



Analysis of Determination of Bankruptcy Costs and Curator Service Costs Reviewed from Aristotle's Distributive Justice Theory (Case Study of Intidana Savings and Loan Cooperative Bankruptcy in Indonesia)

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Abstract

The main problem in this writing is whether the determination of bankruptcy costs and curator service fees by the Commercial Court of Semarang is in accordance with Aristotle's distributive justice theory based on the case study of the determination Number. 1/Pdt.Sus-Cancellation of Peace/2022/PN.Niaga Smg *jo.* Number 10/Pdt.Sus-PKPU/2015/PN.Niaga Smg and the legal consequences that arise. The practical purpose of this writing is to determine whether the determination of bankruptcy costs and curator service fees is in accordance with the theory of justice in law, especially using the distributive justice theory regarding the principle of proportionality according to the legendary figure Aristotle. Judge's considerations in this determination are also analyzed based on the provisions in UUK-PKPU. The conclusions obtained are as follows: The determination of bankruptcy costs and curator service fees in the study of Determination Number. 1/Pdt.Sus-Cancellation of Peace/2022/PN.Niaga Smg *jo.* Number 10/Pdt.Sus-PKPU/2015/PN.Niaga Smg, is not in accordance with Aristotle's distributive justice theory. In practice, bankruptcy costs and curator service fees have been disproportionate where Intidana Savings and Loan Cooperative (KSP) has a larger payment obligation compared to the bankrupt petitioner, which is not in line with the principle of proportionality or equal distribution from Aristotle's Distributive Theory. The legal consequences arising from the issuance of Determination Number. 1/Pdt.Sus-Cancellation of Peace/2022/PN.Niaga Smg *jo.* Number 10/Pdt.Sus-PKPU/2015/PN.Niaga Smg, include: the imposition of high curator service fees, the occurrence of execution, and the inability of Intidana Savings and Loan Cooperative (KSP) to operate again, which is not in accordance with the theory of justice.

Keywords: *Determination of Bankruptcy Costs; Curator Services; Bankruptcy; Distributive Justice*

Introduction

Building the economy of Indonesia, one of which is the cooperative business entity capable of fostering good growth to reduce the number of people living in poverty (Sukamdiyo, 1996:144). Indonesia has hundreds of cooperatives that have been formed, and certainly not all of them can operate effectively. Legal issues continue to emerge in this field, requiring serious attention from the government (Gusti, 2018:3).

Bankruptcy is one of the problems that arise in cooperatives. The terms "bankruptcy" and "insolvency" have different meanings. According to Article 1 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUK-PKPU), "*Bankruptcy is the general seizure of all assets of the Bankrupt Debtor whose management and settlement are carried out by the Curator under the supervision of the Supervisory Judge.*" Meanwhile, the definition of insolvency according to Article 2 paragraph (1) of the Indonesian Bankruptcy Law is, "*A Debtor who has two or more creditors and fails to fully pay at least one debt that has fallen due and is demandable.*"

The Curator has the duty to carry out the management and/or settlement of bankruptcy assets in bankruptcy cases. As stipulated in Article 75 of the Indonesian Bankruptcy Law "*The amount of the Curator's remuneration is determined after the bankruptcy proceedings have concluded.*" Elyta Ras Ginting in her book titled "*Bankruptcy Law: Management and Settlement of Bankruptcy Assets*" Explaining the reasons for the termination of bankruptcy as stated in the Indonesian Bankruptcy Law include: Terminated because the bankruptcy of the debtor imposed by the commercial court has been annulled by the Supreme Court at the cassation or judicial review level; Terminated because the bankruptcy of the debtor at the request of the supervisory judge has been revoked by the commercial court because there are no bankruptcy assets or even insufficient to pay bankruptcy costs; Terminated because there has been a settlement agreement to pay debts between the debtor and concurrent creditors and the peace agreement has been approved by the commercial court and has obtained final legal force; Terminated by settlement and payment to creditors.

The focus of this research is the case of Intidana Savings and Loan Cooperative (KSP) which was declared bankrupt through Decision Number 874K/Pdt.Sus-Pailit/2022 dated May 31, 2022, and has been annulled through the Judicial Review Decision Number 43PK/Pdt/Sus-Pailit/2022 dated October 13, 2022, with one of its clauses "*Stating that Intidana Savings and Loan Cooperative (KSP) has returned to its original state and is no longer bankrupt*". Thus, through the judicial review decision, it annulled the previous cassation decision which declared Intidana Savings and Loan Cooperative (KSP) bankrupt.

The focus of this writing is on bankruptcy costs and curator remuneration if the bankruptcy decision is annulled through a judicial review. The legal basis for determining the curator's remuneration in such circumstances is stipulated in Article 17 of the Indonesian Bankruptcy Law, with specific guidelines further regulated in Article 3 of the Minister of Law and Human Rights Regulation No. 18 of 2021 concerning Guidelines for Remuneration for Curators and Administrators. The issuance of Decision Number. 1/Pdt.Sus-Cancellation of Peace/2022/PN.Niaga Smg jo. Number 10/Pdt.Sus-PKPU/2015/PN.Niaga Smg in the context of burdening bankruptcy costs and curator remuneration between the bankrupt petitioner and the bankrupt respondent is considered unbalanced and unfair.

The objection deemed not to meet the theory of distributive justice in the determination of Decision Number. 1/Pdt.Sus-Cancellation of Peace/2022/PN.Niaga Smg jo. Number 10/Pdt.Sus-PKPU/2015/PN.Niaga Smg is that the panel of judges of the Semarang commercial court, which lacks authority, determined the bankruptcy costs and curator remuneration because it does not comply with Article 17 paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and PKPU. Bankruptcy costs and curator remuneration must be determined by the panel of judges that annuls the bankruptcy declaration decision, in this case, the Supreme Court panel of judges that annuls the bankruptcy and not the panel of judges of the Semarang district court.

The panel of judges of the Semarang commercial court made a mistake in determining the 7 (seven) components of calculating bankruptcy costs and curator remuneration that do not comply with the provisions of Article 4 paragraph (2) letters a to g, Minister of Law and Human Rights Regulation No. 18 of 2021 concerning Guidelines for Remuneration for Curators and Administrators. Aristotle expressed that *justice consist in treating equals equally and unequals unequally, in proportion to their in equality.*

This principle stems from the assumption that similar things should be treated alike, and dissimilar things should be treated differently, proportionally (Budiono, 2015:23). Likewise, in Decision Number. 1/Pdt.Sus-Cancellation of Peace/2022/PN.Niaga Smg jo. Number 10/Pdt.Sus-PKPU/2015/PN.Niaga Smg, it is examined using Aristotle's distributive justice theory.

Research Methodology

This research uses a normative juridical method (Efendi, 2018:52), which is a legal research method that examines legal issues based on the regulations that govern them. This research uses secondary legal data obtained through literature review. The analytical approach used is descriptive analytical, which involves describing the legal issues analyzed to subsequently seek answers to the research problems (Juanda, 2016:157).

Research Results and Discussion

1. Analysis of the Determination of Bankruptcy Costs and Curator Service Costs in Case Number. 1/Pdt.Sus-Cancellation of Peace/2022/PN.Niaga Smg jo. Number 10/Pdt.Sus-PKPU/2015/PN.Niaga Smg

Intidana Savings and Loan Cooperative is a legal entity that has been certified with Number: 14020/BH/KWK.11/V/2001 dated May 21, 2001 by the Department of Cooperatives of Small and Medium Enterprises (Depkop PK & M) of Central Java Province. This case is described in the cassation legal efforts in Case Number 874 K/Pdt.Sus-Pailit/2022 dated May 31, 2022, where the verdict declared Intidana Savings and Loan Cooperative bankrupt with all legal consequences and appointed a curator to manage and settle the bankruptcy estate. In the decision of Case Number 874 K/Pdt.Sus-Pailit/2022 dated May 31, 2022, a Curator Team consisting of 6 (six) members was appointed as stated in paragraph number 6 (six) and determined the curator's remuneration (*fee*) to be determined after the curator has completed their tasks.

Not stopping there, Intidana Savings and Loan Cooperative filed for a Judicial Review registered under Case Number 43 PK/Pdt.Sus-Pailit/2022 dated October 13, 2022. This Judicial Review effort yielded positive results, as stated in the verdict issued by the Supreme Court panel of judges, which declared Intidana Savings and Loan Cooperative back to its original state (not bankrupt). As the bankruptcy was annulled, it follows that the curator had also performed tasks related to managing and settling the bankruptcy estate. The curator had been working since the receipt of the cassation verdict from the Supreme Court on July 27, 2023, until the receipt of the annulment of bankruptcy on November 18, 2022, totaling 114 (one hundred fourteen) days or approximately 4 (four) months. The curator team submitted a request for the determination of curator remuneration and bankruptcy costs on November 28, 2022.

That the considerations of the *Judex Factie* in the *a quo* determination regarding the level of complexity, capability, and hourly rate of the Curator Team are determined based on the provisions of Article 4 paragraph (2) of the Minister of Law and Human Rights Regulation No. 18 of 2021 concerning Guidelines for Remuneration for Curators and Administrators, namely: Length of service as a curator; The magnitude or number of bankruptcy cases handled; The value of bankruptcy assets ever handled; Matters related to the curator's track record during the management and settlement process; Number of creditors; Location of the handled bankruptcy estate; and Reasonableness of time allocated in performing the work.

The registered number of members of Intidana Savings and Loan Cooperative (KSP) is 30,406 (thirty thousand four hundred six) members, with 2,587 (two thousand five hundred eighty-seven) members or creditors submitting claims totaling Rp. 818,298,952,245.00 (eight hundred eighteen trillion two hundred ninety-eight billion nine hundred fifty-two million two hundred forty-five Indonesian Rupiah).

That the value of the bankruptcy estate corresponds to the total assets of Intidana Savings and Loan Cooperative (KSP) amounting to Rp. 424,650,950,965.00 (four hundred twenty-four billion six hundred fifty million nine hundred fifty-two thousand nine hundred sixty-five Indonesian Rupiah) as stated in the financial report of Intidana Savings and Loan Cooperative (KSP) as of December 31, 2021. Likewise, the presence of the bankruptcy estate handled by the curator team is spread across 29 (twenty-nine) branch offices of Intidana Savings and Loan Cooperative (KSP) operating in 4 (four) provinces, namely DKI Jakarta, West Java, Central Java, and East Java.

The length of service, the number of bankruptcy cases handled, track record, and reasonableness of time can be explained that the average curator team consists of curators with professional experience of over 4 (four) years, with a track record of never committing errors or negligence or violating principles of independence. Quoting the opinion of Elyta Ras Ginting, S.H., LL.M., in bankruptcy law, management, and settlement of bankruptcy assets, Sinar Grafika, Jakarta, p. 412, it is stated that: in practice, the Telkomsel bankruptcy curator remuneration case is an example that the application of Article 17 paragraph (3) of the Bankruptcy Law which gives the option to the commercial court to impose bankruptcy costs and curator remuneration on the bankrupt petitioner and debtor in a balanced comparison must be approached with caution and is exceptional in nature.

Based on the description above, the panel of judges does not agree with the hourly rate calculated and proposed by the curator team amounting to Rp. 4,000,000.00 (four million rupiah). The panel of judges agrees with the recommendation of the supervisory judge, considering the position of the main office of Intidana Savings and Loan Cooperative (KSP) located in Semarang and considering the rights of Intidana Savings and Loan Cooperative (KSP) members who have not yet received full payments, thus a fair and balanced hourly rate of Rp. 2,000,000.00 (two million rupiah) is appropriate. Therefore, the calculation is as follows:

Table 2. Curator Team Remuneration Fees

No	Curator Names	Average Working Hours	Total Days	Hourly Rate (Rp.)	Total Fee (Rp.)
1.	Anastasius Wahyu Priyo Utomo, S.H., M.H.	9 Hours	114	2.000.000	2.052.000.000,00
2.	Amanda Rizki Hutama, S.H.	10 Hours	114	2.000.000	2.280.000.000,00
3.	Eko Roesanto Fiaryanto, S.H., M.H.	11 Hours	114	2.000.000	2.508.000.000,00
4.	Victor Sandi Quartia, S.H.	10 Hours	114	2.000.000	2.508.000.000,00
5.	Bambang Muntaha, S.H., M.H.	11 Hours	114	2.000.000	2.280.000.000,00
6.	Iwan Budisantoso, S.H., M.Kn.	9 Hours	114	2.000.000	2.052.000.000,00
Total Remuneration Fee					13.680.000.000,00

Source: Decision Number. 1/Pdt.Sus-Cancellation of Peace/2022/PN.Niaga Smg jo. Number 10/Pdt.Sus-PKPU/2015/PN.Niaga Smg.

The curator team's remuneration fee of Rp. 13,680,000,000.00 (thirteen billion six hundred eighty million rupiah) is allocated to the bankrupt petitioners at 20% (twenty percent), or Rp. 2,736,000,000.00 (two billion seven hundred thirty-six million rupiah) jointly and severally, and to the bankrupt respondents at 80% (eighty percent), or Rp. 10,944,000,000.00 (ten billion nine hundred forty-four million rupiah), considering that the bankrupt petitioners as creditors or members have not received any payments from Intidana Savings and Loan Cooperative (KSP) yet. Conversely, in the bankruptcy administration process, the assets secured are from Intidana Savings and Loan Cooperative (KSP), hence it is reasonable for Intidana Savings and Loan Cooperative (KSP) to bear a larger percentage of the responsibility for remuneration fee payments.

Article 3 paragraph (1) letter c of the Minister of Law and Human Rights Regulation No. 18 of 2021 concerning Guidelines for Remuneration for Curators and Administrators, only regulates remuneration fees excluding administration costs. Therefore, the supervisory judge agrees with Elyta Ras Ginting, S.H., LL.M., in bankruptcy law, management, and settlement of bankruptcy assets, Sinar Grafika, Jakarta p. 42, that imposing bankruptcy costs and curator remuneration on the bankrupt petitioner and debtor in a balanced comparison must be approached with caution and is exceptional in nature.

The administration costs amount to Rp. 4,484,082,868.00 (four billion four hundred eighty-four million eighty-two thousand eight hundred sixty-eight Indonesian Rupiah), allocated to the bankrupt petitioners at 25% (twenty-five percent), or Rp. 1,121,020,717.00 (one billion one hundred twenty-one million twenty thousand seven hundred seventeen Indonesian Rupiah) jointly and severally, and to the bankrupt respondents at 75% or Rp. 3,363,062,151.00 (three billion three hundred sixty-three million sixty-two thousand one hundred fifty-one Indonesian Rupiah).

The costs incurred due to the document submission process, delayed or unfulfilled bankruptcy assets due to unpreparedness from the management of Intidana Savings and Loan Cooperative (KSP) from November 19, 2022, until the implementation date of the submission process, amount to Rp. 43,130,685.00 (forty-three million one hundred thirty thousand six hundred eighty-five Indonesian Rupiah), fully borne by Intidana Savings and Loan Cooperative (KSP). The curator team's standby working hours cost Rp. 1,584,000,000.00 (one billion five hundred eighty-four million Indonesian Rupiah), with the breakdown as follows:

Table 3. Curator Team Standby Working Hours Costs

No	Curator Names	Average Working Hours	Total Days	Hourly Rate (Rp.)	Total Fee (Rp.)
1.	Anastasius Wahyu Priyo Utomo, S.H., M.H.	10 Jam	12	2.000.000	240.000.000,00
2.	Amanda Rizki Hutama, S.H.	11 Jam	12	2.000.000	264.000.000,00
3.	Eko Roesanto Fiaryanto, S.H., M.H.	12 Jam	12	2.000.000	288.000.000,00
4.	Victor Sandi Quartia, S.H.	11 Jam	12	2.000.000	264.000.000,00
5.	Bambang Muntaha, S.H., M.H.	10 Jam	12	2.000.000	240.000.000,00
6.	Iwan Budisantoso, S.H., M.Kn.	12 Jam	12	2.000.000	288.000.000,00
Total Remuneration Fee					1.584.000.000,00

Source: Decision Number. 1/Pdt.Sus-Revocation of Peace/2022/PN.Niaga Smg jo. Number 10/Pdt.Sus-PKPU/2015/PN.Niaga Smg.

The standby working hours costs arise from the process of document submission and delayed or unfulfilled bankruptcy assets due to the unpreparedness of the management of Intidana Savings and Loan Cooperative (KSP), and therefore are fully charged to Intidana Savings and Loan Cooperative (KSP). As for several formal and material errors, anomalies, and objections found in Decision Number 1/Pdt.Sus-

Revocation of Peace/2022/PN.Niaga Smg jo. Number 10/Pdt.Sus-PKPU/2015/PN.Niaga Smg, based on the said decision, the Panel of Judges of the Commercial Court of Semarang is not authorized to determine the bankruptcy costs and curator remuneration. Article 17 paragraph (2) of the Bankruptcy Law and PKPU Regulation explains that bankruptcy costs and curator remuneration must be determined by the Panel of Judges that annulled the bankruptcy declaration decision, in this case, the Panel of Judges of the Supreme Court as the Panel of Judges that annulled the Bankruptcy.

The Decision Number 1/Pdt.Sus-Revocation of Peace/2022/PN.Niaga Smg jo. Number 10/Pdt.Sus PKPU/2015/PN. Niaga Smg is condemnatory in nature, where the petition is filed unilaterally without the presence of the opposing party. This petition can also be termed as a voluntary lawsuit. Based on Article 2 Paragraph (1) of Law No. 14 Year 1970 (as amended by Law No. 35 Year 1999) concerning the Organization of Judicial Power states:

“The resolution of each case submitted to the judicial bodies implies the resolution of the issues involved with voluntary jurisdiction”.

The determination referred to is *declaratoir* in nature, where the decision contains statements or affirmations about a particular state or legal position alone. Determination decisions are limited to decisions that only contain orders declaring, stating, or affirming a certain state or legal relationship without compelling any party to perform specific actions(Wiyono, 2019:124).

That the determination issued for matters that are highly limiting in nature with the condition of *ex partae* or unilateral, is very limited and highly exceptional in certain specific cases only and may only be applied to issues specified and determined by the law affirming that the issue in question can or may be resolved voluntarily in the form of a petition for a determination. Characteristics of a determination include(Harahap, 2002:34): The issue presented is solely one-sided interest(*for the benefit of the party only*); The issue submitted to the District Court essentially without dispute with other parties (*without disputes or differences with another party*); There is no other person or third party drawn as a counterparty, but it is *ex-parte* in nature.

Based on the above, it has been proven that there is a fundamental error in Decision Number 1/Pdt.Sus-Pembatalan Perdamaian/2022/PN.Niaga Smg jo. Number 10/Pdt.Sus PKPU/2015/PN. Niaga Smg, where the Fee for Curator's Services (fee) is *condemnatoir* in nature with the existence of a judgmental clause, whereas a Decision can only contain *declaratoir* clauses.

Based on the author's analysis, there are several errors in Decision Number 1/Pdt.Sus-Pembatalan Perdamaian /2022/PN.Niaga Smg jo. Number 10/Pdt.Sus PKPU/2015/PN. Niaga Smg, namely the occurrence of several mistakes by the panel of judges of the Semarang commercial court. The mistake of the panel of judges of the Semarang commercial court, which is not authorized to determine the bankruptcy costs and curator's fees. Referring to Article 17 paragraph (2) of Law No. 37 of 2004 on Bankruptcy and PKPU, especially in terms of imposing bankruptcy costs and curator's fees, the distribution of 80% for KSP (Cooperative Savings and Loan) Intidana and 20% for the applicant is highly disproportionate and unfair. Based on Article 17 paragraph (3) of Law No. 37 of 2004, it is stated that: "The costs referred to in paragraph (2) shall be charged to the applicant for the bankruptcy declaration or to the applicant and debtor in a proportion determined by the panel of judges." Based on Article 3 paragraph (1) letter C of Minister of Law and Human Rights Regulation No. 18 of 2021, it is stated that: "(1) The amount of curator's fee is determined as follows; In the event that the bankruptcy declaration application is rejected at the cassation or review level, the amount of the fee is charged to the applicant for the bankruptcy declaration or the applicant and debtor, the amount of which is determined by the panel of judges." Based on the above description, the imposition of curator's fee should be prioritized for the

applicant for the bankruptcy declaration, because bankruptcy would not occur without the bankruptcy declaration applicant.

The mistake of the Semarang commercial court judges lies in determining the 7 (seven) components of bankruptcy cost calculation and curator's fee. Regarding the tenure of the curator, which is still new and less than 4 (four) years. In fact, based on the Appointment Decree (SK) of the curator, the curator team only has a tenure of 1 (one) to 3 (three) years. This is evidenced by the data table below:

Table 4. Tenure of Curator Team

No	Curator's Name	SK Number	SK Date
1.	Anastasius Wahyu Priyo Utomo, S.H., M.H.	AHU-57 AH. 04. 04 – 2019	March 25, 2019
2.	Amanda Rizki Hutama, S.H.	AHU-149 AH. 04. 03 – 2020	January 31, 2020
3.	Eko Roesanto Fiaryanto, S.H., M.H.	AHU-156 AH. 04. 03 – 2019	July 25, 2019
4.	Victor Sandi Quartia, S.H.	AHU-161 AH. 04. 03 -2019	August 23, 2019
5.	Bambang Muntaha, S.H., M.H.	AHU-260 AH. 04. 03 – 2021	March 30, 2021
6.	Iwan Budisantoso, S.H., M.Kn.	AHU-33 AH. 04. 03 – 2019	February 26, 2019

Source: Decision of Determination Number 1/Pdt.Sus-Pembatalan Perdamaian/2022/PN.Niaga Smg jo. Number 10/Pdt.Sus-PKPU/2015/PN.Niaga Smg.

Regarding work experience or the number of bankruptcy cases resolved by the curator. It is not possible for a curator to have experience in resolving bankruptcy cases within 1 (one) to 3 (three) years, and in fact, the curator team did not show evidence of work experience and did not provide evidence of bankruptcy cases resolved. Regarding the curator team's transfer and blocking of funds from the accounts of KSP (Credit and Savings Cooperative) Intidana to the petitioner. The fund transfer and account blocking were conducted after the announcement of Decision No. 43 PK/Pdt.Sus-Pailit/2022 dated October 13, 2022, which declared the bankruptcy of KSP (Credit and Savings Cooperative) Intidana null and void. This action was unprofessional and did not promote integration principles in management. Regarding the poor track record of the curator during the management process. It is recorded that on April 3, 2023, the curator team still withheld and did not return the bankrupt funds post the review decision, making it difficult for KSP (Credit and Savings Cooperative) Intidana to continue its business operations. Regarding the curator's track record during the management process, which involved the termination of employment of KSP (Credit and Savings Cooperative) Intidana employees. The curator team has terminated the employment of several KSP (Credit and Savings Cooperative) Intidana employees, greatly harming KSP (Credit and Savings Cooperative) Intidana in its business recovery efforts, as it had to restart its business operations after the bankruptcy was annulled. Regarding the security of KSP (Credit and Savings Cooperative) Intidana assets, which is not complicated. In fact, there was no complexity in securing KSP (Credit and Savings Cooperative) Intidana assets; 90% of the assets were merely receivables or debts owed by members of the Cooperative and did not require special security measures. In reality, the curator team only secured 33 (thirty-three) four-wheeled vehicles and 35 (thirty-five) two-wheeled vehicles. Regarding the unreasonable calculation of the curator team's working hours. It is not feasible for curators to work 9 (nine) to 11 (eleven) hours per day without holidays, including Saturdays, Sundays, and public holidays, counted as working hours. This contradicts the prevailing labor laws.

2. Aristotle's Theory of Justice Review on the Determination of Bankruptcy Costs and Curator Fees in Case Number 1/Pdt.Sus-Revocation of Peace/2022/PN.Niaga Smg jo. Number 10/Pdt.Sus-PKPU/2015/PN.Niaga Smg

Aristotle's theory of justice explains that the word "just" contains more than one meaning. Interpreted according to the law, justice is what is proportional and what is rightful. Someone is considered unjust when they take more than their due share. Those who disregard the law are also unjust because everything based on the law is considered to be just (Darji, 1995:138). The justice referred to here narrows down to a definition of justice more in terms of the rights of an individual that should or ought to be obtained and must be seen from a legal perspective (Resa, 2020: 76). Someone who does not obey the law is considered unjust, thus the law becomes the reference point to determine whether one is just or not (Andrea J. Ritchie, 2017: 28).

Aristotle distinguished between distributive justice and commutative justice (Nasution, 2014:23). Distributive justice is the principle that demands everyone receives what is rightfully theirs in a proportional manner. It concerns the determination and fair distribution of rights within the relationship between society and the state. It can be defined as what the state should provide to the people. Distributive justice entails a proportionate allocation, where greater achievements and responsibilities result in greater rewards. Aristotle proposed proportional equality, meaning a fair distribution that considers balance and suitability according to the deserved qualities. Not everyone can receive it, and only those deemed worthy are entitled to it. Justice is also a political policy, with its rules forming the basis of state regulations, and these rules serve as the measure of what is called rights (Salman, 2012:23). This is also understood as justice in the sense of equality. Numerical equality, where every human is treated as one unit, for example, everyone is equal before the law. Proportional equality gives each person what is rightfully theirs according to their ability and achievement (Rhiti, 2015:52).

The perspective of justice according to Aristotle's view is related to the core philosophy in his work in the book *nicomachean ethics* and that is "*Karena hukum hanya bisa ditetapkan dalam kaitannya dengan keadilan* (Joachim, 2014:15). Not separated from the purpose of law to realize justice that provides benefits and legal certainty in society.

Based on the implementation of justice above, distributive justice leads to proportionality, where the greater the achievement and responsibility, the greater the reward obtained. Additionally, Aristotle also presents the theory of corrective justice, which focuses on the process of rectifying or correcting something wrong. In this case, the correction is carried out by judges through the judicial process to achieve the purpose of law in realizing justice that provides benefits and legal certainty.

There are 2 (two) examples, namely PT. Lidi Manunggal Perkasa and PT. Telekomunikasi Indonesia (Telkomsel), where the appointment of Curator's fees is not in accordance with Article 17 paragraph (2) of the UUK-PKPU. Based on both cases, in the case of PT. Lidi Manunggal Perkasa, the request for judicial review was rejected based on the provisions of Article 67 letter b of Law Number 14 of 1985 as amended by Law Number 5 of 2004 and its second amendment by Law Number 3 of 2009, and Law Number 48 of 2009 concerning the Judiciary. Meanwhile, in the case of Telkomsel, the request for judicial review was granted by the Supreme Court, considering the provisions of Article 24 of Law Number 48 of 2009 concerning the Judiciary, where a final and binding decision can be subject to a judicial review by the Supreme Court. In essence, a decision or ruling that has obtained legal force can be subject to judicial review.

The provisions related to the determination of curator fees when a bankruptcy decision is revoked, as observed by the examining judges in the cases of PT. Lidi Manunggal Perkasa and Telkomsel, refer to Article 2 paragraph (1) of Minister of Justice Decree No. 9 of 1998, which states: "In

the event that the petition for bankruptcy is rejected at the cassation or review level, the amount of the fee shall be determined by the judge and charged to the debtor." This article contradicts Article 17 paragraph (3) of the UUK-PKPU, which states that:

"The costs referred to in paragraph (2) (revoked bankruptcy declaration decision) shall be charged to the Bankruptcy Petitioner or to the Petitioner and the Debtor in the proportion determined by the Judges' Panel"

Meanwhile, Article 2 of the Ministry of Law and Human Rights Regulation No. 1 of 2013 states that in cases where the bankruptcy petition is rejected at the cassation or review level, the amount of compensation is determined by the Judge and charged to the Bankruptcy Petitioner. This regulation also differs from Article 17 paragraph (3) of the Bankruptcy Law and PKPU which states that the compensation is charged to the Bankruptcy Petitioner or to the Petitioner and the Debtor.

The imposition of curator compensation, when viewed from the theory of justice, the regulations of the Minister of Justice Decree No. 9 of 1998 and the Ministry of Law and Human Rights Regulation No. 1 of 2013, do not fully apply the principle of proportional justice as expressed by Aristotle, *justice consists in treating equals equally and unequals unequally, in proportion to their inequality* (Hernoko, 2016: 448). The provision of Article 2 paragraph (1) of the Minister of Justice Decree No. 9 of 1998, which only imposes curator compensation on the Debtor, certainly violates higher laws. The enforcement of Ministry of Law and Human Rights Regulation No. 1 of 2013 has been annulled by Article 2 paragraph (1) letter c of the Bankruptcy and PKPU Law, where the Decision under study by the writer already uses the provisions of Ministry of Law and Human Rights Regulation No. 18 of 2021 and still contradicts the Bankruptcy and PKPU Law.

Examining several regulations that have been used, whose content is not significantly different, of course, the principle of justice that serves as the guiding principle for the examining judges in deciding on the determination of curator compensation needs to be questioned. Based on the provisions of the Joint Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia and the Chairman of the Judicial Commission of the Republic of Indonesia Number: 047/KMA/SKB/IV/2009 concerning the Code of Ethics and Guidelines for Judicial Conduct, it is stated that fairness means giving each their due and providing what is rightfully theirs based on the principle that all individuals are equal before the law. Judges must ensure justice for all parties and not intend solely to punish, and judges are obliged to avoid errors in making decisions or disregarding facts that may implicate the parties or intentionally making considerations that benefit certain parties in adjudicating a case.

The curator's fee will still be paid even if the debtor's bankruptcy is revoked, as a form of appreciation for the curator's performance in managing the bankrupt estate from the moment the bankruptcy decision is pronounced until the decision to revoke the bankruptcy is pronounced. Therefore, if there is no bankruptcy estate administration carried out by the curator, then determining the amount of the curator's fee as a percentage of the total value of all debtor assets would not be appropriate.

Considering O. Notohamidjojo's perspective, the legal perspective has so far been confined to static learning for the continuity of law itself without considering the impact and noble purpose of law, namely the conscience of law to lead humanity towards peaceful prosperity for all parties. Legal authorities, especially supervisory judges and decision-making judges who consider, decide, and issue bankruptcy cost and curator fee determinations, need to realize the legal objectives outlined in the norms proposed by O. Notohamidjojo as follows (Notohamidjojo, 1975:52): Humanity demands that humans be treated as humans; Justice, the unwavering and eternal will to give others what is rightfully theirs (Ulpianus); Appropriateness, a matter to be maintained in the application of the law with the aim of

eliminating its sharpness for human social interaction; and; Honesty, justice maintains honesty within itself and abstains from dishonest acts in handling cases.

The lesson to be learned is that law should not only be studied from its formal or procedural aspects, but also from the substantive or material side of law, which is justice. Law should not only fulfill procedural aspects or juridical legitimacy, but also must have the substance of justice (moral legitimacy), and public acceptance (legitimasi sosiologis) (Indah, 2011:13).

The principle of *pari passu prorata parte* means that the wealth assets are a common guarantee among creditors, and their proceeds must be distributed proportionally among them unless certain creditors are given priority according to the law for payment (Christiawan, 2020:23). This principle emphasizes the distribution of the debtor's assets to settle its debts to creditors more fairly by proportionally allocating them (*pond-pond gewijs*) Not by equal shares (Ginting, 2018:115). Based on the above description, Decision Number 1/Pdt.Sus-Annulment of Settlement/2022/PN.Niaga Smg jo. Number 10/Pdt.Sus-PKPU/2015/PN.Niaga Smg has resulted in several impacts experienced by KSP (Cooperative Savings and Loan) Intidana and its Members as follows: The legal consequence arising from Decision Number 1/Pdt.Sus-Annulment of Settlement/2022/PN.Niaga Smg jo. Number 10/Pdt.Sus-PKPU/2015/PN.Niaga Smg is the imposition of high bankruptcy costs and curator fee. KSP (Cooperative Savings and Loan) Intidana is burdened with the payment of bankruptcy costs and curator fee as regulated in Ministry of Law and Human Rights Regulation No. 18 of 2021 concerning Guidelines for Remuneration for Curators and Administrators, with the total value of KSP (Cooperative Savings and Loan) Intidana's assets amounting to approximately IDR 424,650,950,965 (four hundred twenty-four billion six hundred fifty million nine hundred fifty thousand nine hundred sixty-five Indonesian Rupiah).

KSP (Koperasi Simpan Pinjam) Intidana is burdened with curator fees of 3% (three percent) to 7% (seven percent) of the value of the assets realization carried out by the curator. In addition, other costs arising from the management and realization of bankrupt assets, curator's working hours reservation costs, and others are also charged to KSP (Koperasi Simpan Pinjam) Intidana.

Referring to Article 1 paragraph (3) of Minister of Law and Human Rights Regulation No. 18 of 2021 concerning Guidelines for Compensation for Curators and Administrators, compensation is the remuneration that must be paid to the curator or administrator after bankruptcy or suspension of debt payment obligations ends. Curator's fees are charged to the applicant for bankruptcy or the applicant and debtor, the amount of which is determined by the panel of judges. Referring to Article 17 paragraphs (2) and (3) of the Bankruptcy and PKPU Law, bankruptcy costs including curator's fees listed in the bankruptcy annulment decision and charged to the bankrupt petitioner or charged equally to the bankrupt petitioner and debtor.

The judge's policy is highly needed, taking into account the work already done by the curator, and the aspect of justice in deciding bankruptcy costs and curator's fees to be borne proportionally between the debtor and the bankruptcy petitioner. A cautious approach is certainly necessary to achieve fairness between the two parties. It is therefore clear that the judge's policy does not apply a cautious approach, resulting in the imposition of high curator fees and disproportionate distribution of these fees between the debtor and the bankruptcy petitioner.

The issuance of Decision Number 1/Pdt.Sus-Revocation of Settlement/2022/PN.Niaga Smg concerning Case Number 10/Pdt.Sus-PKPU/2015/PN.Niaga Smg has resulted in the execution of the court's decision registered under Case Number: 12/Pdt.Eks/2023/PN. Smg, which essentially will carry out the execution of the curator's fee determination. As stipulated in Article 17 paragraph (4) of the Bankruptcy and PKPU Law, it is determined that for the implementation of bankruptcy costs and curator fees as referred to in paragraph (2), the chief judge issues an execution order upon the curator's request.

Responding to the high bankruptcy costs and curator fees, KSP (Cooperative Savings and Loan) Intidana objected to the execution on August 28, 2023, where the execution was scheduled for Thursday, August 31, 2023, and Friday, September 1, 2023. Based on interviews conducted by the author with KSP (Cooperative Savings and Loan) Intidana's legal representatives, Mr. Dwi Heru Wisanto Sidi, S.H., M.H., and Mr. Y.B. Binsar Kresna Napitupulu, S.H., M.H., KSP (Cooperative Savings and Loan) Intidana also filed a reconsideration petition against Decision Number 1/Pdt.Sus-Revocation of Settlement/2022/PN.Niaga Smg concerning Case Number 10/Pdt.Sus-PKPU/2015/PN.Niaga Smg, and filed a civil lawsuit, namely a Tort Lawsuit (PMH) registered as No. 265/Pdt.G/2023/PN. Smg, which is still ongoing. Execution postponement can be implemented if it meets the reasons where the court's decision that has legal force has been final, including: the parties have reached a peaceful agreement, acceptable humanitarian reasons, there is still resistance from third parties, the objects of execution are still in another case. In essence, the canceled curator fee at the cassation or reconsideration level cannot be executed because it has no legal basis and contradicts Article 17 paragraph (2) of the Bankruptcy and PKPU Law. The panel of judges who annulled the bankruptcy also determined the curator's fee; in this context, the panel of judges referred to and authorized is the first instance panel of judges. In fact, execution has been partially carried out by the curator. The debtor argues that the curator does not have retention rights like legal advisors, where it should be clear and obligatory that all assets of KSP (Cooperative Savings and Loan) Intidana should not be blocked or controlled by the curator when the reconsideration decision states that KSP (Cooperative Savings and Loan) Intidana is not bankrupt.

Decision Number 1/Pdt.Sus-Revocation of Settlement/2022/PN.Niaga Smg in conjunction with Case Number 10/Pdt.Sus-PKPU/2015/PN.Niaga Smg, resulted in KSP (Cooperative Savings and Loan) Intidana being unable to resume normal operations. Based on an interview with Mr. Ir. Darius Limantara, Dipl. EDE, the chairman of KSP (Cooperative Savings and Loan) Intidana, KSP (Cooperative Savings and Loan) Intidana requires funds to operate, but in this situation, the funds owned by KSP (Cooperative Savings and Loan) Intidana are under the control of the curator, making it difficult for KSP (Cooperative Savings and Loan) Intidana to revive its business.

Referring to cassation decision Number: 874K/Pdt-Sus-Bankruptcy/2022 dated May 31, 2022, where there is a payment scheme that must be paid by KSP (Cooperative Savings and Loan) Intidana from 2021 until the bankruptcy annulment based on the review decision No. 43 PK/Pdt.Sus-Bankruptcy/2022 dated October 13, 2022, it still has to pay the scheme, while KSP (Cooperative Savings and Loan) Intidana does not have the funds and struggles to meet its obligations.

Several branches of KSP (Cooperative Savings and Loan) Intidana have closed, and many assets are under seizure and control of the curator, making it impossible for any activities to take place at KSP (Cooperative Savings and Loan) Intidana. Additionally, many employees of KSP (Cooperative Savings and Loan) Intidana have been laid off by the curator. Based on an interview with Mr. Ir. Darius Limantara, Dipl. EDE, the Chairman of KSP (Cooperative Savings and Loan) Intidana, there is a letter from the curator's team No. 050/BANKRUPTCY/KSP-ID/VIII/2022 regarding the notification of Termination of Employment (PHK) to All Employees of Koperasi Simpan Pinjam Intidana (bankrupt) with the consideration that KSP (Cooperative Savings and Loan) Intidana has been declared bankrupt.

Based on the decision of the review level, KSP (Cooperative Savings and Loan) Intidana has returned to its original state (not bankrupt), which is completely contrary to the current situation. In fact, the current state of KSP (Cooperative Savings and Loan) Intidana is bankrupt because its operations cannot resume. The members' savings that should have been paid out by the management to resume operations cannot be executed due to lack of capital for the reoperation of KSP (Cooperative Savings and Loan) Intidana.

Bankruptcy recognizes the principle of *commercial exit from financial distress*, which means that bankruptcy is a solution to the debtor's debt settlement problem, not an institution to bankrupt a business. This principle is not normative in Indonesian bankruptcy provisions. Indonesia adopts ease in bankrupting legal entities related to debt collective proceedings.

The principle of going concern, or commonly known as the going concern principle, means that a business entity is deemed to no longer have the ability to sustain its operations over a relatively long period and will not undergo liquidation in the foreseeable future. The going concern principle is applied to a company or business entity that experiences financial difficulties. This principle encourages the resolution of existing problems by continuing business operations in a normal and reasonable manner.

Based on an interview with Mr. Ir. Darius Limantara, Dipl. EDE, the chairman of KSP (Cooperative Savings and Loan) Intidana, the management of KSP Intidana submitted a going concern request on August 1, 2022, in an effort to revive its operations. The branches of KSP Intidana can be reopened and resume operations to continue generating profits. This is deemed crucial considering the promising business prospects of KSP Intidana, despite facing temporary liquidity constraints. The resumption of operations can also increase the value of the bankrupt estate.

Based on the legal consequences of Decree No. 1/Pdt.Sus-Revocation of Peace/2022/PN.Niaga Smg jo. No. 10/Pdt.Sus-PKPU/2015/PN.Niaga Smg for KSP (Cooperative Savings and Loan) Intidana and its members as mentioned above, it can be concluded that the high curator fees impose a significant burden on KSP Intidana, which is currently in poor financial condition after just going bankrupt and has no room to resume its business operations to generate profits.

The implementation of the execution (partial execution has already taken place) resulting in difficulties for KSP Intidana in regaining control of assets and the continued blocking of several accounts, which are essential for the resumption of operations of KSP Intidana. The inability of KSP Intidana to resume operations has led to difficulties for its members in accessing their savings and receiving their funds back to meet their living and business needs.

The description above illustrates various difficulties following the annulment of the bankruptcy of KSP Intidana, where, as a consequence of the court decision issued by the Semarang commercial court, the fulfillment of justice for KSP Intidana and its members was not adequately considered.

Closing

The determination of bankruptcy costs and curator remuneration in the case of Decision No. 1/Pdt.Sus-Annulment of Peace/2022/PN.Niaga Smg jo. Decision No. 10/Pdt.Sus-PKPU/2015/PN.Niaga Smg, does not align with Aristotle's distributive justice theory. In this determination, the bankruptcy costs and curator remuneration have been disproportionate, with KSP Intidana bearing a larger payment obligation compared to the petitioner. This distribution does not adhere to the principle of justice proportionality as articulated by Aristotle, which states, *justice consists in treating equals equally and unequals unequally, in proportion to their in equality*.

The legal consequences arising from the issuance of Decision Number 1/Pdt.Sus-Revocation of Peace/2022/PN.Niaga Smg jo. Number 10/Pdt.Sus-PKPU/2015/PN.Niaga Smg include: First, the imposition of high curator fees which severely disadvantage KSP (Savings and Loan Cooperative) Intidana and its Members. Second, the execution that has been partially carried out, resulting in the assets and accounts of KSP (Savings and Loan Cooperative) Intidana being blocked and under the control of the Curator. Third, the inability of KSP (Savings and Loan Cooperative) Intidana to resume its operations in conducting its businesses to generate profits for returning the members' savings and for the needs of their

businesses and daily lives. The consequences of the decision issued by the Commercial Court of Semarang fail to fully consider the fulfillment of justice for KSP (Savings and Loan Cooperative) Intidana and its Members.

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Interview

Interview Lawyer Koperasi Simpan Pinjam (KSP) Intidana, Bapak Dwi Heru Wismanto Sidi, S.H., M.H., dan Sdr. Y.B. Binsar Kresna Napitupulu, S.H., M.H.

Interview Chairman Koperasi Simpan Pinjam (KSP) Intidana, Bapak Ir. Darius Limantara, Dipl. EDE.

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