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Juridical Analysis of the Role of Bankruptcy Curators in Settling Corporate Insolvency with Illiquid Assets in Indonesia

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Abstract

This research examines the role and responsibility of curators in resolving bankruptcy cases involving illiquid assets in Indonesia, as well as the legal economic strategies that may be adopted to optimize the value of the bankruptcy estate for creditors. Illiquid assets, which are difficult to sell or highly vulnerable to depreciation, often hinder the efficiency of bankruptcy proceedings under Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (UU KPKPU). This study employs a normative juridical method with a statutory, conceptual, case, and comparative approach, relying on primary legislation, court decisions, and secondary legal literature. The findings show that, normatively, the UU KPKPU grants curators broad powers to administer and liquidate the estate, yet in practice these powers are constrained by rigid procedures, limited technical guidance, and regulatory gaps concerning illiquid assets. To address these limitations, the curator's role needs to be interpreted progressively in line with Satjipto Rahardjo's Progressive Law, positioning law as an instrument to achieve substantive justice and utility rather than mere formal compliance. Building on Richard A. Posner's Economic Analysis of Law, the research identifies strategies such as negotiation, asset restructuring, asset pooling, investment cooperation, private sale, debt-to-equity swaps, and auction consortiums as tools to increase estate value, reduce transaction costs, and widen the distributive room for creditors, particularly concurrent creditors. The study concludes that integrating normative–dogmatic analysis with progressive law and economic analysis provides a more responsive and efficient framework for curators in handling illiquid assets within Indonesian bankruptcy law.

Keywords: Curator, Illiquid Assets, Bankruptcy, Progressive Law, Economic Analysis Of Law

INTRODUCTION

Bankruptcy is a legal instrument designed to provide a mechanism for the collective settlement of debts when a debtor is no longer able to fulfil its obligations to creditors (Fuady, 2014; Shubhan, 2012). Within the framework of a modern rule-of-law state, the institution of bankruptcy is important not only as a means of enforcing civil obligations, but also as a mechanism for stabilising the economic system because it enables the reallocation of resources from inefficient business actors to more productive ones (Jackson, 1986). A state of bankruptcy may be experienced by anyone, whether a natural person or a legal entity, so that bankruptcy has become an integral part of the dynamics of contemporary economic life (Sjahdeini, 2016). In Indonesia, the regulation of bankruptcy has undergone several changes since the colonial era, culminating in the enactment of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (the Bankruptcy Law) as the currently applicable regime (Republik Indonesia, 2004). The Bankruptcy Law defines bankruptcy as a general attachment over all assets of the bankrupt debtor whose administration and liquidation are carried out by a curator under the supervision of a supervisory judge (Republik Indonesia, 2004). This definition reflects the classical doctrine contained in Articles 1131 and 1132 of the Indonesian Civil Code regarding the concept of a general guarantee over all of the debtor's assets (paritas creditorum and pari passu prorata parte) as the basis for distributing the proceeds of liquidation to creditors (Sjahdeini, 2016).

The main purpose of bankruptcy law is to create a mechanism for the collective, orderly, and fair settlement of debts, while at the same time preventing the possibility of certain creditors unilaterally enforcing their rights to the detriment of other creditors (Fuady, 2014). From a socio-economic perspective, bankruptcy also functions to provide a "fresh start" for deserving debtors,

maintain confidence in commercial dealings, and minimise the social costs of business failure (Jackson, 1986). Thus, the existence of bankruptcy law essentially connects legal certainty, fairness among creditors, and economic efficiency within a single system. Although normatively the Bankruptcy Law provides a relatively comprehensive framework, its implementation in Indonesia often encounters various problems, both in terms of substantive law and procedural law. The condition for bankruptcy formulated in a simple manner in Article 2 paragraph (1) namely the existence of two or more creditors and at least one debt that has fallen due and is payable makes bankruptcy easily used as a tool for debt collection (Republik Indonesia, 2004; Sjahdeini, 2016). However, this simplicity is not always matched by an efficient, transparent, and equitable mechanism for administering and liquidating the bankruptcy estate, giving rise to criticism that in practice the Bankruptcy Law has the potential to create uncertainty for business and an asymmetry of protection between creditors and debtors (Fuady, 2014; Khairandy, 2013).

One of the prominent structural problems in bankruptcy practice in Indonesia is the difficulty of liquidating a bankruptcy estate when the asset composition is dominated by illiquid assets. In the finance literature, illiquid assets are defined as assets that cannot easily and quickly be converted into cash without a significant reduction in value, due to the absence of an active market, low transaction frequency, and wide bid ask spreads (Berk & DeMarzo, 2023; Bodie et al., 2014). Examples include certain types of real estate, old machinery, heavy equipment, shares in closely held companies, works of art, and non-performing receivables that are difficult to collect (Bodie et al., 2014). In the context of bankruptcy, Thomas H. Jackson emphasises that the presence of illiquid assets often slows down the liquidation process and reduces the recovery rate for creditors because of high valuation uncertainty and the limited number of potential buyers (Jackson, 1986).

A similar phenomenon is evident in Indonesian bankruptcy practice. Debtors in the form of business entities, particularly in capital-intensive sectors such as transportation, property, and manufacturing, often have an asset structure dominated by illiquid assets for example, problematic land and buildings, machinery with obsolete technology, heavy equipment that is no longer economical, as well as non-performing receivables (Fuady, 2014). Such assets are difficult to monetise in the short term and are prone to depreciation, while maintenance costs and tax burdens continue to accrue, cumulatively eroding the value of the bankruptcy estate. In several cases, such as the bankruptcy of PT Metro Batavia (Batavia Air), the liquidation process reportedly took years and ultimately resulted in a drastic reduction of the estate's value compared to initial estimates, leading to a very low recovery rate for creditors (Heronimus, 2015). This situation indicates a gap between the normative objectives of bankruptcy law and the empirical outcomes of liquidation when the bankrupt estate consists largely of illiquid assets. On the one hand, the system aspires to a speedy, fair, and proportional settlement of debts; on the other hand, the nature of illiquid assets tends to prolong the process, shrink the value of the estate, and inflate transaction costs (Berk & DeMarzo, 2023; Jackson, 1986). As a result, the function of bankruptcy as a collective mechanism to protect creditors while providing final resolution for the debtor is not optimally achieved.

Within the positive law framework, the sale of bankruptcy assets is in principle conducted through public auction subject to the statutory provisions in the field of auction, which are currently regulated, among others, in Minister of Finance Regulation Number 122/PMK.06/2023 on Auction Implementation Guidelines (Republik Indonesia, Menteri Keuangan, 2023). The auction procedure requires several stages valuation by an independent appraiser, determination of a reserve price, and announcement of the auction which demand considerable time and cost (Republik Indonesia, Menteri Keuangan, 2023). When the first auction fails and must be repeated several times, auction costs and asset maintenance expenses continue to accumulate, while the asset value may continue to decline, thereby reducing the net value that enters the bankruptcy estate (Diba, 2013b; Sjahdeini, 2016). The Bankruptcy Law itself does not stipulate a limit on

the number of auctions that may be held, which in practice allows cost accumulation without certainty as to when the assets will be sold. As an exception, Article 185 paragraph (2) of the Bankruptcy Law opens the possibility of selling bankruptcy assets by private sale if such a sale is considered more beneficial for the estate (Republik Indonesia, 2004). However, this provision is not accompanied by detailed operational guidelines regarding the criteria for "more beneficial", the procedure for selecting a buyer, valuation standards, or mechanisms for supervision and accountability (Diba, 2013b; Fuady, 2014). In practice, curators often have to rely on their own interpretation, negotiate with creditors, or refer to general rules on auction and contracts in order to justify their chosen strategy for selling illiquid assets. This regulatory vacuum may lead to disparities in practice, conflicts of interest, suspicion of undervalue sales, and differentiated treatment among creditors which may ultimately result in violations of the principle of paritas creditorum (Republic of Indonesia, 1847; Republik Indonesia, 1847; Sjahdeini, 2016).

It is in this context that the role of the curator becomes central. Normatively, the curator is a party appointed by the court to take control of, administer, and liquidate the bankruptcy estate under the supervision of a supervisory judge, and to represent the bankrupt debtor both inside and outside the court (Republik Indonesia, 2004). The curator is obliged to act independently, professionally, and in good faith in order to protect the interests of all creditors as well as the debtor (Shubhan, 2012; Sjahdeini, 2016). A number of studies show that the curator's responsibilities include the obligation to inventory the bankruptcy estate, verify claims, sell assets, draw up a distribution list, and submit periodic reports to the supervisory judge and creditors (Aprita, 2019; Muryati, 2017).

However, previous research has also revealed serious problems in the performance of curators' duties, ranging from weak independence, potential conflicts of interest, negligence in administering and liquidating the estate, to ethical violations that may harm both debtors and creditors (Aprita, 2019; Muryati, 2017; Napitupulu, 2020). In cases involving illiquid assets, the curator's burden of responsibility is multiplied: in addition to complying with the formal norms of the Bankruptcy Law and auction regulations, the curator must also be able to make strategic decisions regarding the timing, method, and scheme of sale that are most effective for preserving or maximising the value of the bankruptcy estate. Here, managerial capacity, market understanding, and the courage to undertake responsible innovations become crucial factors (Fuady, 2014; Jackson, 1986). From a theoretical perspective, the issue of the curator's role in liquidating illiquid assets requires an analytical framework that is not only legalistic, but also sensitive to substantive justice and economic efficiency. Progressive Legal Theory developed by Satjipto Rahardjo views law as a means to humanise human beings, rejects the notion that statutory texts are final and absolute, and encourages law enforcers to undertake breakthroughs in pursuit of substantive justice when positive law proves inadequate to resolve real-world problems (Rahardjo, 2009b). Progressive law posits that legal actors, including judges and curators, must dare to reread norms in light of the actual social context and the social purposes of law, rather than merely "spelling out articles" in a formalistic manner (Rahardjo, 2009b).

A number of Indonesian studies have examined the curator from the standpoint of authority, duties, and standards of prudence in the administration and liquidation of the bankruptcy estate, including issues of independence, potential conflicts of interest, and accountability through periodic reporting to the supervisory judge and creditors (Aprita, 2019; Muryati, 2017; Napitupulu, 2020). Other works, meanwhile, have highlighted the auction mechanism as the primary channel for selling bankruptcy assets and the recurring problems associated with it, such as procedural costs, the need for independent appraisal, the determination of a reserve price, and the risk of repeated failed auctions when the pool of buyers is limited (Diba, 2013a; Republik Indonesia, Menteri Keuangan, 2023; Sjahdeini, 2016). Yet, this literature generally approaches liquidation through a procedural–formal lens, so the "strategic" dimension

of the curator's decision-making particularly where the estate is dominated by illiquid assets often remains underdeveloped as a problem that requires evaluative criteria grounded in the objectives of bankruptcy: collective creditor protection, finality for the debtor, and economic efficiency (Fuady, 2014; Jackson, 1986).

At this juncture, the statutory exception allowing private sale under Article 185 paragraph (2) of the Bankruptcy Law in fact creates discretionary space for curators to adopt methods of liquidation better suited to the nature of illiquid assets (Republik Indonesia, 2004). However, because the provision is not accompanied by detailed operational guidance, a curator's decision may be contested on two fronts simultaneously: first, in terms of substantive fairness and creditor parity (whether creditors are treated equally and the process is transparent); and second, in terms of efficiency (whether the chosen mode of sale genuinely minimises transaction costs and maximises the estate's net value) (Posner, 2014; Sjahdeini, 2016). Accordingly, the central issue is not merely whether such discretion is legally permissible, but how to formulate criteria and governance safeguards that allow curatorial discretion to remain innovative and problem-solving, while also being measurable and accountable.

On the other hand, Economic Analysis of Law (EAL), pioneered among others by Ronald Coase and Richard A. Posner, regards legal rules as instruments for minimising transaction costs and maximising social welfare through the efficient allocation of resources (Coase, 1960; Marciano, 2012; Posner, 2014). From this perspective, a legal rule or practice is considered sound if it produces greater wealth maximisation and overall social utility compared to alternative arrangements, while still paying attention to justice as measured in terms of value, utility, and efficiency (Posner, 2014). In the context of bankruptcy, EAL offers a way to evaluate whether liquidation mechanisms including the curator's strategy in selling illiquid assets actually minimise the social costs of business failure and maximise returns for the parties involved (Jackson, 1986; Posner, 2014). These two theoretical frameworks Progressive Legal Theory and Economic Analysis of Law can complement each other in analysing the curator's role. Progressive Law emphasises the moral courage and creativity of law enforcers in interpreting norms for the sake of substantive justice and the protection of the public interest, whereas EAL provides tools to assess the economic impact of legal choices, including the efficiency of liquidation strategies (Posner, 2014; Rahardjo, 2009b). In bankruptcy cases involving illiquid assets, the combination of these two perspectives can be used to assess the extent to which curators can and should use the discretion available to them (for example through private sales) to preserve the value of the bankruptcy estate, while ensuring that such actions remain accountable and do not prejudice creditors or debtors.

Previous studies have generally focused on the curator's responsibilities and legal position in general, the mechanism of auctioning bankruptcy assets, or the legal protection of creditors in the distribution of liquidation proceeds (Aprita, 2019; Gustriansyah, 2017; Muryati, 2017; Napitupulu, 2020). Research that specifically examines the curator's role in resolving the bankruptcy of companies whose assets are predominantly illiquid, using Progressive Legal Theory and Economic Analysis of Law simultaneously, remains relatively limited. Yet it is precisely the problem of illiquid assets that in practice often becomes the source of delays, erosion of estate value, and creditor dissatisfaction with the curator's performance. The foregoing review suggests that scholarship on curators and auctions in Indonesia is already substantial, yet it often proceeds along two separate tracks: (i) a doctrinal/positive-law track that emphasises procedural compliance and distribution of liquidation proceeds, and (ii) an ethical–professional track focusing on integrity and the curator's responsibilities (Aprita, 2019; Gustriansyah, 2017; Muryati, 2017; Napitupulu, 2020). A key limitation, however, is that these studies do not consistently foreground the situation in which the bankruptcy estate is predominantly composed of illiquid assets as a decisive variable that changes the character of liquidation: it prolongs timelines, increases maintenance and safeguarding costs, heightens valuation uncertainty, and

ultimately erodes the net value available for distribution to creditors (Berk & DeMarzo, 2023; Bodie et al., 2014; Jackson, 1986). Consequently, practical debates may end at "procedural compliance," even where empirical outcomes remain suboptimal for both creditors and the debtor.

This is where the present research situates its novelty, namely by integrating Progressive Legal Theory and Economic Analysis of Law to assess the curator's role not merely as a procedural executor but as a decision-maker who must balance substantive justice and efficiency under conditions of open-textured norms (Posner, 2014; Rahardjo, 2009). Progressive law offers an ethical–methodological rationale for curatorial breakthroughs when formal auctions are ineffective for illiquid assets, provided such actions remain aligned with bankruptcy objectives and the protection of the public interest (Rahardjo, 2009). Economic Analysis of Law, in turn, provides evaluative tools to determine whether a chosen strategy (for example, repeated auctions versus private sale) actually reduces transaction costs, accelerates liquidation, and increases the estate's net value thereby affecting the magnitude of creditor recovery (Coase, 1960; Jackson, 1986; Posner, 2014).

To ensure that the statutory phrase "more beneficial" in Article 185 paragraph (2) does not remain purely normative, this research may operationalise it through measurable indicators, such as: (a) time-to-sale, (b) total transaction costs and asset carrying costs during administration (transaction & carrying costs), (c) the gap between realised sale value and appraised/fair value (realisation vs valuation gap), (d) recovery rate and the proportionality of distributions consistent with the pari passu prorata parte principle, and (e) the quality of governance in the sales process (transparency, traceability, conflict-of-interest mitigation, and supervisory judge oversight) (Posner, 2014; Republik Indonesia, Menteri Keuangan, 2023; Republik Indonesia, 2004; Sjahdeini, 2016). With this framework, the research contribution becomes not only descriptive but also prescriptive: it aims to propose guardrails so that curatorial innovation in liquidating illiquid assets remains fair, efficient, and accountable.

RESEARCH METHODS

This study employs a normative legal research method (doctrinal research design). In line with the views of Indonesian legal methodology scholars, normative/doctrinal research is understood as research that focuses on law as a norm (das sollen) by examining legal rules, principles, and doctrines, and by using legal reasoning to answer legal issues through interpretation and systematic analysis of legal materials (Marzuki & Mahmud, 2010; Soekanto et al., 2009). Accordingly, the "subjects" of this research are legal materials, which consist of: (1) primary legal materials, including the 1945 Constitution of the Republic of Indonesia, the Indonesian Civil Code, Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, Minister of Finance Regulation No. 122/PMK.06/2023 on Auction Guidelines, Director General of State Assets Regulation No. 6/KN/2013 on Technical Guidelines for Auction Implementation, as well as relevant decisions of the Commercial Courts and the Supreme Court; (2) secondary legal materials, comprising textbooks, journal articles, theses, dissertations, and scholarly opinions on bankruptcy law, Progressive Law, and Economic Analysis of Law; and (3) tertiary legal materials, such as legal dictionaries, encyclopedias, and relevant media publications.

Data were collected through library research, by systematically tracing legislation, court decisions, and academic literature relevant to the research topic. Consistent with doctrinal methodology, the main analytical focuses include: the normative regulation of the curator's role, legal mechanisms for administering and liquidating bankruptcy estates, the legal and economic

characteristics of illiquid assets, and the practical relevance of Progressive Law and Economic Analysis of Law. The legal materials were analysed using qualitative normative legal analysis through inventorying, classifying, and systematising legal materials, followed by interpretation using recognised methods grammatical, systematic, historical, and teleological interpretation to clarify the meaning and function of norms in resolving the legal issues under study (HS & Nurbani, 2014; Marzuki & Mahmud, 2010). The analysis was then continued with doctrinal analysis (to build prescriptive legal arguments based on norms and principles) and, where necessary, comparative analysis (to enrich evaluation of regulatory options), before drawing deductive conclusions from general legal norms and principles to the concrete issues of curator discretion and the liquidation of illiquid assets in bankruptcy. Since the findings are produced through qualitative legal reasoning and interpretation of legal materials, this research does not employ statistical models or mathematical formulas.

RESULT AND DISCUSSION

1. Procedural Framework of Indonesian Bankruptcy and the Centrality of the Curator

The doctrinal analysis of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment (UUK PKPU) confirms that Indonesian bankruptcy law is built on a collective debt-collection model. Once the simple requirements in Article 2 paragraph (1) are met at least two creditors and one due and payable debt the debtor may be declared bankrupt through a decision of the Commercial Court. Bankruptcy then creates a general attachment (sita umum) over all assets of the debtor (Article 1 point 1 and Article 21 UUK PKPU), and transfers the power to manage and dispose of those assets from the debtor to the curator (Articles 24 and 69). Within this framework, the curator becomes the central organ of the insolvency process. The statute clearly distinguishes between the curator's tasks (factual duties such as inventory, announcement, convening creditors' meetings, verification, distribution), powers (discretionary legal authority to represent the estate, borrow, encumber, sell, or continue the debtor's business), and liability (responsibility for negligence or abuse of power under Articles 72 and 78). Normatively, this structure is designed to protect creditors through professional management of the estate under judicial supervision (judge-supervisor).

However, the mapping of tasks, powers, and liabilities also reveals a tension: the curator is expected to act entrepreneurially to maximise value, but is at the same time exposed to broad civil and even criminal liability if decisions are later judged as imprudent, especially in difficult cases involving non-liquid assets. This tension becomes the main axis of the findings in the next subsections.

2. Non-Liquid Assets and Systemic Constraints in the Indonesian Bankruptcy Regime

The research shows that one of the most critical practical obstacles in Indonesian bankruptcy cases is the handling of non-liquid assets: non-cashable receivables, disputed or low-demand land, special-purpose industrial property, old machinery, aircraft parts, or other assets for which there is no active secondary market. Doctrinally, Article 202 UUK PKPU obliges the curator to carry out "pemberesan secepat mungkin" (prompt realisation). In practice, this obligation is difficult to fulfil when assets repeatedly fail to sell at auction or can only be sold at very deep discounts. Empirical studies and case-based literature cited in this work show that:

1. Repeated auctions are common for certain categories of assets because there are few or no bidders, even when the reserve price has been lowered.
2. During this prolonged process, assets are exposed to depreciation, storage and maintenance costs, regulatory risk, and market volatility, which erode the net value available for distribution to creditors.

3. In extreme cases, creditors particularly concurrent creditors may receive little or no payment, despite the formal application of the pari passu pro rata parte principle.

These findings indicate a gap between law in the books and law in action: while the statutory framework promises collective and proportionate satisfaction of creditors, the combination of illiquid assets, time, and costs can make this promise largely illusory. From the curator's perspective, the presence of non-liquid assets significantly raises the risk of ex-post liability. On the one hand, the curator is expected to avoid fire-sale prices; on the other, if values drop during a long waiting period, creditors may allege negligence. The absence of statutory standards on what constitutes "due care" in managing such assets leaves curators vulnerable to second-guessing in both civil and criminal proceedings.

3. Practice Challenges in Public Auctions

The analysis of the auction regime under Article 185 UUK PKPU and the latest Minister of Finance Regulation No. 122/2023 on Auction Guidelines shows that public auction is formally the default method of selling bankruptcy assets. It carries strong principles of transparency, openness, and public accountability through:

1. pre-auction announcements,
2. the use of authorised auction officials (KPKNL or licensed auction houses),
3. written minutes (risalah lelang) as authentic deeds for transfer of title, and
4. the availability of electronic auction platforms.

Yet, doctrinal and empirical materials reviewed in this study indicate several structural problems when the assets are non-liquid:

1. Thin or non-existent markets: For highly specific industrial assets, aircraft components, or specialised real estate, potential buyers are very limited. Auctions often fail simply because there are no bidders, even after repeated attempts.
2. No statutory limit on the number of auctions: While reserve prices may be adjusted, the law does not provide a maximum number of auction rounds or a clear decision point to switch to alternative methods. This legal silence invites delays and value erosion.
3. Legal defects and third-party claims over the asset: Ongoing disputes (e.g. land registration issues, overlapping security interests, third-party seizures) frequently lead auction officials to refuse to proceed, forcing curators into further litigation or clarificatory steps that prolong the process.
4. Administrative and holding costs: During prolonged auction attempts, boedel pailit must pay for storage, security, maintenance, and repeated announcements costs that are statutorily paid out of the estate and thus reduce the pool available to creditors.

These findings show that while the normative auction framework appears sophisticated, its practical performance for non-liquid assets is often inefficient and value-destructive, pushing curators to seek judicial permission for alternative methods such as private sales.

4. Private Sales and Curator Liability

Article 185 paragraph (2) UUK PKPU allows private sale (penjualan di bawah tangan) when, with the approval of the supervising judge, it is expected to yield a higher and more beneficial return for the estate. This provision embodies a flexibility clause that is conceptually compatible with both progressive law and economic analysis of law: it allows curators to depart from rigid auction procedures when they are clearly inferior in economic terms.

However, the research highlights several normative and practical weaknesses in the current regulation of private sales:

1. The statute does not define what counts as "more beneficial" or "highest possible price," leaving curators without clear benchmarks.
2. Land registration and sector-specific rules often still "prefer" auction minutes as documentary proof, making transfer of title after private sale administratively more complex.

3. Because valuations and negotiations are less visible than public auctions, private sales are more vulnerable to allegations of collusion, undervaluation, or conflict of interest, exposing the curator to civil, criminal, and ethical sanctions.

Case-based analysis shows that, in practice, private sales are sometimes conducted at 50 - 70% below initial appraisal values for deteriorating non-liquid assets. Courts have accepted such sales when:

1. there is documented evidence of repeated failed auctions,
2. a sworn appraiser has provided an updated valuation, and
3. the supervising judge has granted prior approval.

Nevertheless, doctrinal commentary and case analysis converge on the conclusion that clearer statutory and technical guidelines are needed to define acceptable ranges of discount, standards of valuation, and documentation in private sales, in order to protect both creditors and curators.

5. Case Study: The Batavia Air Bankruptcy

The bankruptcy of PT Metro Batavia (Batavia Air) offers a concrete illustration of how non-liquid (and often non-owned) assets, auction procedures, and regulatory gaps interact. The case study confirms several of the doctrinal and analytical points above:

1. A large portion of the airline's core assets aircraft were under international leasing arrangements and thus never became part of the estate, limiting the asset base available for creditors.
2. The remaining assets (spare parts, equipment, office facilities, ground support tools) were highly specific, expensive to maintain, and quickly depreciating, while market demand was weak.
3. Repeated auctions failed or produced offers far below appraisal values; storage and maintenance costs continued to accumulate.
4. The curator ultimately resorted to private sales at steep discounts, with judicial approval, to avoid further deterioration and cost.

Despite these efforts, the final recovery for concurrent creditors was extremely low, and a substantial gap remained between nominal claims and realised distributions. The Batavia Air case thus underscores that even a curator who acts within the legal framework and obtains judicial approvals may not be able to avoid severe value destruction when the legal and market environment is structurally unfavourable.

6. Progressive Law Perspective: Substantive Justice versus Formalism

From the perspective of progressive law (Satjipto Rahardjo), the findings suggest that Indonesian bankruptcy practice still leans heavily toward formal compliance fulfilling statutory steps, conducting auctions, issuing announcements rather than pursuing substantive justice for creditors. Several points emerge:

1. Formal adherence to Article 2 (simple proof test) can lead either to over-inclusive bankruptcies (as in the Telkomsel case at first instance) or to under-protection when debtor insolvency is primarily a liquidity rather than solvency problem.
2. In cases like Batavia Air, formal compliance with auction and distribution rules does not prevent drastic loss of asset value, leaving creditors practically unprotected.
3. The supervising judge's role is often exercised in a procedural rather than substantive manner, focusing on formal requirements instead of interrogating whether a proposed sale truly maximises value and benefits creditors.

Progressive legal theory invites judges and curators to reinterpret their roles: not as mere implementers of textual rules, but as active agents pursuing social and economic justice within and, where necessary, at the edges of existing statutory provisions. In bankruptcy, this implies:

a. a more purposive reading of provisions on auctions and private sales;

b. willingness to approve innovative arrangements (e.g. temporary operation, joint operations, structured private sales) when clearly beneficial to creditors;
c. critical assessment of whether repeated auctions still serve any meaningful function beyond formal compliance.

7. Law-and-Economics Perspective: Efficiency and Wealth Maximisation

Using economic analysis of law (Posner and others), the study evaluates Indonesian bankruptcy mechanisms against two key normative goals: efficiency (minimising transaction and deadweight costs) and wealth maximisation (maximising the total value of the estate before distribution).

The doctrinal and case analysis shows that:

a. Repeated auctions with few bidders, high administrative costs, and time-induced depreciation are economically inefficient, generating high deadweight losses for little or no gain in transparency.
b. In many scenarios, negotiated private sales, asset pooling, limited restructuring, or temporary income-generating use of assets would, from an economic standpoint, yield higher net value for creditors.
c. Curators, however, often avoid such economically rational strategies due to fear of ex-post liability in the absence of a clearly codified business judgment rule in Indonesian bankruptcy law.

Accordingly, the research suggests that aligning legal rules more closely with economic rationality would benefit both creditors and honest curators. This could be done by:

a. explicitly recognising a safe-harbour standard for curators who act on the basis of independent valuations and transparent cost benefit analyses;
b. providing more explicit guidance on when auctions may be skipped or abandoned in favour of better-justified private solutions;
c. encouraging courts to evaluate curator decisions ex ante (based on information available at the time), rather than punishing unfavourable outcomes ex post.

8. Strategic Options for Curators in Handling Non-Liquid Assets

Synthesising the doctrinal, case-law, progressive law, and law-and-economics analyses, the study identifies several strategic options for curators that remain compatible with UUK PKPU but move closer to efficiency and substantive justice:

A. Structured use of auctions and private sales

1. Conduct at least one well-publicised auction as required by law;
2. If demand is low, promptly seek judicial approval for private sale, supported by updated independent valuations and a documented cost benefit analysis.

B. Negotiation and targeted marketing

Proactively identify strategic buyers (e.g. industry players, competitors) and negotiate terms that reflect the specific utility of the asset to them, rather than relying solely on generic auction markets.

C. Asset pooling and bundling

Combine fragmented or unattractive assets into packages that make economic sense for buyers (e.g. grouping spare parts, receivables, or minor properties), thereby improving marketability and price.

D. Temporary productive use and cooperation schemes

Where legally and commercially feasible, maintain or restart limited operations (e.g. leasing out facilities, licensing IP, joint operations) under Article 104, to generate interim income and slow depreciation before final sale.

E. Transparent documentation and communication

1. Rigorously document all steps, valuations, and rationales;

2. Communicate strategies and expected outcomes to creditors through meetings and reports, reducing mistrust and potential litigation.

These options illustrate how curators can operate within the current statutory framework yet move towards a practice that is more efficient, fair, and protective of creditors' interests, especially when the estate consists largely of non-liquid assets.

9. Implications for Creditor Protection and Bankruptcy Policy

Overall, the results of this doctrinal and case-based research show that:

a. The formal architecture of Indonesian bankruptcy law is creditor-oriented on paper, but its effectiveness is substantially diminished in cases dominated by non-liquid assets.
b. Curators play a decisive role in bridging the gap between law and economic reality, but their ability to do so is constrained by regulatory vagueness and liability risks.
c. A combination of progressive interpretation and economic reasoning is necessary to steer the system toward outcomes that both respect legal certainty and deliver substantive justice and efficiency.

For policy, the findings support the need to:

1. refine UUK PKPU and implementing regulations to give clearer standards on curator discretion, valuation, and private sales;
2. strengthen the role of the supervising judge as a substantive reviewer of value-maximising strategies, not just a procedural gatekeeper;
3. develop professional guidelines and training for curators that incorporate law-and-economics and progressive law perspectives.

With these adjustments, bankruptcy law can better fulfil its normative objectives: resolving debt problems fairly and efficiently, protecting creditors, and avoiding unnecessary destruction of economic value particularly in complex cases involving non-liquid assets

CONCLUSION

The resolution of bankruptcy cases involving illiquid assets requires a curator's role that is not only guided by the written norms in the Indonesian Bankruptcy and Suspension of Debt Payment Obligations Act (UU KPKPU), but also by a more responsive and efficient legal approach. The curator is required to interpret his or her authority progressively so that the process of liquidation does not stop at the fulfillment of formal procedures, but truly produces optimal economic value for the creditors. First, with regard to the research question on the role of the curator, this study finds that, normatively, the authority to manage and liquidate illiquid assets has indeed been granted under the UU KPKPU. However, in practice, this role is often constrained by normative limitations, the lack of technical guidelines, and rigid procedural obligations. These conditions make it difficult for curators when dealing with assets that are difficult to sell, illiquid, or subject to depreciation. Therefore, the role of the curator needs to be understood through the lens of Satjipto Rahardjo's Progressive Law, namely by positioning law as an instrument to achieve utility and substantive justice, rather than merely implementing formal provisions mechanically.

Second, with regard to the research question on strategies for liquidating illiquid assets, this study concludes that the curator's actions should be based on two main pillars: first, the principles of efficiency and value enhancement in Richard A. Posner's Economic Analysis of Law, and second, the principle of substantive justice in progressive law. Strategies such as negotiation, asset restructuring, asset pooling, investment cooperation, private sale, debt-to-equity swap, and auction consortium have the potential to increase the value of the bankruptcy estate (boedel pailit) while reducing transaction costs. This approach is consistent with the principle of wealth maximization, under which legal actions are considered efficient when they

generate the greatest possible economic benefit. As the value of the estate increases, the room for distribution to creditors also expands, enabling distributive justice to be achieved more proportionally, particularly for concurrent creditors who are most vulnerable to losses in bankruptcy proceedings. Overall, this study affirms that integrating the normative–dogmatic approach with the principles of progressive law and economic analysis of law provides a robust foundation for curators to work more effectively in liquidating illiquid assets. The bankruptcy system will become more just, efficient, and responsive if curators are afforded sufficient interpretive space to prioritize economic value and substantive justice, while remaining within the corridor of accountability and the supervision of the commercial court.

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