a fact that the debtor or the respondent for bankruptcy has not paid his debts.

The nature of the evidence that is not simple can be used by the judge of the commercial court as an excuse to reject the bankruptcy petition submitted to him. The judge can declare that the case submitted is an ordinary civil case. If a case is categorized by a judge as a case whose proof is not simple, it can state that the case is not under the authority of the Commercial Court.

Article 8 paragraph (5) of the Bankruptcy Law states that a court decision on a bankruptcy petition must be pronounced no later than 60 days after the date the bankruptcy petition is registered. In general, the content and systematics of decisions are also the same as decisions in civil cases which include:

1. Decision number;
2. Head of Decision "For Justice Based on God Almighty";
3. The identity of the bankruptcy applicant and his/her legal representative and the bankrupt applicant and his/her legal representative;
4. Regarding the sitting of the case;
5. Regarding the legal considerations;
6. Amar decision; and

7. Signature of the judges and clerks.<sup>10</sup>

Article 8 paragraph (7) of the Bankruptcy Law states that the decision on the Bankruptcy Law for a declaration of bankruptcy in the Commercial Court can be implemented first, even though legal action is still being filed against the decision or the decision is immediately filed (*uit voerbaar bij voorraad*). The Bankruptcy Law requires the curator to carry out all his duties and authorities to manage and settle the bankruptcy estate as of the date of the bankruptcy declaration decision, even though the bankruptcy decision is canceled at a later date by a higher hierarchy decision. Management and settlement activities by the curator that have been carried out since the bankruptcy decision was handed down until the decision is canceled are still declared valid and binding on the debtor, so that the curator's actions cannot be challenged in any court.

A copy of the court's decision must be submitted by the bailiff by registered express letter to the debtor, the party applying for bankruptcy, the curator and the supervisory judge no later than three days after the date the bankruptcy decision is pronounced. Bankruptcy legal action is a last resort that can be taken if the entire peace process can no longer be carried out and if the bankrupt's assets are not sufficient to meet all of his debts even though he is given the opportunity and a sufficient period of time.

A proceedings in the settlement of debt and credit problems in the Commercial Court will end with a judge's decision which causes the assets or assets of the debtor to be confiscated with the aim of obtaining proceeds to pay off the debtors' debts. The purpose of the bankruptcy process is to protect creditors and debtors. The form of protection for creditors is to obtain repayment of their receivables against the debtor who is petitioned for bankruptcy, while the form of protection provided to the debtor is so that the debtor and his assets or assets can be used as payment of his debts to legal creditors.<sup>11</sup>

So in carrying out his duties, the Curator does not have to obtain approval from or give prior notification to the Debtor or one of the Debtor's organs, even though in a state outside of bankruptcy, such approval or notification is required, and the Curator may make loans from third parties, to increase the value of assets. bankrupt. Since the start of his appointment, the Curator must make every effort to secure the bankruptcy estate and keep all letters, documents, money, jewelry, securities, and other securities by providing a receipt. If there is an error or omission in the task of managing the bankruptcy estate, the Curator is responsible for the error or omission in carrying out the management and/or settlement tasks that cause losses to the bankruptcy estate. Not everyone can become a Curator. According to the old Bankruptcy Law, this obligation was specifically carried out by *Balai Harta Peninggalan*, which was abbreviated

<sup>10</sup>Martiman Prodjohamidjodjo, Bankruptcy Process according to Government Regulation in Lieu of Law no. 1 of 1998 concerning Amendments to the Law on Bankruptcy, (Jakarta: Mandar Maju, 1999), p. 270.

<sup>11</sup>Martiman Prodjohamidjodjo, Bankruptcy Process according to Government Regulation in Lieu of Law no. 1 of 1998 concerning Amendments to the Law on Bankruptcy, (Jakarta: Mandar Maju, 1999), p. 270.

as BHP. The Hall of Relics is a special agency of the Ministry of Justice (it is so named because it is responsible for matters concerning the oversight of custodial).<sup>12</sup>

## **CONCLUSION**

Based on the description above, the conclusion is that the Bankruptcy Law requires the curator to carry out all his duties and authorities to manage and settle the bankruptcy estate as of the date of the bankruptcy declaration decision, even though the bankruptcy decision is canceled in the future by a higher hierarchical decision. Management and settlement activities by the curator that have been carried out since the bankruptcy decision was handed down until the decision is canceled are still declared valid and binding on the debtor, so that the curator's actions cannot be challenged in any court. In the decision No. 89 /Pid.Prap/2016/PN.Jaksel, the Petitioner is the Curator Team of PT. Metro Batavia (In Bankruptcy), which was appointed and appointed based on the Decision of the Commercial Court at the Central Jakarta District Court No. 77/Pailit/2012/PN.Niaga.Jkt. Pst, dated January 30, 2013. Capacity as Curator Team of PT. Metro Batavia (In Bankruptcy), the Petitioner carries out his main duties and functions and has the rights, authorities and obligations in accordance with the provisions referred to in Article 98 of Law No. 37 of 2004 concerning Bankruptcy and PKPU.

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<sup>12</sup>Martiman Prodjohamidjodjo, Bankruptcy Process according to Government Regulation in Lieu of Law no. 1 of 1998 concerning Amendments to the Law on Bankruptcy, (Jakarta: Mandar Maju, 1999), p. 270.

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