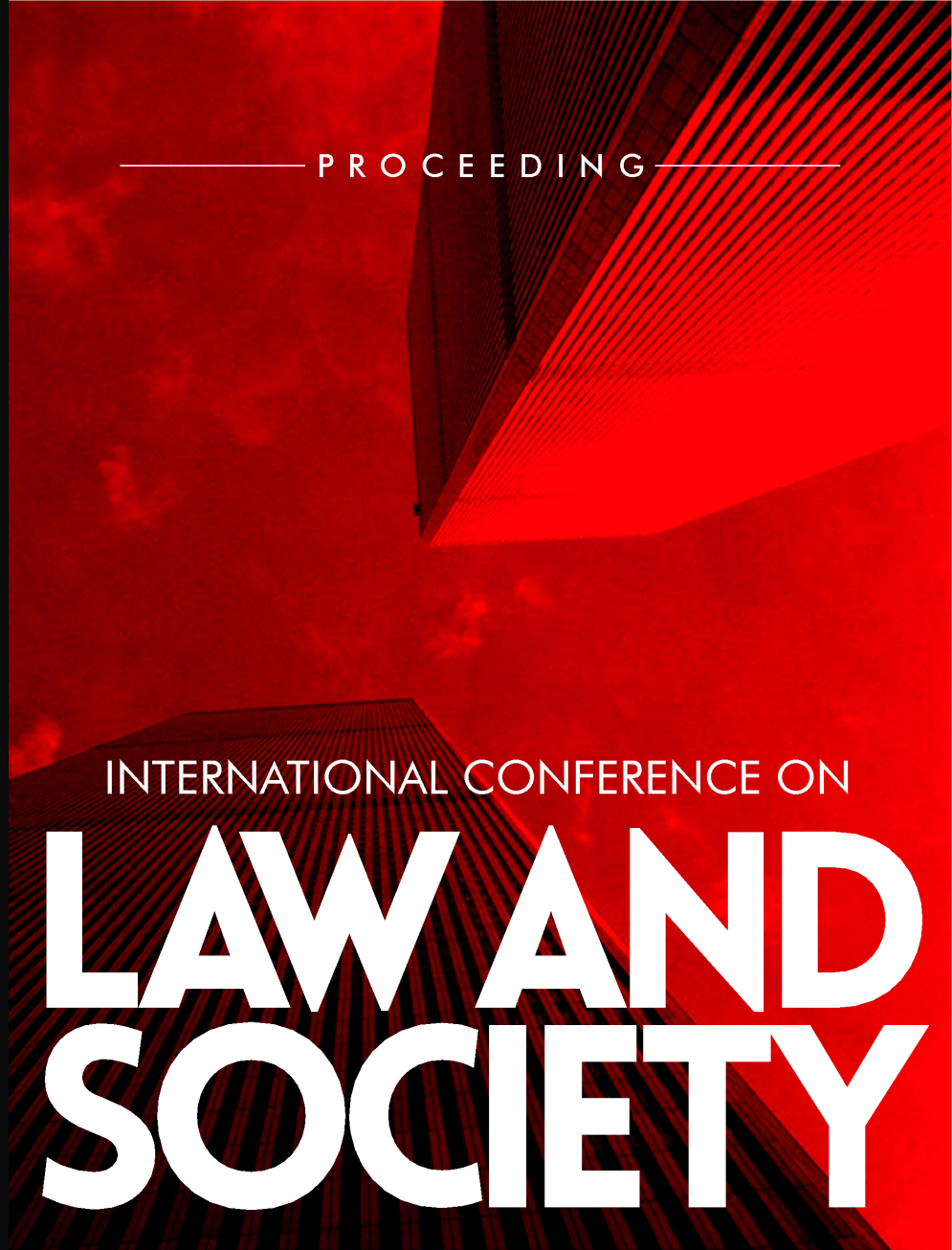




PROCEEDING INTERNATIONAL CONFERENCE ON LAW & SOCIETY 2017

Published by:
 International Conference on Law and Society, Faculty of
 Law & Board of Research, Educational Development and
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 Universitas Muhammadiyah Yogyakarta



PROCEEDING

INTERNATIONAL CONFERENCE ON
**LAW AND
 SOCIETY**



YOGYAKARTA, 04 – 07 APRIL 2017

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

— P R O C E E D I N G —

INTERNATIONAL CONFERENCE ON
**LAW AND
SOCIETY**

Yogyakarta, 04 – 07 April 2017

LP3M & Faculty of Law Universitas Muhammadiyah Yogyakarta
2017

PROCEEDING

International Conference on Law and Society

Yogyakarta, 04 – 07 April 2017

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Published by:

International Conference on Law and Society, Faculty of Law & Board of Research,
Educational Development and Community Empowerment (LP3M) Universitas
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Proceeding International Conference on Law and Society, Yogyakarta

Faculty of Law & LP3M UMY

396; 18,5 x 29,7 cm



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Message from Chairman

Yordan Gunawan

Chairman, International Conference on Law and Society 6,
Universitas Muhammadiyah Yogyakarta

Assalaamu'alaikumWarahmatullahiWabarakatuh,

In the Name of Allah, the most Gracious and the most Merciful. Peace and blessings be upon our Prophet Muhammad (S.A.W).

First and foremost, I felt honoured, on behalf of the university to be warmly welcomed and to be given the opportunity to work hand in hand, organizing a respectable conference. Indeed, this is a great achievement towards a warmers multilateral tie among UniversitasMuhammadiyah Yogyakarta (UMY), International Islamic University Malaysia (IIUM), UniversitiIslam Sultan Sharif Ali (UNISSA), Universiti Sultan ZainalAbidin Malaysia (UNiSZA), Fatoni University, Istanbul University, Fatih Sultan Mehmet Vakif University and Istanbul Medeniyet University.

I believe that this is a great step to give more contribution the knowledge development and sharing not only for eight universities but also to the Muslim world. Improving academic quality and strengthening our position as the procedures of knowledge and wisdom will offer a meaningful contribution to the development of Islamic Civilization. This responsibility is particularly significant especially with the emergence of the information and knowledge society where value adding is mainly generated by the production and the dissemination of knowledge.

Today's joint seminar signifies our attempts to shoulder this responsibility. I am confident to say that this program will be a giant leap for all of us to open other pathways of cooperation. I am also convinced that through strengthening our collaboration we can learn from each other and continue learning, as far as I am concerned, is a valuable ingredient to develop our universities. I sincerely wish you good luck and success in joining this program

I would also like to express my heartfeltthanks to the keynote speakers, committee, contributors, papers presenters and participants in this prestigious event.

This educational and cultural visit is not only and avenue to foster good relationship between organizations and individuals but also to learn as much from one another. The Islamic platform inculcated throughout the educational system namely the Islamization of knowledge, both theoretical and practical, will add value to us. Those comprehensive excellent we strived for must always be encouraged through conferences, seminars and intellectual-based activities in line with our lullaby: The journey of a thousand miles begin by a single step, the vision of centuries ahead must start from now.

Looking forward to a fruitful meeting.

Wassalamu'alaikumWarahmatullahiWabarakatuh

Foreword

Trisno Raharjo

Dean, Faculty of Law, Universitas Muhammadiyah Yogyakarta

Alhamdulillah all praise be to Allah SWT for his mercy and blessings that has enabled the Fakultas Hukum, Universitas Muhammadiyah Yogyakarta in organizing this Inaugural International Conference on Law and Society 6 (ICLAS 6).

This Conference will be providing us with the much needed academic platform to discuss the role of law in the society, and in the context of our two universities, the need to identify the role of law in furthering the progress and development of the Muslims. Muslim in Indonesia and all over the world have to deal with the ubiquity of internet in our daily lives life which bring with it the advantages of easy access of global communication that brings us closer. However, internet also brings with it the depraved and corrupted contents posing serious challenges to the moral fabric of our society. Nevertheless, we should be encouraged to exploit the technology for the benefit of the academics in the Asia region to crat a platform to collaborate for propelling the renaissance of scholarship amongst the Muslims.

This Conference marks the beginning of a strategically planned collaboration that must not be a one off event but the beginning of a series of events to provide the much needed platform for networking for the young Muslim scholars to nurture the development of the Muslim society.

UMY aims to be a World Class Islamic University and intend to assume an important role in reaching out to the Muslim ummah by organising conferences hosting prominent scholars to enrich the developmment of knowledge. This plan will only materialise with the continous support and active participation of all of us. I would like to express sincere appreciation to the committee in organising and hosting this Conference.

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Reviews Juridical on Fee Arrangements in Bankruptcy Curator After the Supreme Court Decision no. 54 P/HUM/2013

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ABSTRACT

Curator plays an important role in bankruptcy, because in the next curator who will be assigned to manage and complete the bankruptcy estate (boedel bankruptcy). In performing its duties guided by the law No. 37 of 2004 on bankruptcy and suspension of debt payments (PKPU). Curator entitled to receive payment for its services. It is stipulated in the Regulation of Minister of Law and Human Rights No. 1 in 2013. The purpose of this study to determine how the regulations on fee curator in bankruptcy in Indonesia, and what the legal consequences of the curator in handling the settlement of bankruptcy in Indonesia after the Supreme Court Decision No 54 P/HUM/2013. This study is a normative juridical: statute and case approach. That concluded: First, there have been inconsistencies curator fee arrangement between Justice and Human Rights Minister Regulation No. 1 of 2013, particularly Article 2 paragraph (1) letter c with Law No. 37 of 2004 on Bankruptcy and PKPU particular Article 17 Paragraph (3). Secondly, the legal consequences of the Supreme Court Decision No 54 P/HUM/2013, that Article 2 paragraph (1) letter c Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia Number 01/2013 regarding Guidelines for Remuneration for Receivers and Administrators declared contrary to legislation higher, namely Law No. 37 of 2004 on Bankruptcy and Suspension of Payment (PKPU). Thus, Regulation Minister of Law and Human Rights of the Republic of Indonesia Number 01 Year 2013 is not valid and does not have binding legal force.

Keywords: *Fee Curator, Judicial Review, Bankruptcy Law and PKPU, Permenkumham*

I. Introduction

In the event of bankruptcy to a debtor or creditor then the next one will do the maintenance of the bankruptcy estate by the curator. Curator is the Heritage Hall or an individual appointed by the court to take care of and cleared Bankrupt Debtors assets under the supervision of the Supervisory Judge in accordance with this Law Article 1 (5) Labor Law and PKPU.

Curator authorities carry out the task of management and / or clearance on the bankruptcy estate from the date of the bankruptcy decision pronounced although the verdict was appealed or judicial review (Article 16 Paragraph (1) Labor Law and PKPU. Top management services or settlement bankruptcy estate, the curator of the right to be paid (fee). Fee curator reward or wages must be paid to the curator of the amount determined based on the legislation in force.

Magnitude curator fee for this refers to the Decree of the Ministry of Justice (MOJ SK) No. M.09-HT.05.10 1998 on the magnitude of PES curator, but on January 11, 2013, Secretary of Justice and Human Rights Amir Syamsuddin issued new regulations governing the remuneration guidelines for the curators and administrators. Regulations which are numbered 1 Year 2013 on remuneration for the Board's curator and replaces Decree of the Minister of Justice No. M.09-HT.05.10 1998 on Guidelines magnitude of PES Receivers and Administrators.

While the Decree of the Minister of Justice and Human Rights was born based on the mandate of Article 17 of the Labor Law and PKPU, which in essence that for the determination of compensation for services Curator which guidance will be set back by a ministerial decree authorized as attribution of Article 76 in conjunction with Article 75 of the Labor Law and PKPU. Associated with the Decree of the Minister of Justice and Human Rights when seen from the contents, there are some changes in the regulations related to remuneration or fee for the curators and administrators.

Based on the background that has the writer described above, then that becomes the focus permasalahan in this study are: about the setting of the fee curator in bankruptcy in Indonesia and the legal consequences of the curator in handling the settlement of bankruptcy in Indonesia after the Supreme Court Decision No 54 P/HUM/2013.

II. Methodology

This type of research is normative, because studied is the philosophy of norms related to the subject matter studied, which is the norm in the field of Bankruptcy Law, especially regarding the aspect of justice and legal certainty. Using a shrimp-law (statute approach), the conceptual approach (conceptual approach), and the approach of the case (case approach)¹.

Legal materials that are used in the form of primary legal materials and secondary law. Primary legal materials consist of legislation, in the areas of Bankruptcy and PKPU, Decree of Ministry of Law and Human Rights of 1998 and in 2013 associated with the magnitude of PES For Receivers and Administrators and the decision of Supreme Court of the Supreme No 54 P/HUM/2013. Bahan law secondary obtained from text books / literature, journals and the results of previous studies that discuss related legal issue in this study. In addition to the publication of the law and bankruptcy through the websites and the websites of the commercial court, namely <http://www.pengadilan-niaga.go.id/>, <http://www.hukumonline.com/>, as well as legal dictionary will also be used.

Primary and secondary legal materials that have been collected through the inventory and classified and analyzed, examined and studied by comparing with the doctrine, theory and legal principles suggested by experts, based on reasoning or logic in legal arguments. Analysis Content analysis is done, to find the truth of the law.

III. Discussion

3.1 The arrangement of the PES / Fee Curator in Indonesia

A. *Periode enactment of Government Regulation 1 of 1998 jo Law No. 4 of 1998*

Since the change in the regulation of kepailitan in Indonesia that were previously in the resolve insolvency is based on the Insolvency Regulation (ferordering vailissement called FV). Then, since 1998 has been successfully delivered PERPU No. 1 of 1998 on Bankruptcy and Suspension of Payment. Later in the same year where the PERPU increased to legislation that became Act 1 of 1998 The delay neighbor Bankruptcy and Debt Payment Obligation (Labor Law and PKPU).

In its decision, the amount of remuneration included a declaration of bankruptcy receivership services are applied based on the guidelines set out in the Decree of the Minister of Justice of the Republic of Indonesia No. M.09-HT.05.10 1998 on Guidelines magnitude of PES For Receivers and Managers².

What is meant by a service fee is the wages to be paid to³:

1. curator, curator of additional or substitute curator in order management and settlement or

bankruptcy assets;

2. The temporary receivership in order to oversee the management of the debtor's business, and overseeing payments to creditors, wealth transfer or pledge debtor in bankruptcy order requires approval curator; and
3. The board, an additional board, or the board of management of the property in order to substitute the debtor in the event of delay debt payment obligations.

Regarding the amount of remuneration for the services of a curator, as referred to in Article 1 paragraph 1 is determined as follows⁴:

- a. in the event of bankruptcy ended with peace, the amount of fee is equal to a percentage of the value ⁵of the bankruptcy estate out of debt as determined in peace with the calculation as follows:

Administrators in bankruptcy that ended with the peace (accord)⁶:

1. up to Rp 50 billion..... 6%
2. The excess above Rp 50 billion s / d Rp 250 billion.... 4.5%
3. The excess above Rp 250 billion s / d Rp 500 billion.... 3%
4. advantages over Rp 500 billion..... 1.5%

(Attached as Appendix I- MOJ Decree RI No. M.09-HT.05.10 1998)

- b. In the event of bankruptcy ended with settlement, the amount of fee is equal to a percentage of the value of the bankruptcy estate settlement outside debt was calculated as follows⁷:

1. up to Rp 50 billion..... 10%
2. The excess above Rp 50 billion s / d Rp 250 billion.... 7.5%
3. The excess above Rp 250 billion s / d Rp 500 billion.... 5%
4. 4. The excess above Rp 500 billion..... 2.5%

(Attached as Appendix II; Decree of the Minister of Justice RI; No. M.09-HT.05.10 1998)

- c. in the case of declaration of bankruptcy petition rejected an appeal or reconsideration level, the amount of service fee set by the judge and charged to the debtor.

In determining the amount of compensation for services (Article 2 Paragraph (1) c, the judge shall consider the work that has been done, the ability, and the work rate of the curator, provided the highest 2% (two percent) of the estate of the debtor.

Regarding the amount of fee for temporary receivership as referred to in Article 1 paragraph 2 of Decision of the Minister of Justice of the Republic of Indonesia No. M.09-HT.05.10 1998 is determined as follows:

- a. in the case of declaration of bankruptcy petition is granted, then the service fee set out in the first meeting of creditors; or
- b. in the case of declaration of bankruptcy petition is rejected, then the amount of service fee set by the judge and charged to the debtor.

In determining the amount of compensation for services referred to in paragraph (3) b, the judge shall consider the work that has been done, capabilities, and tariff job of curator temporary, provided the highest ½% (one half percent) of the estate of the debtor.

In addition to the business or services referred to in Article 2 of this Kepmenkeu, curator can perform sales service of the wealth of the debtor as referred to in Article 57 paragraph (2) of Law No. 4 of 1998. And the fee for the sale referred to in subsection (1) is 2 ½% (two and one half percent) of the sales made by the curator.

Specified in Article 4 that, a service fee for the board is determined as follows:

1. in the case of delay debt payment obligations which ended with peace, the amount of com-

- pensation for services is determined by a judge and charged to borrowers by considering the work that has been done, the ability, and the work rate of the board is concerned with the provision of the highest 3% (three percent) of the value of assets of the debtor; or
2. in the case of delay debt payment obligations ended without peace, the amount of remuneration is determined by a judge and charged to borrowers by considering the work that has been done, the ability, and the work rate of the board is concerned with the provision of the highest 5% (five percent) of the value of the property debtor.

B. Period of entry into force of the Labor Law and PKPU No. 37 of 2004

In PERPU No. 1 Year 1998 on Bankruptcy and PKPU well as in Law No. 4 Year 1998 on Bankruptcy and PKPU not explicitly stated in the article about compensation for services /fee curator in bankruptcy. Sebagaimana has been described researcher berlakunya sebelumnya that in the period to two rules, the curator of the fee stipulated in the Decree of the Minister of Justice of the Republic of Indonesia No. M.09-HT.05.10 1998 on Guidelines magnitude of PES For Receivers and Managers.

B.1. And PKPU Labor Law (Law No. 37 of 2004)

Meanwhile, when Law No. 4 of 1998 was revised and amendment in 2004 into Law No. 37 of 2004 on Bankruptcy and Debt Kewajiban Pembayaran delay, then on compensation for services / fee for the curators have arranged implicit in the chapters. Several articles that regulate the fee curator / recompense for the curators is Article 17 Paragraph (2), Article 17 Paragraph (3) and Article 76.

Complete that provisions of the regulation on compensation for services curator / fee fan PKPU curator in the Labor Law are as follows:

1. Article 17 Paragraph (2) and Paragraph (3) Labor Law and PKPU. Article 17 Paragraph (2) states that: "The judges who overturned the verdict of bankruptcy declaration of bankruptcy costs and also set a fee for the Curator".
2. Article 17 Paragraph (3) and PKPU Labor Law states that: "The cost referred to in paragraph (2) shall be charged to the applicant or the applicant's declaration of bankruptcy and the debtor in the comparison set by the panel of judges".
3. Article 76 of the Labor Law and PKPU. In Article 76 of the Labor Law and PKPU explained that: "The amount of fee to be paid to the Receiver as referred to in Article 75 are set based on the guidelines set by the Minister whose scope of duties and responsibilities in the field of law and legislation".

B.2. Regulation Minister of Law and Human Rights No. 1 Year 2013 on Guidelines Rewards For Receivers and Administrators

Departing from their chaotic curator regarding fee payments Telkomsel case it gives birth to a regulation of the Minister of Justice and Human Rights Amir Syamsudin which issued Decree No. 01 Year 2013 on Guidelines Rewards For Receivers and Administrators, on 11 January 2013. Chewing No. 01 Year 2013 is then used as the basis for refusing to pay the fee curator Telkomsel.

In Article 2 Paragraph (1) states: that the amount of remuneration for the Receiver is determined as follows: "(c) in the case of application for a declaration of bankruptcy was rejected on appeal or reconsideration, the amount of remuneration set by the judge and charged to the applicant a declaration of bankruptcy".

Be related to the curator fee or service fee as determined by the Labor Law and PKPU, the Minister of Justice No. M.09-HT.05.10 1998 on Guidelines magnitude of PES For Receivers and Administrators and Minister of Law and Human Rights No. 1 Year 2013 on Guidelines Rewards For Receivers and Administrators, it is known that the amount of compensation for services curator from each of these regulations differ from one another.

This can be seen in the provisions of Article 17 paragraph (2) and (3) Labor Law and PKPU which states that "paragraph (2): The judges who overturned the verdict of bankruptcy declaration also establishes bankruptcy costs and compensation for services Curator; Paragraph (3): The cost referred to in paragraph (2) shall be charged to the applicant or the applicant's declaration of bankruptcy and the debtor in the comparison set by the panel of judges ". The amount of fee charged receivership under this provision to the two parties that the applicant's bankruptcy and the debtor bankrupt.

The provision is compared with the provisions of Article 2 paragraph (1) letter c Decree of the Minister of Justice of the Republic of Indonesia No. M.09-HT.05.10 1998 on Guidelines magnitude of PES For Receivers and Administrators (abbreviated Decree) states that the amount of compensation for services specified curator by a judge and charged to the debtor in the case of declaration of bankruptcy petition was rejected on appeal or reconsideration.

So by looking at this provision and PKPU course between the Labor Law and the Decree will look different in the case of a service fee for in the Labor Law curator and curator PKPU service fees charged to the applicant and and debtors, while in the Decree the amount of fee charged to debtors curator.

Furthermore, in the Regulation of the Minister of Law and Human Rights No. 1 Year 2013 on Guidelines Rewards For Receivers and Administrators, the amount of service fee charged to the applicant curator bankruptcy declaration in the application for a declaration of bankruptcy was rejected on appeal or reconsideration. Provision of a service fee based Permenkumham curator is different from the previous provisions of the Decree which imposes a fee for the curator to debtors. They will also be at odds with the Labor Law and PKPU which determines that the amount of service fees charged to the applicant curator bankruptcy and debtors.

Their differences regarding the imposition of a service fee curator of the Labor Law and PKPU, Decree and Permenkumham will have an impact on the interpretation or the law to be used, because of the assignment under the Labor Law and PKPU charged to the applicant for bankruptcy and debtors, while in the Decree are charged to the debtor and in Permenkumham charged to the applicant a declaration of bankruptcy.

However, after the Minister of Justice of the Republic of Indonesia No. M.09-HT.05.10 1998 on Guidelines magnitude of PES For Receivers and Administrators revoked and declared null and Article 2, paragraph 1, letter c Permenkumham 1 in 2013 declared invalid and does not have binding legal force after the tested material, then recompense curator regarding request for a declaration of bankruptcy was rejected on appeal or reconsideration charged to the applicant a declaration of bankruptcy and debtors established by a panel of judges based on the provision in Article 17 paragraph (3) Labor law and PKPU.

Based on the three regulations (PKPU adn Labor Law, Decree and Permenkumham) then to ensure legal certainty to recompense curator will still refer to the Labor Law and PKPU.

Rewards curator services pursuant to Article 17 paragraph (3) Labor Law and PKPU was charged to the two parties that the applicant's bankruptcy and debtors. This means that the judge must set a service fee charged to applicants' curator bankruptcy and debtors in the verdict as prescribed by

law. With regulation of the imposition of a service fee curator ensuring legal certainty so as to avoid different interpretations of the parties who bear the cost of compensation for services curator.

In addition to the rules governing compensation for services curators also give legal certainty to be the legal security for individuals/parties against the imposition of a service fee curator. Legal certainty not only in the form of articles of the law but also their consistency in the judge's ruling that one with another judge's ruling on a similar case has already been decided⁸ (in this case the judge must set a service fee curator at the verdict so hakim- the next judge in dealing with cases of bankruptcy, especially in determining compensation for services curators can consistently follow the previous judge's decision). The legal certainty would support the creation of legal certainty because the objective of the law is also part of the objective of the law⁹ where the purpose of law is to ensure certainty in the midst of society and can make a decision only fully legal certainty.

Curator Sitanggang Andrey own interpretation of Article 17 paragraph (2) Labor Law and PKPU. According to Andrey, determination of the number of bankruptcy costs and compensation for services curator of the bankruptcy status is revoked in the Supreme Court (MA) is located on the panel of judges deciding cases of bankruptcy at the first level, instead of MA. You see, MA did not know how much is the curator of the costs incurred during the maintenance process and property settlement debtors. Moreover, the practice is often done too, which is the authority of the judges of first instance court fees curator after getting a recommendation from the supervisory judge¹⁰.

To make it easier to understand the regulation of PES Receivers in bankruptcy in Indonesia, it can be observed in the following table is a comparison of the setting / regulation of PES (Fee) Receivers 1998 and 2013.

Table 1. Comparison of Benefits Regulation Curator 1998 And 2013 Provisions Regulations 1998 Regulations 2013¹¹

Provision	Regulation 1998	Regulation 2013
The amount of fee for the Board if PKPU ended with peace	Highest 3% of the value of the property the debtor (Article 4 paragraph (1))	At most 10% of the value of the debt owed by the debtor (Article 4 letter a)
The amount of recompense for the board if PKPU high end without peace	least 5% of the value of the property the debtor (Article 4 (2))	At least 15% of the value of the debt to be paid debtors (Article 4 letter b)
The amount of recompense for the curator regarding request for a declaration of bankruptcy was rejected on appeal or review	of the Most High 2% of the assets of debtors (Article 2 (2))	was determined based on the work that has been done, the level of complexity, capacity and rate of work of the caretaker (Article 2 paragraph (2))
Party charged if the declaration of bankruptcy is rejected	and the applicant charged to debtors (Article 2 paragraph (1) letter c)	charged to the applicant a declaration of bankruptcy (Article 2 paragraph (1) letter c).

3.2 The legal consequences Against Curator in handling the settlement of bankruptcy in Indonesia after the Supreme Court Decision No 54 P / HUM/2013

A. Brief description of the Supreme Court Decision No 54 P / HUM / 2013

Position Case / Content Type:

1. To accept and grant petitions this test right;
2. To declare that the provisions in Article 2 paragraph (1) letter c of Regulation No. 1 Year 2013 on Guidelines for the Management of Rewards and Curator contrary to Article 17 paragraph (2) and (3) of Law Number 37 of 2004 on Bankruptcy and Suspension Debt Payment obliga-

tion because it has no binding force.

3. Declare Regulation of the Minister of Justice and Human Rights 1nTahun No. 2013 on Guidelines for the Management of Rewards and Curator contrary to Law No. 37 of 2004 on Bankruptcy and Suspension of Payment (PKPU);
4. To declare the provisions in Article 2 paragraph (1) letter c of Regulation No. 1 Year 2013 on Guidelines for the Management and Curator Rewards has no binding force;
5. To order the publication of this petition in the Statute and the Supplement to the State Gazette;

Amar Verdict:

Granted a right of judicial objection of the applicant:

1. Darwin Marpaung, et al (No 9 the applicant)
2. To declare that Article 2, paragraph (1) letter c Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia Number 01 Year 2013 regarding Guidelines for Remuneration for Receivers and Administrators contrary to legislation higher, namely Article 17 paragraph (2) and paragraph (3), as well as Article 76 of Law Number 37 of 2004 on Bankruptcy and Suspension of Payment;
3. To declare that Article 2, paragraph (1) letter c Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia Number 01 Year 2013 regarding Guidelines for Remuneration for Receivers and Administrators, invalid and does not have binding legal force.
4. To instruct the Minister of Justice and Human Rights of the Republic of Indonesia to repeal the provisions of Article 2 paragraph (1) letter c Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia Number 01 Year 2013 regarding Guidelines for Remuneration for Receivers and Administrators;
5. To instruct the Registrar of the Supreme Court to submit excerpts of this decision to the State Secretariat for inclusion in the State Gazette;
6. Punishing the Respondent to pay court costs amounting to USD 1,000,000.00 (one million rupiah).

Basic Legal Considerations Assembly, related to the substance of the case:

1. Whereas Article 17 paragraph (2) and (3) of Law No. 37
2. In 2004, affirmed "The judges who overturned the verdict of bankruptcy declaration also establishes bankruptcy costs and compensation for services curator" (verse 2). Furthermore, "The cost referred to in paragraph (2) shall be charged to the applicant or the applicant's declaration of bankruptcy and debtors in the comparison set by the panel of judges" (paragraph 3);
3. Further provisions of Article 76 of Law No. 37 of 2004, states "The amount of fee to be paid to the Receiver as referred to in Article 75 are set based on the guidelines set by the Minister whose scope of duties and responsibilities in the field of law and regulations invitation";
4. Then the Minister is authorized to determine the amount of guidance services curator with the decision of the minister, but the minister is not authorized to determine which party bears the curator of the service fee, because it is the duty of a judge under the provisions of Article 17 and Article 76 of Law No. 37 of 2004;
5. It is evident that the provisions of Article 2 paragraph (1) letter c Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia Number 01 Year 2013 regarding Guidelines for Remuneration for Receivers and Administrators, contrary to higher laws, namely

- Article 17 paragraph (2) and paragraph (3), as well as Article 76 of Law No. 37 of 2004 on Bankruptcy and Suspension of Payment;
6. Based on the above facts and legal considerations as described above, the Supreme Court concluded that, (i) the Supreme Court has the authority to examine the object of the petition in this case, (ii) the Petitioner has the legal standing to file the petition a quo, and (iii) object of the petition conflict with legislation that is higher;
 7. The Supreme Court found the petition a quo legal grounds and deserves to be granted. Therefore, the article of the regulations which became the object of a judicial petition of objection rights should be declared invalid and does not have binding legal force;
 8. Furthermore, the Supreme Court considering the substance of the objection petition object, whether the provisions petitioned for judicial quo contrary to legislation that is higher or not;
 9. The provisions of Article 17 paragraph (2) and (3) of Law No. 37 In 2004, affirmed "The judges who overturned the verdict of bankruptcy declaration also establishes bankruptcy costs and compensation for services curator" (verse 2). Furthermore, "The cost referred to in paragraph (2) shall be charged to the applicant or the applicant's declaration of bankruptcy and debtors in the comparison set by the panel of judges" (paragraph 3);
 10. Furthermore, the provisions of Article 76 of Law No. 37 of 2004, states "The amount of fee to be paid to the Receiver as referred to in Article 75 are set based on the guidelines set by the Minister whose scope of duties and responsibilities in the field of law and legislation";
 11. Then the Minister is authorized to determine the amount of guidance services curator with the decision of the minister, but the minister is not authorized to determine which party bears the curator of the service fee, because it is the duty of a judge under the provisions of Article 17 and Article 76 of Law No. 37 of 2004;
 12. Hence it is evident that the provisions of Article 2 paragraph (1) letter c Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia Number 01 Year 2013 regarding Guidelines for Remuneration for Receivers and Administrators, contrary to higher laws, namely Article 17 paragraph (2) and paragraph (3), as well as Article 76 of Law No. 37 of 2004 on Bankruptcy and Suspension of Payment;
 13. Based on the above facts and legal considerations as described above, the Supreme Court concluded that, (i) the Supreme Court has the authority to examine the object of the petition in this case, (ii) the Petitioner has the legal standing to file the petition a quo, and (iii) object of the petition conflict with legislation that is higher;
 14. Then the Supreme Court found the petition a quo legal grounds and deserves to be granted. Therefore, the article of the regulations which became the object of a judicial petition of objection rights should be declared invalid and does not have binding legal force;

C. As a result of its Law Against Curator

After the Supreme Court overturned the verdict of the Supreme Court No 54 P/HUM/2013 related to the substantive review of the Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia Number 01 Year 2013 regarding Guidelines for Remuneration for Receivers and Administrators, then result in:

1. It states that Article 2 paragraph (1) letter c Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia Number 01 Year 2013 regarding Guidelines for Remuneration for Receivers and Administrators contrary to legislation higher, namely Article 17 paragraph (2) and paragraph (3), as well as Article 76 of Law Number 37 of 2004 on Bankruptcy

and Suspension of Payment;

2. Furthermore, Article 2, paragraph (1) letter c Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia Number 01 Year 2013 regarding Guidelines for Remuneration for Receivers and Administrators, invalid and does not have binding legal force.
3. Article 2 paragraph (1) letter c Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia Number 01 Year 2013 regarding Guidelines for Remuneration for the enactment of Receivers and Administrators revoked.

With the granting of the application for judicial review of Article 2 paragraph (1) letter c Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia Number 01 Year 2013 regarding Guidelines for Remuneration for Receivers and Administrators is then for the Receiver to the task completed settlement treasures of the debtor in bankruptcy based on Labor Law and PKPU as a rule higher especially in relation to Article 17 paragraph (1) and paragraph (3) and Article 76.

And since Article 2, paragraph (1) letter c Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia Number 01 Year 2013 regarding Guidelines for Remuneration for Receivers and Administrators has revoked the entry into force so long as there is no rule that the new Decree of the Minister of Justice of the Republic of Indonesia Number: M.09-HT.05.10 1998 on Guidelines magnitude of PES For curator and the Board may be enforced by legal principles.

IV. Conclusion

Based on the results of research and pembahasan as described in the previous chapter, it can be concluded that:

1. The arrangement of the Fee Curator / Curator in Bankruptcy compensation for services in Indonesia has been based on:
 - a. Decree of the Minister of Justice of the Republic of Indonesia Number: M.09-HT.05.10 1998 PES For Receiver and Administrator,
 - b. Bankruptcy Law No. 37 of 2004, especially in Article 17 Paragraph (2) and paragraph (3), in conjunction with Article 76.
 - c. Regulation of the Minister of Justice of the Republic of Indonesia No. 1 Year 2013 About PES For Receivers and Administrators.
2. The legal consequences against the Curator in dealing with the settlement of bankruptcy in Indonesia after the Supreme Court Decision No. 54P/HUM 2013:
 - a. That the main core of the judicial review of Article 2 paragraph (1) letter c Permenkumham No. 1 Year 2013 on PES Receivers and Administrators to the Supreme Court in the grant by the Supreme Court. In its legal considerations assemblies found Candy's legal and human rights proved to be contrary to the law of higher Law No. 37 of 2004 on Labor Law and PKPU. So that Article 2 (1) c is declared invalid and not legally binding, the provisions of the repealed enactment of.
 - b. Legal consequences for the Receiver in bankruptcy: that in execution completed settlement treasures of the debtor in bankruptcy based on the Labor Law and PKPU as a rule higher especially in relation to Article 17 paragraph (1) and paragraph (3) and Article 76. And because Article 2 paragraph (1) letter c Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia Number 01 Year 2013 regarding Guidelines for Remuneration for Receivers and Administrators has revoked the entry into force so long as there

is no rule that the new Decree of the Minister of Justice of the Republic of Indonesia No. M.09-HT. 05:10 1998 on Guidelines magnitude of PES For Receivers And Board may be applied based on the principle of law. Until later born again guidelines on compensation for services for the curators and administrators

ENDNOTES

- ¹Peter Mahmud Marzuki, 2009, *Penelitian Hukum*, Kencana, Prenada Media Group, Ed.1., the first printed, Jakarta, page 93-95.
- ²Rahayu Hartini, 2003, *Bankruptcy Law*, Bayu Media, Malang, first printed, page 95 jo Rahayu Hartini, 2012, *Bankruptcy Law, Revision edition*, the Third printed, UMM Press, Malang, hal 117.
- ³See Article 1, the Decree of the Minister of Justice of the Republic of Indonesia No. M.09-HT.05.10 1998 on Guidelines magnitude of PES For Receivers and Managers.
- ⁴ See Article 2, the Minister of Justice of the Republic of Indonesia No. M.09-HT.05.10 1998 on Guidelines magnitude of PES For Receivers and Managers.
- ⁵Rahayu Hartini, op. Cit, page 118.
- ⁶Ibid, page 119.
- ⁷Ibid, page 120, see also Article 2 (4), the Minister of Justice of the Republic of Indonesia No. M.09-HT.05.10 1998 on Guidelines magnitude of PES For Receivers and Managers.
- ⁸Peter Mahmud Marzuki, Loc. Cit.
- ⁹ Erwin, Mohammed, 2011, *Philosophy of Law: Law Against Critical Reflection*. Jakarta: Raja Grafindo Persada, and Huijbers, Theo 1992, *Philosophy of Law in track history*, Canisius, Yogyakarta, and Jono, 2008, the Bankruptcy Law, Sinar Grafika, Jakarta, page 42.
- ¹⁰<http://www.hukumonline.com/berita/baca/1t512c39e91b715/andil-ma-dalam-kisruh-ifee-i-kurator-telkomsel,diaksestanggal15Oktober2016>.
- ¹¹<http://www.hukum-hukum.com/2016/09/pengaturan-fee-kurator-2016.html>, download at 7 November 2016.

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Legislation:

- PERPU No. 1 Year 1998 on Bankruptcy and Suspension of Payment
- Law No. 4 of 1998 on Bankruptcy and Suspension of Debt payments
- Law No. 37 of 2004 on Bankruptcy and Suspension of Payment.
- Regulation of the Minister of Law and Human Rights No. 1 Year 2013 on Guidelines Rewards Receivers and Administrators.
- Decree of the Minister of Justice of the Republic of Indonesia Nomor.M.09HT.5.10 1998 on Guidelines magnitude of PES For Receivers and Administrators.

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