

Reconstructing Legal Protection for Bankruptcy Trustees against Bad-Faith Debtors: A Human Rights Perspective

Rio Bonang, Ariawan Gunadi

Faculty of Law, Univeritas Tarumanagara, Indonesia

ariawang@fh.untar.ac.id

Article Info

Received: 16-04-2026

Revised: 11-05-2026

Accepted: 21-10-2026

Keywords:

Bankruptcy Curator; Legal
Protection; Human Rights;
Normative Reconstruction.

Abstract

The increasing criminalization of bankruptcy curators by bad faith debtors exposes a normative gap in Indonesian bankruptcy law concerning legal protection for curators performing court-mandated duties. This study aims to examine the existing legal framework governing curator protection under Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations from a human rights perspective and to formulate a human rights-based normative reconstruction. This research employs normative legal research using statutory and conceptual approaches. The analysis is based on primary legal materials, secondary legal literature, and relevant non-legal materials, and is conducted through a prescriptive legal analysis. The findings reveal that the current legal framework emphasizes the authority and liability of curators but lacks preventive legal safeguards against abusive criminal proceedings. Therefore, the study proposes reconstructing the legal framework by incorporating qualified functional immunity, preventive screening mechanisms, institutional oversight, and human rights principles to strengthen legal certainty, professional protection, and the effectiveness of Indonesia's bankruptcy system.

I. Introduction

Bankruptcy law is a legal instrument that serves to ensure legal certainty and create a balance of interests between debtors and creditors in the settlement of debts and receivables.(Ningsih, 2025) Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU), Article 1 number 1, defines bankruptcy as a general seizure of all the assets of a bankrupt debtor, the administration and settlement of which shall be conducted by a curator under the supervision of a supervising judge. The position of a curator is an officer of the court or an extension of the court.(Yudistira, 2025) It is also stipulated in Article 1 number 5 juncto Article 15 paragraph (1) of the UUK-PKPU, which confers authority upon the curator to administer and/or settle the bankrupt estate. The legal consequences of a bankruptcy judgment are governed by Article 24 paragraph (1) of the UUK-PKPU, which states that the debtor shall by operation of law lose the right to control and administer their assets as of the pronouncement of the bankruptcy declaration. Such provisions confirm that the curator performs a legal function derived from state authority, and thus the discharge of their duties is an integral part of the effective operation of the national bankruptcy system.

In practice, the exercise of the curator's authority does not always proceed cooperatively, as debtors are still found to offer resistance to the process of administering and settling the bankrupt estate.(Ketut Eka Patni & Wayan Wiryawan, 2023) This resistance takes the form of refusal to surrender documents, concealment of assets, and even the use of criminal legal instruments against a curator who is exercising their authority pursuant to a court decision.(Styabudhi et al., 2026) This phenomenon is reflected in the bankruptcy case of PT Surabaya Agung Industri Pulp dan Kertas, which originated from the Decision of the Commercial Court at the Surabaya District Court Number 01/PKPU/2013/PN.Niaga.Sby. The curator in such case was reported criminally for the acts of verifying claims and preparing the voting certificate,(Simanjuntak, 2023) but the Supreme Court, through Decision No. 231 K/Pid/2015, declared the defendant discharged from all legal prosecution (ontslag van rechtsvervolging) since the acts performed constituted the exercise of authority conferred by law. This case demonstrates that criminal law instruments may be misused as a means of intimidation against curators acting pursuant to a court order, while also indicating systemic weaknesses in the protection of the curator profession.

The UUK-PKPU has regulated the principle of curator independence under Article 15 paragraph (3), which states: "A curator appointed must be independent and shall not have a conflict of interest with the Debtor or Creditors." The principle of independence is a concept requiring that the official exercising a legal function be free from influence, pressure, or the interests of any particular party, so that every action is based on law and professionalism.(Amin & Budianto, 2025) Nevertheless, the UUK-PKPU has not yet established an affirmative legal protection mechanism that guarantees safeguards for curators when facing legal actions brought in bad faith by debtors. Conversely, Article 72 of the UUK-PKPU provides that "A curator shall be liable for any fault or negligence in performing their duties of administering and/or settling the estate that causes loss to the bankrupt estate." This provision reveals an imbalance between the extensive liability imposed upon curators and the limited legal protection instruments available when such authority is challenged through mechanisms outside the bankruptcy regime.

This issue touches upon human rights dimensions as guaranteed by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that every person shall be entitled to recognition, guarantees, protection, and legal certainty that is just, as well as equal treatment before the law. Furthermore, Article 28G paragraph (1) of the 1945 Constitution guarantees the right of every person to protection of their person, honour, and dignity, as well as the right to security and protection from threats of fear. The criminalisation of curators in the performance of their judicial duties also constitutes a violation of the principle of judicial independence, as it interferes with the enforcement of court decisions through coerced criminal proceedings. This human rights dimension is reinforced by international legal norms, particularly Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which was ratified pursuant to Law No. 12 of 2005; it affirms the principle of equality before the courts and the guarantee of a fair trial by a competent, independent, and impartial tribunal. Such principles ought equally to protect curators as professionals carrying out official mandates and instructions from the State (*ambtelijk bevel*). However, the absence of explicit human rights articulation in the institutional design of the UUK-PKPU demonstrates that curator protection has thus far been regarded merely as a technical commercial law matter.

The urgency of this research lies in identifying the legal vacuum within the UUK-PKPU concerning affirmative legal protection mechanisms or immunity rights for curators against bad-faith resistance from debtors. This is substantially different from the regulation of curator liability for fault under the UUK-PKPU, which governs only civil law aspects and does not address protection against criminalisation. Additionally, there exists normative tension between the duty of curator independence and the potential misuse of criminal instruments by debtors, which risks creating a structural chilling effect upon the curator profession in carrying out settlement duties firmly and objectively. Weak legal protection for curators has direct implications for the overall effectiveness and credibility of the national bankruptcy system, since curators are key actors who determine the successful resolution of the bankrupt estate for the benefit of creditors. In light of these disparities, a reconstruction of the legal protection framework for curators is required, one that integrates human rights standards particularly the principles of legal certainty, security, and fair trial into the normative design of the UUK-PKPU, so as to establish a proportional balance between the interests of debtors, creditors, and the professional security of curators themselves.

Ahmad Dwi Nuryanto and Mohammed AlHadilbrahim Boshahmed, in their article “Does Indonesian Bankruptcy Law Protection for Curators in Bankruptcy?”, examine the forms of legal protection afforded to curators under the UUK-PKPU and find that existing provisions do not yet provide adequate protection, as they do not expressly regulate protection mechanisms for curators while exercising their authority. (Nuryanto & Boshahmed, 2026) Johannes Joshua Mulia, in his research “Legal Steps by Curators as a Form of Legal Protection for Curators Who Carry Out the Task of Settling Bankruptcy Assets”, focuses on the legal remedies available to curators when facing legal issues in the process of settling the bankrupt estate, and concludes that protection for curators relies predominantly on legal mechanisms available only after a dispute has arisen. (Mulia, 2020) Meanwhile, Sakti Andreas Sinambela, Isnaini, and M. Citra Ramadhan, in their research “Efforts to Protect the Law Against Curators in the Process of Settling Bankruptcy Assets Reviewed from the Bankruptcy Law”, analyse the implementation of legal protection for curators under the UUK-PKPU

through a study at the HKPI Regional Coordinator of Medan, and find that legal protection for curators still encounters various obstacles in both normative and practical aspects.(Sinambela et al., 2026) Nevertheless, those three studies remain oriented toward analysing legal protection from the perspective of bankruptcy law and have not comprehensively examined curator protection through a human rights-based approach, nor have they proposed a reconstruction of legal protection norms for curators against bad-faith acts by debtors.

The novelty of this research lies in its use of a human rights perspective as the analytical foundation for assessing the adequacy of legal protection provisions for curators, and in formulating a human rights-based reconstruction of legal protection norms that integrates the principles of legal certainty, professional protection, security, and fair trial into Indonesia's bankruptcy law framework. Unlike prior studies focused on legal protection within the UUK-PKPU framework or the legal remedies available to curators, this research positions curators as persons performing public functions who therefore require legal protection consistent with constitutional guarantees and international human rights instruments. The objectives of this research are to analyse the regulation of legal protection for curators in administering and settling bankrupt estates under the UUK-PKPU from a human rights perspective, and to formulate a human rights-based reconstruction of legal protection norms for curators facing bad-faith conduct by debtors, in order to realise legal certainty, professional safeguards, and the effective administration of bankruptcy law in Indonesia.

2. Research Method

This research is a normative legal study focused on analysing legal protection for curators through a human rights lens, employing the statutory approach and the conceptual approach. The statutory approach is used to examine provisions governing the legal protection of curators, while the conceptual approach serves to analyse relevant legal doctrines, principles, and theories as the basis for norm reconstruction. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, Law No. 12 of 2005 concerning Ratification of the ICCPR, other relevant laws and regulations, and pertinent court decisions. Secondary legal materials comprise books, journal articles, research findings, and expert opinions in the fields of bankruptcy law, legal protection, and human rights, while non-legal materials consist of legal dictionaries and Indonesian language dictionaries. All legal materials are collected through library research, processed using inventory, classification, and systematisation techniques, and analysed prescriptively to produce recommendations for a human rights-based reconstruction of legal protection norms for curators

3. Results and Discussion

The Legal Protection for Curators in the UUK-PKPU Regime: A Human Rights Perspective

The position of a curator within Indonesia's bankruptcy law system is inseparable from the authority conferred directly by statute. Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU), under Article 1 number 5, defines a curator as the Public Curator's Office (Balai Harta Peninggalan) or an individual appointed by the court to administer and/or settle the bankrupt estate.(Yuliyanto Waisapi, 2023) Such authority is further reinforced by Article 15 paragraph (1) concerning the appointment of a curator concurrently with the bankruptcy declaration, Article 69 paragraph (2) letter b concerning the authority to borrow funds for the benefit of the bankrupt estate, and Article 105 granting authority to obtain control over the debtor's information and correspondence. These provisions demonstrate that a curator is not merely a party representing the interests of creditors, but rather a performer of legal functions who derives direct legitimacy from the State through court decisions.(Kadir & Sabirin, 2025) This character of authority positions the curator as an organ exercising a public function, such that every action taken must be understood as the performance of a statutory mandate, not as an independent personal act.

Problems arise when the broad authority vested in the curator is not accompanied by commensurate legal protection safeguards against the risks inherent in exercising such authority. From the perspective of administrative law, every attributory authority conferred by law inherently carries the potential for conflicts of interest with parties affected by the exercise of that authority.(Abdul Hamid, 2026) Such circumstances are relevant in bankruptcy proceedings, as the curator's actions frequently affect the economic interests of both debtors and creditors, thereby potentially giving rise to resistance and even legal opposition.(Noviriska & Dwi Atmoko, 2024) The broader the discretion granted to a curator in managing the bankrupt estate, the greater the likelihood of disputes being directed personally at the curator as the authority holder. This demonstrates that legal protection for curators ought to be positioned as a logical consequence of statutory conferral of powers, so that the two are inseparable within a unified legal system.

The meaning of curator independence as regulated by Article 15 paragraph (3) of the UUK-PKPU stipulates that a curator must be independent and free from conflicts of interest with either the debtor or creditors. In essence, the independence principle requires every action of a curator to be based on law, professionalism, and objectivity, unaffected by the interests of any particular party.(Kartoningrat & Krisharyanto, 2023) This concept serves an important function, as the success of the bankrupt estate settlement process depends heavily on the curator's ability to maintain neutrality toward all interested parties. However, this provision only sets forth the professional obligations incumbent upon curators, without accompanying provisions on the right to protection when such independence itself gives rise to pressure or legal resistance from parties who perceive themselves as aggrieved. Consequently, independence under the UUK-PKPU remains declaratory in nature and has not yet developed into a normative guarantee capable of protecting the curator profession when performing duties pursuant to statutory mandate.

The inadequacy of such protection is further evident in Article 72 of the UUK-PKPU, which provides that a curator shall be liable for any fault or negligence in performing their

duties of administration and/or settlement that causes loss to the bankrupt estate. Doctrinally, this provision does not yet provide clear criteria distinguishing professional error arising from the exercise of discretion from unlawful acts capable of giving rise to criminal liability. This blurred boundary creates room for parties acting in bad faith to construe every decision made by a curator as a legal violation, even where such decision is taken in the exercise of authority conferred by law. This situation creates legal uncertainty, as curators face potential criminal proceedings for administrative actions that fall essentially within the scope of their official duties. This issue demonstrates that provisions governing curator liability are not yet balanced by adequate normative benchmarks, necessitating a legal framework that clearly distinguishes professional error from conduct that genuinely satisfies the elements of a criminal offence.

The issue of legal protection for curators is not merely a matter of having provisions governing authority, but also concerns the adequacy of mechanisms capable of protecting the exercise of powers in bankruptcy enforcement. Philipus M. Hadjon distinguishes legal protection into preventive and repressive forms: preventive protection affords legal subjects the opportunity to prevent disputes from arising before a decision produces legal effects, whereas repressive protection aims to resolve disputes after a right has been infringed.(Risal, 2024) When this theory is applied to bankruptcy law, the UUK-PKPU essentially emphasises repressive mechanisms, as a curator is only afforded the opportunity to defend themselves after facing a civil claim or criminal proceedings. By contrast, the law does not yet provide preventive instruments capable of filtering or restricting the filing of criminal complaints against curators for actions that fall within the scope of their official authority. This situation indicates that the design of legal protection under the UUK-PKPU is not yet fully aligned with the concept of preventive protection developed by Philipus M. Hadjon, thereby leaving room for the misuse of legal instruments by parties acting in bad faith.

Satjipto Rahardjo, in his theory of progressive law, asserts that law is essentially a means to protect human interests(Amelia, 2023) such that the existence of norms must be capable of delivering tangible benefits to legal subjects performing social as well as public functions. In the bankruptcy context, a curator is a profession that performs a public function, acting pursuant to a court order to administer and settle the bankrupt estate for the benefit of all creditors.(Ketut Eka Patni & Wayan Wiryawan, 2023) Therefore, protection for curators should not be understood as granting special privileges to a particular profession, but rather as an instrument to ensure that the function of bankruptcy law may be performed effectively without personal pressure. This approach demonstrates that a balance between authority and legal protection is an essential condition for the law to maintain its protective function, in keeping with its fundamental purpose.

The principle of due process of law, as one of the fundamental elements of a state governed by law, requires that every measure restricting a person's rights be carried out through fair, objective, and proportional procedures, and based on sufficient evidence that a violation of law has occurred.(Arif Setiawan, 2022) In the bankruptcy context, administrative actions taken by a curator pursuant to statutory mandate and court orders should not automatically be made the basis for criminal prosecution without prior proof of an abuse of authority satisfying the elements of a criminal offence. Not every decision that causes loss to a debtor is an unlawful act, given that most of a curator's actions are the legal consequence of the bankrupt estate settlement process, which inherently may affect the economic interests of

the parties. Application of the principle of due process of law in cases involving curators serves as an instrument to maintain the balance between the enforcement of criminal law and respect for authority conferred by statute.

The principle of equality before the law requires that every person be treated equally before the law, yet such equality does not negate the need for procedural protection mechanisms tailored to the characteristics of the office being performed.(Syabani Korompot et al., 2021) In the practice of Indonesian constitutional governance, several professions performing public functions such as judges, public prosecutors, advocates, and notaries already enjoy specific forms of protection when discharging their official duties within the limits prescribed by law. Curators, who likewise perform a public function by virtue of court appointment, have not yet been accorded comparable provisions, notwithstanding that the legal risks they face are of a comparable nature, particularly when required to take decisions that may potentially prejudice one party in bankruptcy proceedings. This disparity demonstrates that the principle of equality before the law has not yet been fully realised in substantive terms, as procedural protection for curators lags behind that of other legal professions exercising similar public functions.

The deficiencies in the legal protection framework for curators are illustrated in the case involving Jandri Onasis Siadari, curator of PT Surabaya Agung Industri Pulp dan Kertas. The case originated from the Decision of the Commercial Court at the Surabaya District Court No. 01/PKPU/2013/PN.Niaga.Sby, which appointed a curator to carry out the verification of claims and administration of the debtor's assets in accordance with the provisions of the UUK-PKPU. In the performance of these duties, the curator rejected the claim of ZT Holding Pte. Ltd. on the grounds that the submitted documents failed to satisfy the verification requirements, with the result that the said creditor was excluded from voting on the composition plan. This decision was met with a criminal complaint filed by the President Director of PT Surabaya Agung Industri Pulp dan Kertas, who accused the curator of document forgery, ultimately leading to the curator being designated a suspect and placed in detention.(Simanjuntak, 2023) This sequence of events demonstrates that actions which are essentially the exercise of administrative authority in bankruptcy proceedings can be transformed into a criminal case in the absence of a mechanism capable of providing protection from the earliest stage of law enforcement.

The legal issues in this case concerned the application of Articles 263 and 266 of the Criminal Code (KUHP) to the curator's conduct. Article 263 KUHP requires the act of making or forging a document capable of creating a right or specific legal consequence, whereas Article 266 KUHP requires false statements inserted into an authentic instrument. Based on the trial facts, the verification and voting report prepared by the curator was an administrative document compiled upon actual examination conducted in the PKPU process under the supervision of the Supervising Judge, and therefore did not satisfy the elements of forgery as contemplated by Article 263 KUHP. Furthermore, such a report cannot be classified as an authentic instrument within the meaning of Article 1868 of the Civil Code (KUHPer), as it was not made by or before a public official in the form prescribed by law. The application of general criminal provisions to a curator's conduct must be exercised with caution so as to avoid interpretive expansion that obscures the distinction between the exercise of official authority and criminal conduct.

This reasoning was subsequently reinforced by Supreme Court Decision No. 231 K/Pid/2015, which declared the curator discharged from all legal prosecution or ontslag van alle rechtsvervolging. The Supreme Court found that the curator's actions constituted the exercise of authority conferred by the UUK-PKPU and therefore could not be held criminally liable. (Silitonga et al., 2025) Such reasoning is consistent with Article 50 of the Criminal Code (KUHP), which provides that a person who commits an act in compliance with the provisions of a statute shall not be subject to criminal punishment. Criminal law doctrine treats Article 50 KUHP as a justification that negates the unlawfulness of an act when performed in fulfilment of an obligation commanded by law. Supreme Court Decision No. 231 K/Pid/2015 affirms that the exercise of authority by a curator must be regarded as an integral part of the operation of the bankruptcy law system, such that criminal liability may not be imposed merely because a curator's decision produces prejudicial consequences for one of the parties.

The regulation of legal protection for curators from a human rights perspective under the UUK-PKPU is currently only declaratory-functional in nature, acknowledging the curator's function and obligations but lacking protective-substantive effect guaranteeing the right to security against criminalisation. The criminalisation of curators not only causes individual harm to the profession but also undermines the legal certainty of the investment climate as measured by the ease of doing business index, since impairment of curator independence paralyses the objective liquidation of assets in the interest of the national economy. Accordingly, a reconstruction of the legal protection framework for curators that integrates human rights standards into the normative design of the UUK-PKPU is an imperative, so as to achieve a proportional balance among the interests of debtors, creditors, and the professional security of curators themselves.

Human Rights-Based Regulatory Reconstruction Formulation: Legal Protection for Curators Against Bad-Faith Debtor Actions

Reconstruction of legal protection for curators must begin with a shift in the perspective on the curator's status within the Indonesian bankruptcy law system. Provisions under Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU) still position the curator as a technical administrator of the bankrupt estate, without accompanying recognition of the right to protection in the performance of such functions. This approach reflects a character oriented more toward procedural function rather than the protection of the legal subject exercising state authority. The reconstruction of legal protection norms for curators must proceed from a paradigm shift toward a human rights-based approach (HRBA) that regards curator protection as part of the fulfilment of constitutional and human rights, not merely a technical arrangement within bankruptcy law. The success of the bankruptcy system is determined not only by the effectiveness of bankrupt estate administration, but also by the guarantee that curators may exercise their authority independently without facing disproportionate legal threats.

The human rights-based approach (HRBA) in international human rights law practice emphasises five operational principles comprising Participation, Accountability, Non-discrimination, Empowerment, and Legality (PANEL). (Noh, 2022) Application of such

principles places the State under an active duty to ensure that provisions governing curators not only confer authority, but also provide effective protection against the misuse of legal instruments by other parties. This approach aligns with international human rights doctrine, which divides State obligations into the obligation to respect, obligation to protect, and obligation to fulfil.(Teshome, 2022) The proposed reconstruction of bankruptcy law norms essentially constitutes the concrete operationalisation of the obligation to protect within the institutional design of national bankruptcy law, as the State must prevent acts by third parties that may interfere with the exercise of a curator’s statutory authority. This framework demonstrates that legal protection for curators is no longer positioned as a matter of administrative policy, but rather as a consequence of the State’s responsibility to guarantee the enjoyment of the rights to legal certainty and security.

A further issue lies in the absence of clarity concerning the scope of a curator’s liability under Law No. 37 of 2004, particularly under Article 72, which employs only the phrase fault or negligence without providing definite criteria. Lon L. Fuller, in *The Morality of Law*, formulated eight preconditions for a legal system to be considered valid and to function properly, namely generality, clarity, non-contradiction, and constancy of norms over time.(Schneiderman, 2024) Norms lacking clear boundaries are prone to divergent interpretations, thereby diminishing legal certainty for the subjects bound to implement them. Accordingly, norm reconstruction must be directed toward drawing a clear distinction between administrative errors arising from the exercise of professional discretion and conduct that satisfies the elements of a criminal offence upon proof of *mens rea*. Such formulation also aligns with the principle of *lex certa* in criminal law, which requires norms to be drafted with sufficient clarity so as not to leave room for expansive interpretations prejudicial to legal certainty.(Bielska-Brodziak et al., 2026)

Reconstruction of legal protection will not be effective if it focuses solely on limiting liability without establishing protection mechanisms from the earliest stage of law enforcement. Philipus M. Hadjon’s theory of legal protection affirms that preventive protection must take precedence over repressive mechanisms, as its primary purpose is to prevent rights from being infringed in the first place.(Risal, 2024) Such principle may be realised through application of the maxim *audi et alteram partem*, by affording the curator an opportunity to explain the legal basis of their actions before a criminal complaint proceeds further with law enforcement authorities. In practice, investigators should first obtain a statement or recommendation from the Supervising Judge and the curator professional organisation regarding whether the reported action falls within the scope of authority conferred by the UUK-PKPU. Such mechanism does not eliminate the possibility of criminal liability should criminal elements be established, but serves as an administrative screening capable of preventing criminal law from being used as an instrument of intimidation against curators performing their duties professionally.

Reconstruction of legal protection norms must also be directed toward strengthening protection for the exercise of curatorial authority through the concept of qualified functional immunity.(Kordsiemon, 2022) This need arises from the reality that although Supreme Court Decision No. 231 K/Pid/2015 essentially recognised a curator’s actions as the performance of a statutory mandate, such protection was only granted after a lengthy criminal trial process. Normatively, this framework aligns with the justifying circumstance of acting in compliance with the law, previously governed by Article 50 of the KUHP and now codified in Article 31

of Law No. 1 of 2023 concerning the Criminal Code, as well as the justifying circumstance of carrying out an official order, previously set out in Article 51 paragraph (1) of the KUHP and now regulated by Article 32 of Law No. 1 of 2023. Nevertheless, the application of such justifying circumstances still depends on judicial assessment once a case has entered the trial stage, and therefore does not afford protection from the outset of legal proceedings. Accordingly, the UUK-PKPU should be reconstructed to include a norm on qualified functional immunity, affirming that actions taken by a curator in good faith and within the scope of statutory authority may not give rise to criminal liability unless and until an actual abuse of authority or malicious intent is proven.

Protection for curators must remain balanced by effective oversight mechanisms to prevent abuse of power. In this context, the principle of checks and balances developed by Montesquieu(Akhtar, 2023) can be adapted to the regulation of the curator profession through the division of oversight functions between the professional organisation and the State. The arrangements under the Insolvency Practitioners Regulation Act 2019 of New Zealand may serve as a reference, whereby New Zealand designates an accredited body as the internal regulator empowered to conduct professional development, grant licensing, and enforce codes of ethics,(Finnie et al., 2024) while the Registrar through the New Zealand Companies Office carries out external oversight functions to protect the public interest.(Taylor, 2023) This model may be applied in Indonesia by vesting the curator professional organisation with authority to provide technical assessments of alleged professional misconduct, while the Directorate General of General Legal Administration (Ditjen AHU) of the Ministry of Law maintains its independent State oversight function. Such division of powers establishes a layered oversight system that preserves the balance between professional protection and legal accountability, so that functional immunity does not evolve into a space of impunity for curators proven to have committed criminal offences.

Norm reconstruction must also observe the balance of interests among curators, debtors, and creditors, so as not to create new inequalities in the practice of bankruptcy law. Robert Alexy's theory of proportionality provides an analytical framework consisting of three stages of review suitability, necessity, and proportionality *stricto sensu* for assessing whether any restriction or protection has been formulated in a precise manner.(Valentini, 2025) Application of such theory demonstrates that the grant of protection to curators must genuinely be aimed at preventing unfounded criminalisation, not at eliminating the possibility of criminal liability where a curator is proven to have abused their authority. This consideration is relevant to the bankruptcy case of PT Alam Galaxy, which illustrates that curators may also commit unlawful acts(Simanjuntak, 2023) and therefore must still be held accountable under criminal law provisions if the elements of an offence are proven. A reconstruction grounded in the principle of proportionality will produce a balance between safeguarding professional independence and upholding accountability, such that the objective of bankruptcy law reform may be achieved without diminishing the protection of the rights of all interested parties.

The reconstruction of legal protection for curators ought to be situated within the constitutional framework so as to possess strong normative legitimacy and form an integral part of the national legal system. Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees the right to recognition, assurance, protection, and fair legal certainty, while Article 28G paragraph (1) guarantees the right to security and protection from

threats of fear. Both provisions must be read systematically alongside Articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified pursuant to Law No. 12 of 2005. The ICCPR affirms the rights to liberty, personal security, and a fair trial.(Enonchong, 2022) Integrating constitutional norms and international human rights instruments into the regulation of curators is essential to ensure that protection for this profession rests not merely on technical considerations of bankruptcy law, but also on a constitutional foundation as an aspect of human rights protection. This approach will strengthen the method of systematic interpretation when judges assess the limits of a curator’s liability, so that legal certainty does not depend solely on case-by-case interpretation of general criminal provisions.

Philippe Nonet and Philip Selznick, in their theory of responsive law, maintain that law must do more than uphold procedural regularity; it must also be capable of responding to evolving social needs while upholding the principles of a state governed by the rule of law.(Sukmana, 2023) Current provisions under the UUK-PKPU still reflect the character of autonomous law, as they focus more on prescribing the curator’s authority and liability than on establishing mechanisms to protect against the legal risks that arise in practice. Meanwhile, the evolution of bankruptcy jurisprudence demonstrates that the threat of criminalisation targeting curators is no longer an incidental matter; it has become a systemic legal issue requiring a normative response through the formulation of more adaptive rules. A human rights-based norm reconstruction represents a form of responsive law capable of accommodating the need for professional safeguards while maintaining proportionate oversight and accountability mechanisms.

The success of such norm reconstruction ultimately depends on its ability to fulfil the purposes of law and to be applied effectively in practice. Gustav Radbruch’s theory of the three fundamental values of law legal certainty, justice, and purposiveness must be realised in a balanced manner,(Adachi, 2023) while Lawrence M. Friedman’s theory of the legal system affirms that legal effectiveness depends on the integration of legal substance, legal structure, and legal culture. Reconstructing legal protection norms for curators cannot be achieved solely through amendments to the UUK-PKPU; it must also be accompanied by the strengthening of the professional organisation, the optimisation of the oversight function of the Directorate General of General Legal Administration at the Ministry of Law, and a paradigm shift among law enforcement authorities in understanding the special nature of a curator’s authority as an officer of the court. Such transformation of the legal culture is essential so that administrative actions taken pursuant to authority under the UUK-PKPU are no longer regarded as criminal merely because they cause loss to a particular party, without proof of abuse of authority. A reconstruction built through substantive reform, institutional strengthening, and transformation of the legal culture will yield a more comprehensive protection system, such that the independence of curators is preserved without diminishing their accountability in the administration of bankruptcy law in Indonesia

4. Conclusion

The regulation of legal protection for curators under Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations does not yet provide adequate protection against the risk of bad-faith conduct by debtors through the criminalisation of duties performed in the administration and settlement of the bankrupt estate. Existing provisions remain focused on the authority and liability of curators, unaccompanied by

preventive protection mechanisms that guarantee legal certainty, security, and professional independence. Accordingly, norm reconstruction must be directed toward establishing a human rights-based legal protection system through the introduction of qualified functional immunity, a screening mechanism for criminal complaints, strengthened institutional oversight, and the formulation of clearer and more proportional limits on curator liability.

The legislature should reform the UUK-PKPU by integrating legal protection mechanisms that strike a balance between professional independence and curator accountability. Law enforcement authorities should likewise apply an approach that recognises the special nature of a curator's authority as an officer of the court in all law enforcement processes. Future research is recommended to develop comparative and empirical studies on models of legal protection for curators across different jurisdictions, serving as a basis for refining bankruptcy law policy in Indonesia.

References

- Abdul Hamid. (2026). The Legal Role of State Administration in Dealing with Conflicts of Interest of Public Officials. *Journal of Law, Politic and Humanities*, 6(3), 2253–2261. <https://doi.org/10.38035/jlph.v6i3.3190>
- Adachi, H. (2023). Radbruch, Gustav. In G. Zanetti (Ed.), *Encyclopedia of the Philosophy of Law and Social Philosophy* (pp. 2920–2924). Springer Netherlands. https://doi.org/10.1007/978-94-007-6519-1_452
- Akhtar, Z. (2023). Montesquieu's Theory of the Separation of Powers, Legislative Flexibility and Judicial Restraint in an Unwritten Constitution. *Amicus Curiae*, 4(3), 552–577. <https://doi.org/10.14296/ac.v4i3.5616>
- Amelia, S. (2023). Progressive Legal Approach to Modern Community Law Enforcement in Indonesia. *Pancasila and Law Review*, 4(1), 1–14. <https://doi.org/10.25041/plr.v4i1.2729>
- Amin, M. S., & Budianto, A. (2025). The Role and Independence of the DPR RI Ethics Council in Adjudicating Violations of the Members' Code of Ethics from the Perspective of the Principle of Justice. *Jurnal Greenation Sosial Dan Politik*, 3(4), 856–865. <https://doi.org/10.38035/jgsp.v3i4.507>
- Arif Setiawan, M. (2022). Arrest and Detention in Indonesian Criminal Procedure Code under Human Rights Perspective. *International Journal of Social Science, Education, Communication and Economics (SINOMICS JOURNAL)*, 1(2), 153–162. <https://doi.org/10.54443/sj.v1i2.15>
- Bielska-Brodziak, A., Drapalska-Grochowicz, M., & Suska, M. (2026). Protecting legitimate expectations in the interpretation of criminal law: an analysis of possible approaches. *Statute Law Review*, 47(2), 1–16. <https://doi.org/10.1093/slr/hmag022>
- Enonchong, L.-S. (2022). Public prosecutors and the right to personal liberty: An analysis of the jurisprudence of the UN Human Rights Committee and the European Court of Human Rights. *Netherlands Quarterly of Human Rights*, 40(3), 222–243. <https://doi.org/10.1177/09240519221115280>

- Finnie, D., Ali, N. A., McKay, C., & Wilson, N. (2024). Ethics Provisions Within New Zealand Professional Codes of Conduct, Towards a Construction-Wide Code of Ethics. In J. O. B. Rotimi, W. M. Shahzad, M. Sutrisna, & R. Kahandawa (Eds.), *Advances in Engineering Management, Innovation, and Sustainability* (pp. 367–382). Springer. https://doi.org/10.1007/978-3-031-56544-1_24
- Kadir, A., & Sabirin, A. (2025). The Immediate Bankruptcy Decision: The Role of Curators and Supervisory Judges in Ensuring Justice and Legal Certainty. *Jurnal Hukum Bisnis Bonum Commune*, 8(1), 77–94. <https://doi.org/10.30996/jhbbc.v8i1.12437>
- Kartoningrat, R. B., & Krisharyanto, E. (2023). Principles of Statutory Duty and Fiduciary Duty in The Responsibility of The Bankruptcy Curator. *Media Iuris*, 6(2), 205–230. <https://doi.org/10.20473/mi.v6i2.37738>
- Ketut Eka Patni, N., & Wayan Wiryawan, I. (2023). Legal Protection Of The Authority Of The Curator In The Management And Settlement Of Bankrupt Assets. *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan*, 2(6), 1715–1728. <https://doi.org/10.54443/sibatik.v2i6.926>
- Kordsiemon, T. (2022). Challenging the Constitutionality of Qualified Immunity. *SSRN Electronic Journal*, 576–613. <https://doi.org/10.2139/ssrn.4220395>
- Mulia, J. J. (2020). Legal Steps by Curators as a Form of Legal Protection for Curators Who Carry Out the Task of Settling Bankruptcy Assets. *International Journal of Science and Society*, 2(4), 584–596. <https://doi.org/10.54783/ijsoc.v2i4.241>
- Ningsih, A. S. (2025). Creditor Of Fiduciary Facing Bankruptcy, What Should They Do? *Diponegoro Law Review*, 10(1), 29–41. <https://doi.org/10.14710/dilrev.10.1.2025.29-41>
- Noh, J.-E. (2022). Review of human rights-based approaches to development: Empirical evidence from developing countries. *The International Journal of Human Rights*, 26(5), 883–901. <https://doi.org/10.1080/13642987.2021.1981869>
- Noviriska, & Dwi Atmoko. (2024). The Role of Curators in Bankruptcy Legal Issues Between Debtors and Creditors in Postponement of Debt Payment Obligations (PKPU). *KRTHA BHAYANGKARA*, 18(3), 765–785. <https://doi.org/10.31599/krtha.v18i3.3477>
- Nuryanto, A. D., & Bosha Ahmed, M. A. I. (2026). Does Indonesian Bankruptcy Law Protection for Curators in Bankruptcy? *Contrarius*, 2(1), 20–36. <https://doi.org/10.53955/contrarius.v2i1.258>
- Risal, A. (2024). Legal Protection for Debtors in Online Transactions: Evaluating Safeguards in E-Commerce. *Jhbbc*, 7(2), 176–187. <https://doi.org/10.30996/jhbbc.v7i2.11656>
- Schneiderman, D. (2024). Weber, Fuller, and Belief in the Legitimacy of Law. *Max Weber Studies*, 24(2), 183–216. <https://doi.org/10.1353/max.2024.a938237>
- Silitonga, A. N., Chandra, T. Y., & Ismed, M. (2025). Pertanggungjawaban Pidana Kurator Pelaku Tindak Pidana Pemalsuan Surat Dalam Pengurusan Harta Pailit. *CORPUS JURIS: JURNAL ILMU HUKUM*, 1(2), 123–132.

<https://doi.org/10.62335/corpusjuris.v1i2.2223>

- Simanjuntak, R. P. (2023). Curators Are Vulnerable To Be Criminalized And Criminated In Bankruptcy And Pkpu Processes. *Global Legal Review*, 3(2), 141–161. <https://doi.org/10.19166/blr.v3i2.7424>
- Sinambela, S. A., Isnaini, & Ramadhan, M. C. (2026). Efforts To Protect The Legal Against Curators In The Process Of Settling Bankruptcy Assets Reviewed From The Bankruptcy Law (Study On Hkpi- Coordination Of The Medan Region). *SOSIOEDUKASI : JURNAL ILMIAH ILMU PENDIDIKAN DAN SOSIAL*, 15(1), 1529–1536. <https://doi.org/10.36526/sosioedukasi.v15i1.7500>
- Styabudhi, A. D., Borman, S., & Ayuningtyas, F. (2026). Curators in Indonesian Corporate Bankruptcy: Duties, Independence, and Implications for Corporate Dissolution. *Jurnal Ragam Pengabdian*, 3(2), 5860–5874. <https://doi.org/10.62710/y1jbb170>
- Sukmana, T. (2023). Responsive Law and Progressive Law: Examining the Legal Ideas of Philip Nonet, Philip Selznick, and Sadjipto Raharjo. *Peradaban Journal of Law and Society*, 2(1), 92–105. <https://doi.org/10.59001/pjls.v2i1.82>
- Syabani Korompot, M. I., Al-Fatih, S., & Pradhan, D. (2021). The Principle of Equality Before the Law in Indonesian Corruption Case: Is It Relevant? *Journal of Human Rights, Culture and Legal System*, 1(3), 135–146. <https://doi.org/10.53955/jhcls.v1i3.13>
- Taylor, L. (2023). A comparative analysis of the Australian and New Zealand liquidation schemes. *International Insolvency Review*, 32(1), 60–92. <https://doi.org/10.1002/iir.1492>
- Teshome, R. G. (2022). The Draft Convention on the Right to Development: A New Dawn to the Recognition of the Right to Development as a Human Right? *Human Rights Law Review*, 22(2), 1–24. <https://doi.org/10.1093/hrlr/ngac001>
- Valentini, C. (2025). Principles, balancing, and proportionality. In *Research Handbook on Legal Argumentation* (pp. 96–114). Edward Elgar Publishing. <https://doi.org/10.4337/9781803925431.00013>
- Yudistira, B. A. G. (2025). The Potential of Protection System of Curator and Administrator Profession in Indonesia (Comparative Analysis of Curator and Notary Profession in Indonesia). *Technology and Economics Law Journal*, 4(2), 630–641. <https://doi.org/10.21143/TELJ.vol4.no2.1065>
- Yuliyanto Waisapi, J. (2023). The Role of Curators and Liquidators In Solving Problems Insolvent Limited Liability Company. *Eduvest - Journal of Universal Studies*, 3(2), 477–490. <https://doi.org/10.59188/eduvest.v3i2.760>