

**LEGAL ANALYSIS OF THE PHRASE "INDEPENDENT" RELATED TO
CRIMINAL LIABILITY OF CURATORS IN LAW NUMBER 37 OF 2004
CONCERNING BANKRUPTCY AND SUSPENSION OF DEBT PAYMENT
OBLIGATIONS (PKPU)**

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ABSTRACT

This research is motivated by the position of the Curator who has the authority in the management and settlement of bankrupt assets, thus demanding independence as a fundamental principle to guarantee justice and protection of the interests of creditors and debtors. Article 15 paragraph (3) of Law Number 37 of 2004 concerning Bankruptcy and PKPU requires the Curator to be independent, honest, and impartial, but does not provide a clear definition or indicator regarding the phrase "independent". The ambiguity of this norm gives rise to different interpretations in practice and has implications for legal uncertainty and the potential for criminal liability of the Curator. Based on this, this research formulates problems regarding the regulation of the phrase "independent", the form of criminal liability of the Curator, and its implications for legal certainty.

This research uses a normative legal research method with a statutory and conceptual approach. The legal materials used include primary, secondary, and tertiary legal materials, which are analyzed qualitatively to obtain a systematic and comprehensive legal understanding, and relevant to the research problem.

The results of this study indicate that, first, the regulation of the phrase "independent" in Article 15 paragraph (3) of Law Number 37 of 2004 is a vague norm (vague norm) because it does not have a normative definition or objective indicators, so that its interpretation in practice becomes very subjective. Second, the form of criminal liability of curators who are proven not to be independent is subject to general criminal law in Law Number 1 of 2023, which includes the offenses of embezzlement (Article 486), fraud (Article 492), and document falsification (Article 491), as long as the elements of actus reus and mens rea are proven. Third, the ambiguity of the phrase gives rise to legal implications in the form of significant legal uncertainty. For bankrupt debtors, this has the effect of hindering the process of settling

bankrupt assets and delaying certainty about the legal status of assets, which prolongs the debtor's legal and economic burden. Furthermore, this situation raises the risk of excessive criminalization for curators and makes it difficult for commercial judges to provide objective assessments, ultimately undermining the credibility of the commercial justice system in Indonesia.

Keywords: Independent, Curator, Bankruptcy, Criminal, Certainty

A. Introduction

Bankruptcy is a legal process to settle debts when a debtor is unable to pay. The legal basis in Indonesia is Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU), hereinafter referred to as the Bankruptcy Law. This regulation provides legal certainty for creditors so that their rights are fulfilled fairly. The curator plays a central role in managing and settling the assets of the bankrupt debtor, so their integrity and professionalism are crucial to the success of the bankruptcy process.¹

This study is important because bankruptcy law is not merely a technical procedure, but rather a reflection of justice and legal certainty. The unclear role of the curator can weaken the foundation of the legal system. An analysis of the phrase "independent" is both academically and practically relevant to bankruptcy governance in Indonesia. This research aims to fill this gap in understanding and provide a basis for improving future legal policy.²

According to Article 1 paragraph (5) of the Bankruptcy Law, a curator is a party appointed by the Commercial Court to manage and settle the bankrupt's assets. His authority includes takeovers, inventory, asset sales, and distribution of proceeds to creditors. Article 15 paragraph (3) emphasizes that the curator must be independent, honest, and impartial. This principle of independence serves as an ethical basis for the curator to work in the interests of creditors collectively, not personally or in the interests of a particular party.³

However, this obligation of independence is not only ethical but also has serious legal implications. The curator must be free from any influence, whether from the debtor, creditors, or other third parties, that could compromise his or her objectivity.⁴ For example, the curator must not have any family, business, or financial relationships with the debtor or creditors that could create a conflict of interest. Compliance with this principle of independence is a

¹Susanti Adi Nugroho, 2018, Bankruptcy Law in Indonesia in Theory and Practice and its Legal Application, Jakarta: Prenadamedia Group, pages 57-58.

²Elyta Ras Ginting, 2018, Bankruptcy Theory, East Jakarta: Sinar Grafika, page 7.

³Ibid., page 10.

⁴Hartini Rahayu. 2020, Bankruptcy Law, Malang: UMMPress, page 20.

fundamental prerequisite for the validity of the entire bankruptcy process, as the curator's decisions and actions will impact significant financial rights.

The Curator's failure to maintain independence can give rise to irregularities, collusion, discrimination between creditors, and conflicts of interest such as family, business, or financial relationships with certain debtors or creditors, including biased actions in the management and settlement of bankrupt assets.⁵ Lack of independence can also take the form of selling assets below fair value, non-transparent management, manipulation of processes, or the acceptance of personal benefits, which are detrimental to the parties and violate the principles of justice, professionalism, and legal certainty in the bankruptcy system.⁶

The Bankruptcy Law requires a curator to be independent, but it does not provide a clear definition of the term. This ambiguity allows for subjective interpretation, opens the door to manipulation by irresponsible curators, and makes it difficult for law enforcement to prove violations of independence.⁷

The vagueness of the term "independent" has given rise to differing interpretations among the parties. Because the law does not specify the criteria or indicators for independence, each party can interpret it according to their own perspective. A judge may deem a curator indefinitely independent simply because of a prior professional relationship with the debtor, even if there is no evidence of bias. Creditors may consider a curator indefinitely independent if the outcome of the bankruptcy estate settlement does not align with their interests. Meanwhile, the curator may perceive themselves as independent because they have not committed any obvious abuse of authority.⁸

Different interpretations of the principle of receiver independence create legal uncertainty, as it's unclear who is considered to have violated the law and when such violations will result in criminal consequences. The lack of clear benchmarks complicates the process of proving the case, risks wrongful conviction or acquittal, and undermines certainty and confidence in bankruptcy courts.⁹

This research is crucial because the ambiguity of the phrase "independent" has significant implications for bankruptcy practice. The analysis aims to interpret and provide a

⁵*Ibid.*, page 21.

⁶*Ibid.*, page 23.

⁷ *Ibid.*, page 24.

⁸ Susanti Adi Nugroho, *Op.cit.*, page 62.

⁹ Sriti Hesti Astiti. (2016). "Criminal Liability of Curators Based on the Principle of Independence According to Bankruptcy Law." Surabaya: Jurnal Yuridika, No. 3, page 442.

clearer legal meaning through doctrine, jurisprudence, and expert opinion, examining norms, implementation, and practical constraints.¹⁰

Ultimately, this research is not merely an academic undertaking, but an effort to improve Indonesia's bankruptcy legal system to make it more transparent, fair, and provide legal certainty. This systematic analysis is expected to yield constructive solutions to address legal issues and prevent future losses

B. Research Methods

A study cannot be called research if it does not have a research method.¹¹ Research methods are one of the factors of a problem that will be discussed. The study was conducted using secondary data which was analyzed qualitatively using the Desk Research Method. The literature materials used in writing this research are several references originating from research results, studies, and reviews of several writings which are then summarized into a scientific paper.¹²

C. Discussion

1. Certainty Regulation of the Phrase “Independent” of Curator in the Indonesian Bankruptcy Law

The certainty of the independence of the curator is a main principle in bankruptcy law to guarantee justice and legal certainty for debtors and creditors.¹³ This principle ensures that the management and settlement of the bankrupt's assets are conducted objectively and professionally without any conflict of interest. Thus, the Curator acts solely according to the law without any intervention from any party.

The independence of the curator is crucial to maintaining the trust of the parties in the bankruptcy process. An independent curator can manage and dispose of the bankruptcy estate fairly and proportionally, in accordance with the rights of creditors.¹⁴ Thus, the objectives of bankruptcy law as well as the principles of justice, legal certainty, and benefit can be realized. The principle of the Curator's independence is firmly stated in Article 15 paragraph (3) of

¹⁰Ibid., page 444.

¹¹ Hanifah, I., Hariyanto, H., Ginting, L., Koto, I., & Syafriana, R. (2026). Legal Protection of Indonesia's Fisheries from Foreign Investment: A Social-State Approach. *Jurnal IUS Kajian Hukum dan Keadilan*, 14(1).

¹² Simatupang, R. S. A., Hanifah, I., & Mansar, A. (2025). The Concept of Restitution as Legal Accountability in the Crime of Human Trafficking. *Pena Justisia: Media Komunikasi dan Kajian Hukum*, 24(1), 3554-3462.

¹³ Kartoningrat, RB, Marzuki, PM, & Shubhan, MH (2021). The Principle of Independence and Accountability of Curators in the Management and Settlement of Bankrupt Assets. *RechtIdee*, No. 1, page 37.

¹⁴ Sibarani, TWR (2025). A Legal Review of the Curator's Role in the Management and Settlement of Bankrupt Assets. *Journal of History Education and Social Humanities Research*, 5(1), page 3.

Law Number 37 of 2004 concerning Bankruptcy, which requires the Curator to act "independently". This provision confirms that independence is a binding legal norm and is the basis for the legitimacy of the appointment and implementation of the Curator's duties legally and responsibly.

Literally, "independent" means not bound, free from the influence or interests of any party, so that in bankruptcy law the Curator is obliged to act independently, neutrally and professionally based on the law and objective standards in order to ensure a transparent and fair process for all parties.¹⁵

The curator in Indonesia is positioned as an organ of the court that carries out public functions in an accountable manner, but must still have professional autonomy within the limits of the law so that the bankruptcy process avoids abuse of authority. The prohibition on conflicts of interest, such as family or business relationships with parties to a litigation, is a concrete example of efforts to maintain this independence. If this principle is violated, the Commercial Court has the corrective authority to replace the Receiver to restore objectivity and public trust in the commercial justice system.¹⁶

Thus, The regulation regarding the phrase "independent" in Law Number 37 of 2004 concerning Bankruptcy and PKPU, particularly in Article 15 paragraph (3), only mentions the curator's obligation to be independent, honest and impartial without providing a clear normative definition or indicator. As a result, the phrase has become a vague norm because it lacks an objective benchmark for determining when a curator is no longer considered independent. In practice, independence is often interpreted subjectively by stakeholders.

2. Forms of Criminal Liability for Curators If Proven to be Non-Independent in Carrying Out Their Duties

The curator may be held criminally liable under Law Number 1 of 2023 concerning the Criminal Code if, in carrying out his duties of managing and settling bankrupt assets, he is proven to have committed a crime such as embezzlement due to trust, fraud, or falsification of documents, so that he remains subject to the national criminal law regime without immunity even though he carries out functions related to the court.¹⁷

¹⁵ Harahap, JA (2025). The Curator's Responsibility in Settlements of Bankrupt Debtors' Assets (Case Study of Decision Number 7/Pdt. Sus Bankruptcy/2025/PN. Niaga. Jkt. Pst). ISNU SU: Journal

¹⁶ Munir Fuady, 2008, Bankruptcy Law in Theory and Practice, Bandung: PT Citra Aditya Bakti, page 129

¹⁷ Astiti, SH, Op.cit, page 192.

Independence is an essential prerequisite for a curator to ensure that the process of managing and disposing of bankrupt assets is fair, objective, and responsible. Without independence, the curator's duties could potentially deviate from the principles of commutative and distributive justice, thereby undermining the integrity and legitimacy of the bankruptcy system. Therefore, independence is key to maintaining public and creditor trust in the bankruptcy mechanism.¹⁸

If the Curator is proven not to be independent, the legal implications are:

1. Change of curator: The Commercial Court may replace a non-independent Curator upon the request of the Supervisory Judge or creditor, as regulated in Article 71 of Law Number 37 of 2004 concerning Bankruptcy and PKPU.
2. Claim for Compensation (Civil): The curator's actions that are not independent and cause losses to the bankrupt's assets can give rise to civil liability in the form of a lawsuit for damages. The legal basis for this is Article 72 of Law Number 37 of 2004 concerning Bankruptcy and PKPU, which stipulates that the curator is responsible for any errors or negligence in carrying out his or her duties. In practice, this liability is constructed through Article 1365 of the Civil Code concerning unlawful acts.
3. Criminal Charges: In the context of criminal liability, a Curator who is not independent and commits an unlawful act can be prosecuted based on Law Number 1 of 2023 concerning the Criminal Code, either for embezzlement due to trust (Article 486), fraud (Article 492), falsification of documents (Article 491), or gross negligence (*culpa lata*) which causes serious losses to the bankrupt's assets or creditors, so that he remains subject to criminal sanctions of imprisonment and/or fines according to the level of error and the consequences caused.

In this context, the Curator can be charged under Article 486 and Article 492 of Law Number 1 of 2023 concerning the Criminal Code or other relevant criminal provisions such as document falsification if it fulfills the elements of a crime, so that even though he carries out functions related to the judiciary and management of bankrupt assets, the Curator remains subject to national criminal law without legal immunity..¹⁹

The use of general criminal law against the Curator confirms that his position in the bankruptcy process does not exempt him from criminal responsibility for deliberate acts (*dolus*) or gross negligence (*culpa*) that fulfill the elements of a criminal act in Law Number

¹⁸M. Hadi Shubhan, 2008, Bankruptcy Law, Principles, Norms, and Practices in the Courts, Jakarta: Kencana Prenada Media Group. pages 40-45.

¹⁹ Astiti, SH, Op.cit, page 195.

1 of 2023 concerning the Criminal Code, so that the principle of equality before the law is maintained, while the Bankruptcy Law and the Criminal Code are complementary to criminal law as the ultimum remedium when violations exceed the administrative or civil realm..²⁰

In criminal law doctrine, the Curator's criminal liability must fulfill the objective element in the form of an unlawful act that causes loss and the subjective element in the form of intent or negligence, in line with the principle of "geen straf zonder schuld" according to Moeljatno, so that loss alone is not enough without proof of fault..²¹

The form of criminal liability for a curator who is proven to be non-independent in carrying out his duties is subject to general criminal law provisions as stipulated in Law Number 1 of 2023 concerning the Criminal Code. A curator may be held criminally responsible if his non-independence is manifested in concrete actions that fulfill the elements of a criminal act, either in the form of intent (*dolus*) or gross negligence (*culpa lata*). In the event that the Curator intentionally abuses the trust inherent in his position to control or use the bankrupt assets unlawfully, his actions can be charged as embezzlement due to trust as stipulated in Article 486 of Law Number 1 of 2023. If the act is carried out through deception or a series of lies that are detrimental to the bankrupt assets or creditors, the Curator can be subject to the crime of fraud based on Article 492 of Law Number 1 of 2023. Furthermore, if the Curator makes, falsifies, or uses false documents related to the process of managing or settling the bankrupt assets, then his actions can be punished as a crime of falsifying documents based on Article 491 of Law Number 1 of 2023. Thus, the Curator remains subject to general criminal law without legal immunity, and punishment can only be carried out if the elements of *actus reus* and *mens rea* are proven.

3. Implications of the Ambiguity of the Phrase "Independent" on Legal Certainty Regarding the Criminal Liability of Curators

The "independent" requirement for curators in the Bankruptcy Law aims to ensure objectivity in their duties. However, when confronted with criminal liability mechanisms, normative tensions arise that have the potential to lead to legal uncertainty..²² According to the Big Indonesian Dictionary (KBBI), the word independent means standing alone, having a free spirit, not being bound, independent, free without being tied to other parties..²³

²⁰ Siahaan, YTB, & Silaen, AP (2024). A legal analysis of the curator's criminal liability for embezzlement in the bankruptcy estate settlement process. *Law Development and Justice Review*, No. 2, pages 175-176.

²¹ *Ibid.*, page 177-179.

²² Nasyith, RM, Wiranatakusumah, RD, & Augustine, T. (2025). Reform of the Indonesian Bankruptcy System from the Perspective of Restorative Justice and Legal Certainty for Creditors and Debtors. *Journal of History Education and Social Humanities Research*, No. 2, page 151.

²³ Language Development and Fostering Agency, Ministry of Education, Culture, Research, and Technology of the Republic of Indonesia, Big Indonesian Dictionary, entry "independent", accessed through <https://kbbi.kemdikbud.go.id/entri/independen>.

According to Jimly Asshiddiqie, independence is a primary prerequisite for the legal profession to ensure the attainment of justice, because without independence, legal power or authority will easily be abused by external interests that are not in line with the objectives of law enforcement. Independence requires a clear and clear distance between legal office holders and parties who have an interest in the results of the exercise of that authority, whether economic, political, or personal interests. This distance is necessary so that every legal decision can be made objectively, rationally, and free from pressure or intervention from external parties.²⁴

When a formally independent curator makes a decision that results in losses to the bankrupt's estate, the Commercial Court does not immediately impose criminal liability. The court must first assess the source and nature of the losses through the following distinctions:

1. **Reasonable Business Risks:** Losses arising from rational business decisions made in good faith and with due care and within the receiver's authority are considered legitimate business risks. In these circumstances, the receiver is protected by the principles of independence and professional discretion, thus not giving rise to legal liability, either civil or criminal.
2. **Professional negligence:** If losses arise due to negligence or carelessness on the part of the Curator in carrying out his/her obligations to manage or settle the bankrupt's assets, without any malicious intent, then the Curator's liability lies within the civil realm. The legal basis is Article 72 paragraph (3) of Law Number 37 of 2004, which states that the Curator is responsible for any errors or negligence that result in losses to the bankrupt's assets.
3. **Intentional and Ulterior Motive Acts:** On the other hand, if it is proven that the loss is the result of an act carried out consciously and intentionally, with an ulterior motive to benefit oneself or another party, then the act is no longer within the administrative or civil realm. In this condition, the Curator can be held criminally responsible based on Law Number 1 of 2023 concerning the Criminal Code, as long as the act fulfills the elements of a general criminal offense such as embezzlement due to trust, fraud, or forgery.

The ambiguity of the term "independent" in bankruptcy law creates legal uncertainty that is detrimental to both curators and creditors. Curators are vulnerable to criminalization for their professional actions due to the unclear line between discretion and criminal conduct, while creditors are disadvantaged by inconsistent law enforcement and inconsistent decisions. To address this ambiguity, a case-based approach and the active role of the supervisory judge are

²⁴Jimly Asshiddiqie, 2005, Responding to Legal Cases: Judicial Integrity and Judicial Independence, Jakarta: Konstitusi Press, p. 42.

crucial. The supervisory judge's function is to assess the curator's independence substantively and contextually based on concrete facts and to ensure that the curator's actions comply with the principles of prudence and authority.²⁵ Through consistent legal findings, the supervisory judge's decision can serve as a practical guideline for the curator and contribute to the creation of legal certainty in bankruptcy.

Because the term "independent" has not been clearly defined, judicial practice and the role of the supervising judge are crucial in assessing whether the curator's actions remain in accordance with the principles of independence and prudence or whether they have exceeded legal boundaries. However, when the curator's actions enter the criminal realm, the assessment shifts to the Public Prosecutor and Criminal Judge, with the benchmark being the evidence of the elements of the crime.²⁶ In criminal law, the independence of the curator is a normative obligation whose violation, whether intentional or negligent, can be considered a criminal act and give rise to criminal liability in order to maintain the integrity of the profession.

Based on a descriptive-qualitative analysis, normative harmonization is needed between the phrase "independent" and existing criminal provisions. Future legislative policies should:

1. **Explicit Definition:** Provides an operational definition of the phrase "independent" in the Explanation Constitution Bankruptcy narrows the scope for interpretation. The definition must encompass both structural and substantive dimensions.
2. **Discretionary Protection (Safe Harbor):** Creating a protective norm for Curators who act honestly and in good faith within the limits of professional discretion (similar to the business judgment rule), provided that their substantive independence is maintained.
3. **Criminal Evidence Standards (Onus Probandi):** In criminal cases involving Curators, the standard of proof must be raised to prove the existence of an element of deliberate malice (*mens rea*).²⁷

Barda Nawawi Arief emphasized that the formulation and application of criminal law must be carried out carefully, proportionally, and with great caution to avoid a tendency towards over-criminalization. Criminal law, as a last resort (*ultimum remedium*), should not be used indiscriminately against any form of legal violation, especially in the context of positions or

²⁵ Suhariyanto, B. (2018). Interception of justice authority of discretion abuse between administration court and corruption court. *Journal of Law and Justice*, No. 2, pages 213-236.

²⁶ Sunaryo, S., & Sukardi, DH (2023). The Curator's Responsibilities in Bankruptcy Cases Based on the Principle of Independence. *Justicia Sains: Journal of Legal Studies*, No. 1, page 45.

²⁷ Nur, AA, Nawi, S., & Makkuasa, A. (2025). Legal Protection for State Civil Apparatus as Legal Subjects Regarding Legality Issued by the Ministry of Agrarian Affairs and Spatial Planning/BPN. *Journal of Lex Theory (JLT)*, No. 1, pages 192-203.

professions that inherently contain room for discretion and professional judgment, such as the position of Curator in bankruptcy law.²⁸

In the context of a receivership, this caution is crucial because the receiver's duties and powers are not merely administrative in nature, but also involve strategic decision-making that often directly impacts the interests of both debtors and creditors. These decisions do not always result in outcomes that benefit all parties, potentially giving rise to dissatisfaction and accusations of abuse of authority. Therefore, law enforcement must be able to clearly distinguish between the receiver's actions that are truly intrinsically evil (*mala in se*) and those that merely constitute violations of normative or procedural provisions (*mala prohibita*).²⁹

Acts classified as *mala in se* are acts that fundamentally contradict the sense of justice and moral values of society, such as fraud, embezzlement, or abuse of authority committed with malicious intent to enrich oneself or a particular party. In this case, criminalizing the Curator becomes relevant and legally valid because such acts have exceeded the limits of professional misconduct and entered the realm of crimes that harm protected legal interests. Criminalizing such acts serves as a form of protection for the integrity of the bankruptcy process and public trust in the Curator profession.³⁰ *Mala prohibita* acts by a curator involve administrative violations or negligence without malicious intent. These acts should be resolved through civil or administrative sanctions. The use of criminal law has the potential to chill the curator's independence and professionalism.

If the distinction between *mala in se* and *mala prohibita* is not consistently applied, the receiver's independence loses its substantive meaning. The receiver becomes defensive and reluctant to make strategic decisions for fear of being criminalized, which is detrimental to creditors and the effectiveness of bankruptcy proceedings.³¹ The term "independent" is ambiguous because, on the one hand, it guarantees the curator's freedom and discretion in carrying out their duties. This discretion is necessary so that the curator can act professionally, effectively, and responsively in dealing with the complexities of bankruptcy.

However, on the other hand, this broad discretion is not balanced by clear boundaries or indicators regarding what is meant by "independent" in the Bankruptcy Law. The absence of a

²⁸ Irmawanti, ND, & Arief, BN (2021). The urgency of the objectives and guidelines for sentencing in the context of reforming the criminal law sentencing system. *Journal of Indonesian Legal Development*, 3(2), page 217.

²⁹ Irawati, SA (2024). The Difference Between Intentional and Unintentional in Criminal Law. *Ideas: Journal of Education, Social, and Culture*, No. 4, page 1137.

³⁰ Irmawanti, ND, & Arief, BN *Op.cit*, page 218.

³¹ Mulyadi DL, & Sh, MH, 2023. *Anthology of general and special criminal law*. Alumni Publisher., page 242.

clear and operational definition leaves this phrase open to multiple interpretations, particularly when confronted with criminal liability mechanisms. In practice, an action deemed by a Curator as a legitimate and independent exercise of discretion may be interpreted differently by Creditors, law enforcement, and Judges, thus opening up room for differing legal assessments.³² This condition creates legal uncertainty for curators who are at risk of being criminalized for their professional actions and for creditors who have difficulty determining the limits of the curator's liability for losses to the bankrupt estate.

Resolving the ambiguity of the term "independent" requires an active role for judges through legal research to interpret independence contextually and distinguish professional misconduct from malicious intent. However, a long-term solution must be achieved through legislative reform with a clear definition and indicators of independence. This step is crucial to protect trustees acting in good faith while ensuring fairness to creditors.³³

Thus, the implications of the ambiguity of the phrase "independent" create legal uncertainty in bankruptcy practice due to the absence of clear normative boundaries regarding indicators of violations of the Curator's independence. This condition causes differences in perception between judges, creditors, and Curators in assessing the objectivity of the Curator's actions, so that the Curator is potentially reported criminally or sued civilly even though he has acted in accordance with procedures. As a result, debtors experience delays in legal certainty regarding the bankruptcy estate, creditors risk delays in obtaining their rights, Curators face excessive legal risks in exercising professional discretion, and commercial judges experience difficulties in making consistent assessments. The accumulation of these conditions ultimately hampers the process of settling bankruptcy estates and reduces the effectiveness and credibility of the commercial justice system in Indonesia.

D. Conclusion

The Certainty of the Regulation of the phrase "independent" in Law Number 37 of 2004 concerning Bankruptcy and PKPU, specifically Article 15 paragraph (3), only requires the Curator to be independent, honest, and impartial without providing a clear normative definition or indicators. As a result, the phrase has become a vague norm (vague norm) because it does not have an objective benchmark to determine when the Curator is considered not independent, so that in practice it is often interpreted subjectively by the parties.

³² Permatasari, PR, Sulistyarini, R., & Widyanti, YE (2024). Ratio Decidendi Analysis in the Settlement of Marital Property Disputes: Implications for Legal Practice in Indonesia. *Legal Horizons*, No.3, page 57.

³³ *Ibid.*, page 58-59.

The form of criminal liability for non-independent curators is subject to Law Number 1 of 2023 concerning the Criminal Code. Curators can be punished if their lack of independence is manifested in actions that fulfill the elements of a criminal act, either intentionally (*dolus*) or gross negligence (*culpa lata*). Abuse of trust to control or use bankruptcy assets unlawfully can be charged as embezzlement (Article 486). If done through deception that is detrimental to the bankruptcy estate or creditors, can be subject to fraud (Article 492). The creation or use of false documents related to the settlement of bankruptcy assets can be punished as document forgery (Article 491). Thus, curators do not have legal immunity and can only be punished if the elements of *actus reus* and *mens rea* are proven.

Implications: The ambiguity of the phrase "independent" creates legal uncertainty in bankruptcy practice due to the lack of clear parameters for violations. This makes curators vulnerable to criminal reports or civil lawsuits even if they have acted in accordance with procedures, due to differences in assessments between judges, creditors, and the curator. For debtors, this situation can hinder the settlement of bankruptcy assets and prolong legal and economic burdens. For creditors, it has the potential to delay the fulfillment of rights fairly and proportionally. For curators, the lack of clear standards creates the risk of overcriminalization and hinders professional decision-making. Commercial judges also struggle to objectively assess alleged violations, potentially leading to inconsistent decisions. Ultimately, this situation reduces the effectiveness, efficiency, and credibility of commercial justice.

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