



Moral Responsibility of Curators in the Liquidation of State-Owned Legal Entity Companies

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ABSTRACT

This study aims to investigate the ethical responsibilities of curators in managing the liquidation process of State-Owned Enterprises (SOEs). The method used is a literature review, examining various relevant sources to gain a deep understanding of the moral and ethical dilemmas faced by curators during the SOE liquidation process. The study's findings indicate that the moral responsibilities of curators encompass several critical aspects: protecting public interests by ensuring the continuity of essential services provided by SOEs to the community, considering the welfare of affected employees by providing fair compensation and support in finding new employment, ensuring fairness for all stakeholders involved in the liquidation process through high transparency to support accountability, upholding integrity and high business ethics to avoid conflicts of interest and ensuring decisions are based on mature moral considerations, and considering the social and environmental impacts of SOE liquidation and seeking solutions that minimize negative consequences. This research provides important insights for curatorial practices and the ethical and responsible management of SOE liquidations. Curators are also advised to continuously enhance their skills and expertise through ongoing training and education to ensure the liquidation process is conducted fairly, transparently, and responsibly.

Keywords: Responsibility; Moral; Curator; Liquidation.

INTRODUCTION

In the current era of globalization, business is not solely measured from a financial profit perspective, but also from the standpoint of social and moral responsibility (Gupta, 2022; Marantika et al., 2020). One of the entities playing a crucial role in managing complex business processes is the state-owned legal entity. However, when such companies move towards liquidation, significant questions arise regarding the moral responsibility of the curators involved in the process (Ishak et al., 2021).

State-owned legal entities often serve as pivotal pillars in a nation's economy. They are involved in vital sectors such as energy, infrastructure, and other public services (Apriliyanti & Kristiansen, 2019; Milhaupt & Pargender, 2017). However, when these companies face insurmountable financial difficulties, liquidation may become the only remaining option. This process, however, is not merely about asset management and financial obligations but also about its impacts on various stakeholders, including employees, contractors, and the general public (Gu & Xu, 2020).

One of the biggest challenges in the liquidation of state-owned legal entities is maintaining a balance between financial interests and moral and ethical considerations (Castañeda et al., 2020). The curators assigned to manage the liquidation process bear a significant responsibility to ensure that their decisions not only benefit shareholders or the government but also consider the well-being and fairness of all parties involved. In the context of liquidating state-owned legal entities, curators have complex moral responsibilities towards various stakeholders. They must ensure that the liquidation process is conducted transparently and fairly so that the interests of affected employees, contractors, and other parties are accommodated as best as possible. Additionally, curators must also consider the long-term implications on the general public and the local business ecosystem.

The liquidation of state-owned legal entities also involves managing assets that often hold significant value and strategic impact (Dewi et al., 2022). In this regard, curators have a moral responsibility to ensure that company assets are managed efficiently and do not harm other parties. They must also consider whether there are alternative options to liquidation that can minimize social and economic losses (Panjaitan et al., 2023).

Article 1 paragraph 1 of the Bankruptcy Law states that bankruptcy generally refers to a public seizure, whereby when a debtor is declared bankrupt by the Commercial Court, all of the debtor's assets (both individuals and legal entities) are transferred to the Curator. Therefore, discussing bankruptcy issues cannot be separated from discussions about the Curator, especially regarding the duties and responsibilities of the Curator in a bankruptcy process. In Article 70 paragraph (2), it is clearly stated that a Curator appointed by the Commercial Court Judge's Panel is someone who has special skills and expertise in managing and/or settling bankruptcy assets and is registered with the Ministry of Law and Human Rights of the Republic of Indonesia (Yuhelson, 2010). Based on Article 24 paragraph (1) of Law No. 37 of 2004, notes that "from the date the bankruptcy declaration decision is pronounced, the bankrupt debtor legally loses the right to control and manage their assets included in the bankruptcy estate." With the loss of control over their assets, the debtor can no longer take any action regarding their assets because the legal consequence of the bankruptcy declaration is the general seizure of all the debtor's assets, both those existing at the time of bankruptcy and those acquired during the bankruptcy proceedings (Sunaryo & Sukardi, 2023).

The curator's authority to secure the bankrupt assets is an authority that cannot be delayed in its implementation or can be said to be immediately enforceable (*uit overbears bij voorraad*) as regulated in Article 16 of the Bankruptcy Law. It means that immediately after the debtor is declared bankrupt, the curator's duty and authority to manage and liquidate the bankrupt assets to the fullest extent possible must commence promptly, even if the bankrupt debtor files a cassation appeal to the Supreme Court against the decision (Simanjuntak., 2003).

Liquidation and bankruptcy are two closely related legal processes, but they have differences in the context of treatment towards State-Owned Legal Entities (BUMN) companies (Ansari, 2019; Panjaitan et al., 2023). Liquidation is a process in which a company ceases all operations, sells all its assets, pays off its debts, and distributes the remaining proceeds to shareholders or the government. Liquidation can occur due to business failure, restructuring, or strategic decisions of the company. On the other hand, bankruptcy is a condition in which a company is unable to pay its debts and is forced to seek legal protection from the court to reorganize or settle its obligations to creditors. Bankruptcy provides legal protection to companies so that they can carry out restructuring or liquidation in a coordinated and fair manner.

In the context of State-Owned Enterprises (BUMN), liquidation and bankruptcy have different legal implications. Liquidation of a BUMN can occur when the company is no longer deemed viable to operate, for example, due to continuous losses or poor business prospects. The liquidation process is usually regulated by applicable laws and may involve government authorities or supervisory bodies that have jurisdiction over the BUMN. On the other hand, although BUMNs may not be in the same position as private companies regarding bankruptcy, they can still face serious financial issues. In such cases, BUMNs can seek legal protection by filing for bankruptcy, which allows them to undergo restructuring or liquidation processes under court supervision.

The relationship between liquidation and bankruptcy is sometimes complex, especially when BUMNs face financial problems. In some cases, liquidation may be a better option than bankruptcy, especially if the company cannot be rehabilitated or restructuring is not feasible. However, such decisions must be made considering the broad legal, financial, and social implications, as well as moral responsibilities towards various stakeholders involved. Thus, the role and moral responsibility of curators are crucial in the liquidation process of State-Owned Legal Entities (BUMNs) (Harjono, 2023; Wijayati, 2019).

The moral role of curators in the liquidation process of State-Owned Legal Entities (BUMNs) holds significant importance, especially considering the wide-ranging impacts of liquidation on various stakeholders and the general public (Hidayatussalam & Hasyim, 2022). BUMNs often have strategic roles in the economy and provide essential services to society. In the liquidation process, curators have a moral responsibility to ensure that the public interest remains

protected. They must consider the impact of liquidation on the services provided by the BUMN and efforts to minimize its negative effects. Additionally, BUMN liquidation can greatly affect employees working for the company. Curators have a moral responsibility to ensure that the rights and welfare of employees are carefully considered in the liquidation process. It includes ensuring fair wage payments, providing support in finding new employment, and minimizing potential social impacts. Curators also have a moral responsibility to ensure that liquidation is conducted fairly for all parties involved, including creditors, contractors, and suppliers. They must ensure that debt settlement processes are conducted transparently and by the law while avoiding misuse or discrimination against specific parties. In carrying out their duties, curators must act with high integrity and adhere to high standards of business ethics. They must avoid conflicts of interest and ensure that their decisions are based on mature moral considerations, not just financial or political considerations.

Considering the importance of these factors, the moral responsibility of curators is key to ensuring that the liquidation process of BUMNs is conducted fairly, transparently, and responsibly while minimizing its negative impacts on various stakeholders involved. It is not only about ensuring financial success in liquidation but also about maintaining integrity and fairness in performing crucial public functions.

RESEARCH METHODS

The method used in writing this applied thesis is the descriptive analytical method. This method involves collecting and using data that clearly depict the issues directly in the field, followed by analysis and conclusions to resolve the problem (Abdussamad, 2021). The data collection methods include observation and literature study, providing the foundation for finding solutions to the issues discussed in this research (NGUTRA, 2016).

The literature review method is extensively employed in this research to gather, analyze, and synthesize existing knowledge and studies related to 2W EV ride-hailing services and their implications for environmentally friendly mobility in Indonesia. This method is crucial as it provides context, identifies gaps in existing literature, supports field data analysis, and guides the selection of appropriate methodologies. Additionally, the socio-legal juridical approach is used to examine issues from a legal and systematic perspective, while the sociological approach is applied to study problems within society to obtain facts, identify issues, and seek resolutions (Soemitro, 1988; Sutedi, 2009). This combination of approaches ensures a comprehensive understanding of the legal and social dimensions of 2W EV ride-hailing services, facilitating the development of well-rounded solutions.

RESULTS AND DISCUSSION

Moral Responsibilities of Curators in the Liquidation of State-Owned Legal Entity Companies

The curator profession emerges as a consequence of bankruptcy law. Curators are institutions established by law to manage and liquidate bankrupt assets (Shubhan, 2012). The basic principle that a curator must possess is an educational background followed by advanced training activities organized by a curator's professional organization as a basis for performing their duties. The significance of education and advanced training is intended to strengthen moral character, thus realizing an independent curator in carrying out their tasks and responsibilities. Curators are appointed by a Court Judge along with a Supervisory Judge in a bankruptcy declaration decision. Curators appointed in such bankruptcy declaration decisions must be independent and have no conflict of interest with the debtor or creditors (Szarzec et al., 2021; Tryandari, 2021).

Article 72 of the Bankruptcy Law explicitly states that curators are responsible for errors or negligence in carrying out management and/or liquidation tasks that result in losses to the bankrupt estate. Curators are responsible for their actions while performing management and liquidation tasks of the bankrupt estate. Based on the Bankruptcy Law, the authority of curators includes: securing the bankrupt estate, recording the bankrupt estate, selling the bankrupt estate, and continuing the business of the bankrupt debtor (Marzuki., 2010).

State-Owned Legal Entity Companies as legal entities are born based on a legal process, so their termination must also go through a legal process. The Company Law divides the termination of a company into three stages. The first stage is dissolution. Article 142 paragraph (1) determines six reasons for the dissolution of a company. Since being dissolved, companies or companies or BUMN cannot carry out legal actions, except for liquidation. Every outgoing letter must include the words "in liquidation" after the company name as a form of notification to third parties. Within 30 days of the dissolution, the liquidator is obliged to announce it in newspapers and state news, and thereafter notify the Minister of Law and Human Rights (hereinafter referred to as the Minister). If this is not done, the dissolution of the company does not apply to third parties, and the liquidator is personally liable for losses to third parties. Creditors are given 60 days from the announcement to submit their claims. If the creditor does not submit a claim, even though there are remaining assets after liquidation, the creditor can submit a claim to the district court within 2 years from the date of the announcement (Paula, 2021).

Liquidation is a loanword from English, derived from the term "liquidation," which means determining the amount of unclear debt, debt settlement, or the process of converting assets into cash, especially to settle debts. This is clarified in Article 150 paragraphs (2) and (3) of the Company Law. The court may order the liquidator to retrieve the remaining proceeds of liquidation that have been distributed to shareholders (Article 150 paragraph (4) of the Company Law). Liquidation means the settlement and termination of the company's affairs. (Harahap., 2008) Actions taken in settling company affairs include: 1) recording and collecting assets, 2)

determining the procedure for asset distribution, 3) payment to creditors, 4) payment of remaining liquidation proceeds to shareholders, and 5) other necessary actions. After recording the company's assets, both assets and liabilities, the liquidator sells non-cash assets. Once all of the company's assets have been converted into cash, the liquidator pays the creditors. If there is still a surplus after payment, the remaining liquidation proceeds are distributed to the shareholders proportionally. Before making payments to creditors and shareholders, the liquidator must announce the distribution plan, including a detailed list of debts and their repayment plans, in newspapers and official gazettes. Once announced, creditors have 60 days to raise objections (Fuady, 2013).

The third stage is the termination of legal entity status. After the liquidation process is completed, the liquidator is required to be accountable for their duties to the General Meeting of Shareholders (RUPS) or the court that appointed them. If the accountability is accepted, the liquidator is released from their responsibility (*acquit et de charge*). Within 30 days, the liquidator must announce the results of the liquidation in newspapers and notify the Minister. Upon receiving this notification, the Minister records the termination of the company's legal entity status and announces it in the official gazette, as well as removing the company's name from the list of companies. Liquidation must be carried out for dissolved companies, regardless of whether they have conducted business activities or have assets at the time of dissolution. Article 142 paragraph (2) of the Company Law stipulates, "In the event of dissolution of a Company, ... it must be followed by liquidation carried out by a liquidator...." One of the reasons for dissolution is the company being inactive for three consecutive years or the wealth having diminished to such an extent that it is impossible to continue business operations.

The curators assigned to handle the liquidation of State-Owned Legal Entity (BUMN) companies must possess a variety of skills and broad knowledge. The following are some of the trainings they receive to prepare themselves for this task:

1. Business Law and Corporate Law.

Training in business law and corporate law is crucial for curators. They need to understand the fundamentals of law related to company liquidation, including legal processes, legal obligations, and the rights of stakeholders involved.

2. Financial Management.

Knowledge of financial management will assist curators in understanding the financial aspects of liquidation, such as asset valuation, debt restructuring, and allocation of available financial resources.

3. Accounting and Audit.

Training in accounting and audit is necessary to comprehend the company's financial statements, analyze financial conditions, and ensure compliance with applicable accounting standards.

4. Negotiation and Dispute Resolution.

Good negotiation skills are essential in the liquidation process, especially in resolving disputes with creditors, contractors, or other involved parties. Curators need to be trained in effective negotiation techniques and dispute-resolution strategies.

5. Communication and Presentation.

Effective communication with various stakeholders, including shareholders, employees, government, and media, is key to success in the liquidation process. Training in communication and presentation will help curators convey information clearly and persuasively.

6. Professional Ethics and Social Responsibility.

Training in professional ethics and social responsibility will assist curators in carrying out their duties with high integrity and considering the social impact of the decisions they make.

7. Leadership and Project Management.

Liquidation of state-owned enterprises can be a complex project requiring efficient and effective management. Training in leadership and project management will help curators in planning, organizing, and managing the liquidation process effectively.

8. Understanding of Industry and Regulations.

Curators need to have a good understanding of the industry in which the state-owned enterprise operates, as well as the regulations governing that industry. It will help them identify risks and opportunities associated with liquidation.

With comprehensive training in various fields, curators will be better prepared to face the complex challenges in the liquidation process of state-owned enterprises (BUMN). This training not only assists them in managing the financial and legal aspects of liquidation but also in considering the social impact, ethics, and moral responsibilities associated with their tasks. With a wealth of training and competencies possessed by curators, it must also be accompanied by an increased role of Moral Curators, to provide a sense of justice and ensure a feeling of safety and comfort in carrying out their roles and responsibilities in handling liquidation cases.

The moral responsibility of curators in handling cases of liquidation of state-owned enterprises (BUMN) encompasses various important aspects to be considered. Here are some things that curators must consider in carrying out their duties with integrity and moral responsibility:

1. Protection of Public Interests.

One of the primary responsibilities of curators is to ensure that public interests are protected in the liquidation process. They must ensure that the services provided by the BUMN continue to operate efficiently or are well-organized after liquidation. It may involve ensuring the continuity of vital services such as transportation, energy, or communication, or seeking alternative solutions if these services are threatened.

2. Employee Welfare.

Curators have a moral responsibility to consider the welfare of employees affected by liquidation. They must ensure that the liquidation process is conducted fairly towards employees, including providing fair wage payments, assisting in finding new employment, or providing counseling services if needed.

3. Fairness for Stakeholders.

Curators must ensure that the liquidation process is conducted considering the interests of all involved stakeholders, including creditors, contractors, suppliers, and others. They must take necessary steps to ensure that asset distribution is done fairly and transparently while considering the rights and legal obligations of all parties involved.

4. Transparency and Accountability.

Curators have a moral responsibility to conduct the liquidation process with high transparency and accountability. They must provide clear and open information to all involved parties, including shareholders, the government, and the general public. This includes disclosing information about the company's financial condition, the liquidation process, and the decisions made.

5. Integrity and Business Ethics.

Curators must act with high integrity and adhere to high business ethics principles in carrying out their duties. They must avoid conflicts of interest and ensure that the decisions they make are based on mature moral considerations, not just financial or political considerations.

6. Social and Environmental Impact.

Curators must consider the social and environmental impact of the liquidation of state-owned enterprises. They must ensure that the liquidation process does not cause unnecessary harm to society or the environment, and if possible, they should seek solutions to minimize such negative impacts.

Taking these aspects into consideration, curators can carry out their duties with high integrity, transparency, and moral responsibility in handling cases of liquidation of state-owned legal entity companies. It is not just about achieving financial or legal goals, but also about maintaining integrity and fairness in managing assets owned by the public collectively. In principle, the moral responsibility of Curators cannot be separated from theories other than independence, namely transparency theory.

Transparency theory is highly relevant in the context of the moral responsibility of curators in the liquidation process of state-owned legal entity companies (BUMN). Transparency refers to the practice of providing obvious, open, and easily accessible information to all involved parties. In the context of the liquidation of BUMN, the relationship between transparency theory and the moral responsibility of curators can be explained as follows:

1. Providing Clear and Open Information.

The moral responsibility of curators includes the obligation to provide clear and open information to all parties involved in the liquidation process, including shareholders, employees, creditors, and the general public. This includes information about the company's financial condition, liquidation plans, decision-making processes, and their impact on various stakeholders.

2. Supporting Accountability and Responsibility.

Transparency helps support the accountability and responsibility of curators for their decisions and actions in the liquidation process. By providing clear and open information, curators enable others to understand and evaluate their decisions, as well as provide feedback or criticism if necessary.

3. Preventing Conflicts of Interest.

Transparency can also help prevent conflicts of interest in the liquidation process. By conducting the process openly and transparently, curators can minimize the risk of allegations or perceptions of bias or abuse of power.

4. Respecting Stakeholders' Right to Know.

Transparency theory also respects stakeholders' right to know relevant information in the liquidation process. Curators have a moral responsibility to ensure that these rights are recognized and respected, and to provide adequate access to necessary information for all parties involved.

5. Building Trust and Legitimacy.

Consistent and effective transparency practices in the liquidation process help build trust and legitimacy for curators and the institutions involved. By providing clear and open information, curators can demonstrate their integrity and strengthen public trust in the ongoing liquidation process.

Thus, transparency theory plays an important role in guiding the moral responsibility of curators in the liquidation process of state-owned legal entity companies. The principles of transparency help ensure that the liquidation process is conducted with integrity, accountability, and fairness and strengthen public trust in the institutions and decision-makers involved.

Continuous development and training are key to ensuring that the moral responsibility of curators is continuously enhanced and developed in the future. Here are some ways in which the moral responsibility of curators can be continuously trained and developed:

1. Ethics and Professional Ethos Training.

Special training programs can be held to discuss ethical issues relevant to the work of curators. This includes discussions about ethical dilemmas that may be encountered in the liquidation process and how to handle them with integrity and courage.

2. Case Studies and Discussions.

Real case studies of the liquidation of state-owned legal entity companies from various countries can be a valuable learning resource for curators. Discussions about these cases can help them understand the moral and ethical complexities involved in the liquidation process.

3. Conflict Management Training.

Since liquidation often involves various parties with different interests, training in conflict management can help curators handle conflicts wisely and avoid detrimental conflicts of interest.

4. Effective Communication Training.

Training in effective communication can help curators convey information clearly and persuasively to various parties involved in the liquidation process. This includes the ability to listen empathetically and manage communication conflicts.

5. Development of Management and Leadership Skills.

Strong management and leadership skills are essential for curators to successfully manage the liquidation process. Training in this area can help them become effective leaders capable of addressing complex challenges.

6. Technical Training.

Training in law, finance, accounting, and project management is also necessary to ensure that curators have the knowledge and skills needed to carry out their duties effectively.

7. Continuing Education.

Curators need to continuously update their knowledge and skills through continuing education and advanced training. They can attend seminars, conferences, or courses relevant to their field to stay updated with the latest developments in law, ethics, and best practices.

By engaging in continuous training and development, the moral responsibility of curators can be continuously enhanced and developed to ensure that they are prepared to face moral and ethical challenges in handling the liquidation of state-owned legal entity companies.

CONCLUSION

In liquidating state-owned companies (BUMN), curators bear significant moral responsibility to ensure the process is conducted with integrity, transparency, and fairness. They must protect public interest by maintaining essential services and considering the welfare of affected employees, including fair payments and employment support. Ensuring fairness for all stakeholders, such as creditors, contractors, and suppliers, and maintaining transparency to support accountability and minimize conflicts of interest is crucial. Curators should adhere to high ethical standards, act with integrity, and avoid conflicts of interest while also considering the social and environmental impacts of liquidation, seeking solutions to minimize negative effects.

Continuous training and education help curators handle ethical challenges, ensuring a fair, transparent, and responsible liquidation process.

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