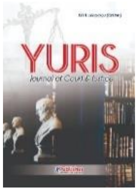

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# Reconstructing Curator Liability for Creditor Losses in Indonesian Bankruptcy Law

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## ABSTRACT

*Article 72 of Indonesian Bankruptcy Law obliges a curator to compensate losses arising from fault or negligence in managing and settling bankrupt assets, yet the provision does not define how fault should be measured, how causation should be proven, or what defense a curator may raise, which leaves both creditors and curators exposed to inconsistent outcomes. Prior studies on curator accountability have examined this problem mainly through procedural or criminal law lenses, leaving the underlying structure of Article 72 itself largely unexamined. This study addresses that gap by reconstructing Article 72 through the theory of the purpose of law and the theory of responsibility. Using normative legal research, the study applies the statutory, conceptual, philosophical, and comparative approaches, drawing on Indonesian bankruptcy law, comparative insolvency practice in selected jurisdictions, and relevant legal theory. The findings show that Article 72 correctly adopts liability based on fault but lacks the normative detail needed to apply that principle consistently, including graduated standards of fault, defined causation, and a good faith defense. Comparative practice in the Netherlands, the United Kingdom, the United States, and Germany confirms that fault-based liability, refined through professional oversight, remains the dominant model. The study concludes that reconstruction should refine rather than replace the fault-based principle, strengthening proportionality, legal certainty, and balanced protection between creditors and curators within Indonesia's bankruptcy system.*

**Keywords:** *Bankrupt Assets, Curator Liability, Indonesian Bankruptcy Law, Liability Based on Fault, Theory of Responsibility*

## INTRODUCTION

Bankruptcy law exists to provide an orderly and fair mechanism for settling a debtor's assets once the debtor is no longer able to meet its obligations, and the curator occupies the central position in that mechanism as the party entrusted with managing and liquidating the bankrupt assets on behalf of all creditors.[12] The curator's authority is far-reaching, extending to the verification of claims, the sale of assets, and the distribution of proceeds among creditors of differing rank, all of which must be carried out under the supervision of a supervisory judge.[34] Because this authority touches property in which multiple parties hold competing interests, the legal standard that governs the curator's liability for losses arising during that process carries direct consequences for the legitimacy of the entire bankruptcy system. Within Indonesian law, this standard is set out in Article 72 of Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereafter Article 72), which has so far received limited doctrinal attention despite its foundational role.

Article 72 provides that the curator is liable for any fault or negligence committed in the course of managing or settling the bankrupt assets that results in loss. This formulation rests on the principle of liability based on fault, since the duty to compensate only arises once *culpa* on the part of the curator has been established.[5] However, the article does not explain how *culpa* is to be measured, does not separate ordinary negligence from gross negligence or intent (*culpa levis*, *culpa lata*, and *dolus*), and does not state how the resulting losses are to be proven against the curator's conduct. This absence of normative detail leaves Article 72 open to multiple interpretations and creates uncertainty for every party that relies on it, including the curator, the creditor, and the supervising judge.

The practical consequences of this ambiguity are already visible in recent Indonesian scholarship on curator accountability. Aprita, Wulandari, and Qosim found that the absence of a clear, independent appointment mechanism for curators creates a structural conflict of interest that exposes curators to legal action even

[1] Allova Herling Mengko, Dudi Pramedi, and Adinda Annisa Madani, "Restructuring & Insolvency Laws and Regulations 2026," International Comparative Legal Guides, May 29, 2026, https://iclg.com/practice-areas/restructuring-and-insolvency-laws-and-regulations/indonesia/.
[2] Fahad Alarifi, "The Bankruptcy Law of Saudi Arabia: Policy, Operation and Comparison," *PSU Research Review* 7, no. 3 (November 1, 2023): 201–17, https://doi.org/10.1108/PRR-02-2021-0011.
[3] Cokorda Istri Sri Dharma Widyaningrum and I Nyoman Bagiastra, "CORPORATE ORGANS' ACCOUNTABILITY IN CASE OF SOLE PROPRIETORSHIP BANKRUPTCY," *Journal of Court and Justice* 3, no. 3 (July 24, 2024): 1–10, https://doi.org/10.56943/jcj.v3i3.584.
[4] Florian Andretsch, "Between Punishment and Protection: A Noble Insolvency and Its Governmental Management in Mid-Eighteenth-Century Lower Austria," *Continuity and Change* 40, no. 2 (August 2025): 134–67, https://doi.org/10.1017/S0268416025100672.
[5] G. Radbruch, "Statutory Lawlessness and Supra-Statutory Law (1946)," *Oxford Journal of Legal Studies* 26, no. 1 (January 1, 2006): 1–11, https://doi.org/10.1093/ojls/gqi041.

where their conduct may not amount to genuine fault.[6] In a related study, Mulkan and Aprita showed that criminal liability for a curator's alleged lack of independence is in practice decided by reference to general provisions of the Criminal Code rather than to any settled standard within the Bankruptcy Law itself, which leaves the threshold for fault largely to judicial discretion.[7] Widyaningrum and Bagiastra observed that liability for losses connected to mismanagement in an insolvency context remains personally attached to the responsible party, yet the line between attributable negligence and ordinary business risk is rarely drawn with precision.[8] Taken together, these findings indicate that disputes over curator liability are not a theoretical concern but a recurring feature of bankruptcy practice, and that curators who act diligently may still face claims they have no clear normative basis to resist.

This uncertainty has a doctrinal source as well as a practical one. Article 72 attempts to serve three purposes of law at once: it should provide a philosophical basis for fair treatment of creditors, a juridical basis for legal certainty in attributing fault, and a sociological basis for sustaining public confidence in the curator profession.[9] Because the article does not distinguish degrees of fault or set a clear evidentiary threshold, it struggles to satisfy any of the three purposes consistently. A curator who acts in good faith can, in practice, be held to the same standard as one who acts with gross negligence, which weakens the proportionality between conduct and consequence that the principle of liability based on fault is meant to protect.[10]

Existing studies on curator liability in Indonesia have tended to approach the subject from procedural or criminal law perspectives rather than from the perspective of liability theory itself. Amini, Yusdiansyah, and Rivandi examined disputes between curators and land deed officials over allegedly defective transfer deeds, concluding that responsibility should follow the party that supplied inaccurate information rather than the party that merely recorded it, but their analysis stopped short of addressing how fault should be calibrated within the curator's own liability framework.[11] Other studies have focused on the curator's

[6] Serlika Aprita, Mona Wulandari, and Sarah Qosim, "Criminal Liability of the Curator for Illegal Acts in the Independence Principle," *Jurnal Cita Hukum* 10, no. 2 (August 25, 2022): 391–404, https://doi.org/10.15408/jch.v10i2.27801.
[7] Hasanal Mulkan and Serlika Aprita, "PERTANGUNGJAWABAN PIDANA KURATOR YANG MELAKUKAN PERBUATAN MELAWAN HUKUM DALAM KAITANNYA DENGAN PRINSIP INDEPENDENSI BERDASARKAN UNDANG-UNDANG NOMOR 37 TAHUN 2004," *Unes Journal of Swara Justisia* 7, no. 1 (2023): 264–76.
[8] Widyaningrum and Bagiastra, "CORPORATE ORGANS' ACCOUNTABILITY IN CASE OF SOLE PROPRIETORSHIP BANKRUPTCY."
[9] Radbruch, "Statutory Lawlessness and Supra-Statutory Law (1946)."
[10] Gregory C Keating, "Is There Really No Liability Without Fault: A Critique of Goldberg & Zipursky," *FORDHAM LAW REVIEW RES GESTAE*, 2016.
[11] Nyak Amini, Prof. Dr. Efik Yusdiansyah, and Dr. Dhody Ananta Rivandi, "LEGAL PROTECTION OF DISPUTED LAND DEED OFFICIALS IN THE BANKRUPTCY ESTATE BY

criminal exposure under the principle of independence, on the position of company organs in bankruptcy, or on the curator's standing relative to land and notarial instruments, leaving the structure of Article 72 itself largely unexamined.[12] [13] None of these studies has reconstructed Article 72 from the standpoint of the theory of the purpose of law combined with the theory of responsibility, which is the gap this study addresses.

The novelty of this study lies in treating Article 72 not as a settled rule to be applied but as a norm whose internal structure requires reconstruction. Rather than asking only whether a curator has violated Article 72 in a given case, as the procedural and criminal-law studies cited above tend to do, this study asks why the article's current formulation cannot consistently deliver justice, legal certainty, and benefit at the same time, and what a revised structure of liability would need to contain to do so. This shift in framing, from compliance to structural reconstruction, distinguishes the present study from the largely case-based literature on curator accountability published to date.

Framed narratively, this study investigates how the curator's liability for losses suffered by creditors during the settlement of bankrupt assets should be understood when measured against the theory of the purpose of law, and how that liability should be reconstructed when measured against the theory of responsibility, so that the resulting framework distinguishes degrees of fault, clarifies the burden of proof, and protects curators who act in good faith without weakening the protection owed to creditors. These two questions correspond to the central objective of this study, which is to produce a more proportionate and operable standard of curator liability than Article 72 currently provides, one capable of guiding both judicial practice and any future legislative revision of the Bankruptcy Law.

## LITERATURE REVIEW

### Theory of the Purpose of Law

Classical legal theory holds that law serves three purposes that are often in tension with one another: justice, understood philosophically; utility, understood sociologically; and legal certainty, understood juridically.[14] Justice in its formal sense requires that legal rules be applied generally, reflecting the Aristotelian

THE CURATOR IN RELATION TO THE PRINCIPLE OF JUSTICE," *Journal of Court and Justice* 3, no. 2 (June 14, 2024): 59–75, https://doi.org/10.56943/jcj.v3i2.544.

[12] Amini, Yusdiansyah, and Rivandi; Mulkan and Aprita, "PERTANGUNGJAWABAN PIDANA KURATOR YANG MELAKUKAN PERBUATAN MELAWAN HUKUM DALAM KAITANNYA DENGAN PRINSIP INDEPENDENSI BERDASARKAN UNDANG-UNDANG NOMOR 37 TAHUN 2004"; Aprita, Wulandari, and Qosim, "Criminal Liability of the Curator for Illegal Acts in the Independence Principle"; Widyaningrum and Bagiastra, "CORPORATE ORGANS' ACCOUNTABILITY IN CASE OF SOLE PROPRIETORSHIP BANKRUPTCY."

[13] Aprita, Wulandari, and Qosim, "Criminal Liability of the Curator for Illegal Acts in the Independence Principle."

[14] Radbruch, "Statutory Lawlessness and Supra-Statutory Law (1946)."

principle that equal cases be treated equally and unequal cases be treated according to their differences.[15] Formal justice alone, however, provides no guidance on what content the law should have. Radbruch addressed this gap by arguing that where reasonable people disagree on what justice requires in substance, the resolution of that disagreement must fall to legal certainty, since certainty alone can be settled by positive enactment rather than by competing moral claims.[16]

Utility, in this framework, concerns ends rather than means, and Radbruch identified three categories of ends relevant to law: the individual personality, the collective personality, and human artifacts such as institutions and rights.[17] Where positive law conflicts with an individual's moral conscience, legal certainty ordinarily prevails, because a judge's duty is to apply the law as enacted rather than to substitute personal judgments of fairness.[18] This priority is not unconditional. Radbruch's own formula holds that where the conflict between an unjust law and substantive justice becomes intolerable, the unjust law must yield, since at that threshold the positive law forfeits its claim to be law at all.[19] Alexy's later defense of this formula clarifies that the relevant threshold is not mere unfairness but extreme and manifest injustice, which keeps the exception narrow rather than open-ended.[20]

Legal certainty performs a distinct epistemic function in this triad. Because individuals cannot always know in advance what justice or utility requires in a given case, a designated authority must determine what is legally permitted, prohibited, or obligatory, and that determination must be followed even by those who would have decided differently.[21] For a judge, this means that the professional duty is to give effect to positive law, reserving departure from it for the narrow class of cases described above. Applied to Article 72, this framework suggests that a liability rule cannot be judged only by whether it feels fair in an individual dispute. It must also be assessed by whether it gives curators, creditors, and courts a certain and workable standard, and by whether it produces outcomes that sustain confidence in the bankruptcy system as a whole.

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[15] Aristotle, *The Nicomachean Ethics*, ed. Lesley Brown and David Ross (Oxford University Press, 2009).
[16] Radbruch, "Statutory Lawlessness and Supra-Statutory Law (1946)."
[17] Ralf Dreier, "Gustav Radbruchs Rechtsbegriff," in *Gesellschaft Und Gerechtigkeit* (Nomos Verlagsgesellschaft mbH & Co KG, 2011), 15–45, https://doi.org/10.5771/9783845231167-15.
[18] T.R.S. Allan, "CONSTITUTIONALISM AT COMMON LAW: THE RULE OF LAW AND JUDICIAL REVIEW," *The Cambridge Law Journal* 82, no. 2 (July 22, 2023): 236–64, https://doi.org/10.1017/S000819732300017X.
[19] Radbruch, "Statutory Lawlessness and Supra-Statutory Law (1946)."
[20] Robert Alexy, "Gustav Radbruch's Concept of Law," in *Law's Ideal Dimension* (Oxford University Press, 2021), 107–18, https://doi.org/10.1093/oso/9780198796831.003.0008.
[21] G. Radbruch, "Five Minutes of Legal Philosophy (1945)," *Oxford Journal of Legal Studies* 26, no. 1 (January 1, 2006): 13–15, https://doi.org/10.1093/ojls/gqi042.

**Theory of Responsibility**

Theories of legal responsibility are commonly divided into liability based on fault and liability without fault. Liability based on fault covers tortious liability, liability for breach of contract, and liability arising from legal presumption, while liability without fault covers strict liability and absolute liability.[22] Tortious liability arises where a party's fault or negligence breaches a duty owed generally under law, and it serves two functions: prevention, by giving parties an incentive to take care, and compensation, by restoring the injured party as closely as possible to the position held before the loss occurred.[23] Liability for breach of contract, by contrast, presupposes an agreement, a failure to perform what was promised, and a determination that the failure was not excused.

Liability by presumption shifts the practical burden of proof rather than the underlying standard of fault. A rebuttable presumption allows a claimant to rely on an inference of fault once certain predicate facts are shown, after which the burden shifts to the defendant to produce evidence that the presumed fault did not in fact occur.[24] Parisi and Frezza note that jurisdictions differ in where they place this initial burden, and that shifting it toward the defendant, rather than leaving it with the claimant, tends to improve incentives for due care precisely in situations where the defendant has far better access to the relevant facts than the claimant does.[25] This is directly relevant to curator liability, since the curator, not the creditor, is ordinarily in possession of the records needed to show whether a loss resulted from fault or from an unavoidable business risk.

Strict liability and absolute liability dispense with fault as the basis for responsibility, though they differ in degree. Strict liability holds a party responsible for a class of harm without inquiry into defective conduct, on the view that some activities justify shifting risk to the party best placed to bear it.[26] Keating's analysis remains instructive here, since it shows that the boundary between fault-based and strict liability is rarely as sharp in practice as it appears in doctrine, because the standard of care within a fault rule can itself be raised until it functions much like strict liability.[27] Absolute liability goes further still, attaching responsibility once a loss occurs regardless of intent, causation, or care taken, subject only to the narrow exceptions that a specific legal instrument may provide.[28] Recent comparative work on product liability reform in Europe illustrates how legislators continue to recalibrate the line between these categories as new risks emerge, which suggests

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[22] S. K. Stepanov, "Product Liability in Modern Conditions: European Reform Experience," *Digital Law Journal* 4, no. 4 (August 8, 2024): 8–35, https://doi.org/10.38044/2686-9136-2023-4-4-2.
[23] Stepanov.
[24] Francesco Parisi and Giampaolo Frezza, "Burdens of Proof in Establishing Negligence: A Comparative Law and Economics Analysis," *Italian Law Journal* 9 (2023).
[25] Parisi and Frezza.
[26] Stepanov, "Product Liability in Modern Conditions: European Reform Experience."
[27] Keating, "Is There Really No Liability Without Fault: A Critique of Goldberg & Zipursky."
[28] Stepanov, "Product Liability in Modern Conditions: European Reform Experience."

that the choice between fault-based and no-fault liability is a matter of policy design rather than a fixed feature of legal logic.[29]

Applied to the curator, this typology clarifies what is actually at stake in Article 72. The article uses the language of fault and negligence, which places it within liability based on fault rather than strict or absolute liability, yet it does not specify how a presumption of fault should operate or how the burden of proof should be allocated between curator and creditor. The theory of responsibility therefore supplies the analytical vocabulary, fault, presumption, and degree of culpability, that the next section uses to assess where Article 72 currently falls short and what a reconstructed standard would need to address.

## RESEARCH METHODOLOGY

This study used normative legal research, which examined the application of positive legal norms at the level of legal dogmatics, legal theory, and legal philosophy.[30] Four approaches were applied in combination: the statutory approach, which examined Article 72 and its derivative provisions within Law Number 37 of 2004; the conceptual approach, which clarified the meaning of fault, negligence, and liability as used in the curator's context; the philosophical approach, which evaluated Article 72 against the theory of the purpose of law set out in the preceding section; and the comparative approach, which placed Indonesia's regulation of curator liability alongside the regulation of insolvency practitioner liability in selected other jurisdictions. References to specific court decisions were incorporated within the statutory and comparative approaches as illustrative material rather than treated as a separate case-based method, since this study did not undertake an independent analysis of court rulings as its primary unit of inquiry.

The legal materials used consisted of primary legal materials, namely Law Number 37 of 2004 and its implementing provisions, and secondary legal materials drawn from books, legal commentaries, and scholarly journal articles relevant to curator liability and to the theory of responsibility.[31] These materials were analyzed grammatically and systematically through four stages: formulating the legal principles contained in the positive law, formulating legal definitions of the key terms used in Article 72, establishing the legal standards that followed from those definitions, and formulating the legal rules proposed for reconstruction. The comparative material was limited to jurisdictions whose regulation of insolvency practitioner liability is documented in accessible secondary sources, since that scope matched the study's objective of reconstructing the normative structure of Article 72 rather than measuring its practical effects in litigation.

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[29] Stepanov.
[30] Dr. Suyanto Suyanto, *Metode Penelitian Hukum Pengantar Penelitian Normatif, Empiris Dan Gabungan* (Gresik: Unigress Press, 2022).
[31] Widyaningrum and Bagiastra, "CORPORATE ORGANS' ACCOUNTABILITY IN CASE OF SOLE PROPRIETORSHIP BANKRUPTCY."

## RESULT AND DISCUSSION

### Article 72 as the Core Norm of Curator Liability

Article 72 functions as the core provision governing the curator's liability for losses suffered by the bankrupt assets, and it operates as a general norm, or *lex generalis*, from which several derivative provisions take their specific form. Article 72 states that the curator is responsible for any fault or negligence in carrying out management or settlement duties that results in loss to the bankrupt assets, and this formulation positions the article squarely within the principle of liability based on fault rather than strict or absolute liability. The phrase "fault or negligence" requires the establishment of *culpa* before any duty to compensate arises, which means that the curator's liability depends on proof that a specific failure occurred, not merely that a loss occurred while the curator held authority over the assets.

This fault-based character was confirmed by testing Article 72 against the general principles of Indonesian civil law. Article 1365 of the Civil Code requires fault (*schuld*) as the basis of tortious liability, and Article 1366 extends that basis to include negligence, while no provision of the Civil Code imposes liability without fault outside specialized fields such as environmental or product liability.[32] Article 72 sits within this paradigm. Negligence under Article 72 remains a form of culpable fault rather than a no-fault standard, and the use of "negligence" alongside "fault" serves to capture both active misconduct and passive omission, not to expand liability beyond the fault-based framework. A curator who can show that conduct was undertaken in good faith, with professional care, and in accordance with applicable procedure should, in principle, remain free of liability under this standard.

The difficulty with Article 72 is therefore not its choice of liability based on fault, which is well established in Indonesian civil law, but the incompleteness of the structure built upon that choice. The article does not state how degrees of fault are to be distinguished (*culpa levis*, *culpa lata*, and *dolus*), does not specify how causation between the curator's conduct and the creditor's loss is to be established, and does not provide any defense mechanism for a curator who has acted with due care. This gap leaves the application of Article 72 dependent on case-by-case judicial interpretation, which produces the structural weaknesses summarized in Table 1.

**Table 1** Structural Weaknesses of Article 72

| Analytical Aspect | Current Status of Article 72 | Implication |
| --- | --- | --- |
| Norm Structure | Does not distinguish degrees of fault | Risk of disproportionate liability |

[32] Republik Indonesia, "Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek)" (n.d.).

| Analytical Aspect | Current Status of Article 72 | Implication |
|---|---|---|
| Causation | Not explicitly regulated | Weak evidentiary basis for proving loss |
| Liability Mechanism | No formal ethics or pre-litigation review | Accountability gap before civil claims arise |
| Professional Protection | Not accommodated | Exposure to excessive criminalization |
| Balance of Norms | Disproportionate as between curator and creditor | Reduced confidence in the bankruptcy system |
| Hierarchical Relationship between Norms | No clear synchronization between Article 72 and its derivative provisions | Fragmentation of the liability system |

**Source:** Processed by the researcher (2026)

### Toward Reconstruction: Direction and Guiding Principle

The reconstruction proposed in this study is not directed at replacing liability based on fault with strict or absolute liability, since the comparative and doctrinal analysis above shows that fault remains the appropriate basis for professional liability of this kind. The reconstruction is instead directed at closing the specific gaps identified in Table 1: the unclear boundary between fault and negligence, the absence of a mechanism for assessing professional standards of care, the imbalance between protecting curators and protecting the bankrupt assets, the absence of causation parameters, and the absence of any distinction between personal and official responsibility.

Measured against the theory of the purpose of law, this reconstruction is intended to deliver substantive rather than merely formal justice, to achieve a measurable standard of legal certainty, and to support the social benefit and economic effectiveness of the bankruptcy system. Table 2 summarizes the five principles that should guide the reformulation of Article 72.

**Table 2** Guiding Principles for Reconstruction

| No. | Principle | Explanation | Theoretical basis |
|---|---|---|---|
| 1 | Liability based on professional fault | The curator is liable only where professional fault or gross negligence is proven | Theory of professional liability |
| 2 | Good faith and reasonable care | Conduct undertaken in good faith and with due care does not give rise to liability | Fiduciary duty and the standard of care |

| No. | Principle | Explanation | Theoretical basis |
|---|---|---|---|
| 3 | Causal connection | Liability arises only where a direct causal link exists between the curator's conduct and the loss | Theory of proximate and adequate cause |
| 4 | Proportional accountability | The degree of sanction must correspond to the degree of wrongdoing | Theory of hierarchical responsibility |
| 5 | Transparency and oversight | Liability determinations should pass through ethical and administrative review under the supervising judge and the professional association | Accountability theory in professional governance |

**Source:** Processed by the researcher (2026)

## Comparative Perspectives from Other Jurisdictions

International comparison provides an empirical basis for the principles set out above, since the regulation of curator and insolvency practitioner liability in other modern bankruptcy systems consistently treats that liability as part of a professional governance framework rather than as strict or absolute liability. Table 3 summarizes this comparison across five jurisdictions.

**Table 3** Comparative Regulation of Insolvency Practitioner Liability

| Jurisdiction | Basic Principle | Type of Liability | Standard of Proof | Curator Protection |
|---|---|---|---|---|
| Netherlands | Gross negligence | Liability based on fault | Proof of serious fault required[942] | Good faith defense available |
| United Kingdom | Fiduciary duty and duty of care | Professional fault | Honest errors of judgment excluded[943] | Due care defense available |
| United States | Negligence to willful misconduct, depending on circuit | Professional fault, graded by jurisdiction | Evidence of negligence, gross negligence, or willful misconduct, depending on circuit[945] | Business judgment protection available |
| Germany | Liability based on fault | Ordinary fault | There must be clear, | Reasonable concern |

| Jurisdiction | Basic Principle | Type of Liability | Standard of Proof | Curator Protection |
|---|---|---|---|---|
| | | | demonstrable fault[944] | standard applied |
| Indonesia (pre-reconstruction) | Mixed fault and omission | Unclear | No restrictions specified | Weak |
| Indonesia (post-reconstruction, proposed) | Professional misconduct and gross negligence | Accountability based on measurable fault | Based on ethical and legal mechanisms | Safe harbor clause proposed |

**Source:** Processed by the researcher (2026)

***Note:*** *superscript markers in this table correspond to footnotes 42–45, citing Vriesendorp et al. (2025) for the Netherlands, United Kingdom, and Germany rows, and Bazian (2012) for the United States row.*

This comparison pointed to several consistent patterns. Most modern systems do not apply strict liability to bankruptcy practitioners, and where fault is required, the threshold ranges from ordinary negligence to gross negligence or willful misconduct depending on the jurisdiction. There is a strong tendency to protect professional decisions made in good faith through doctrines such as the business judgment rule, and dual oversight is common, with professional bodies regulating ethics and discipline while courts assess legal causation once a loss has occurred. Several jurisdictions also require concrete evidence of gross negligence before liability attaches, and some develop pre-litigation ethical review before a civil claim may proceed.

Drawing on these patterns, the reconstruction of Article 72 should incorporate six elements. First, the reconstruction should establish clear liability standards by stating expressly that professional misconduct and gross negligence or intentional misconduct are the grounds for a claim against the curator. Second, it should formalize a safe harbor under which a curator who acts in good faith and follows applicable court procedures or professional standards cannot be held liable for resulting losses. Third, it should establish a pre-litigation mechanism requiring mandatory ethics review by professional associations or independent panels before a civil claim proceeds, except where a clear criminal element is present. Fourth, it should strengthen the role of the supervising judge by providing operational guidelines that allow substantive assessment of the curator's conduct. Fifth, it should strengthen certification and codes of ethics through defined competency standards, professional records, and an integrated administrative sanction mechanism. Sixth, it should regulate proof of causation by setting clear guidelines on what constitutes a compensable loss, so that proximate cause and reasonable foreseeability, rather than mere correlation, determine when an adverse outcome is attributable to the curator.

Read together, these comparative results indicated that reconstructing Article 72 toward liability based on professional fault and gross negligence was not a departure from international practice but an alignment with it. Such a reconstruction supports proportionality in the curator's responsibilities, encourages professionalism and prudential standards, protects the bankruptcy system from excessive criminalization, and brings the values of justice, legal certainty, and utility identified in the theory of the purpose of law into closer alignment with one another.

**The Curator's Liability Viewed Through the Theory of the Purpose of Law**

Radbruch's theory of the purpose of law treats justice, utility, and legal certainty as three values that a legal system must realize in balance, and these values provide the appropriate parameters for assessing whether Article 72 functions as intended in practice.[33] From the perspective of justice, the principle of liability based on fault in Article 72 aligns with the Aristotelian concept of corrective justice, which aims to restore a balance disturbed by conduct that is normatively blameworthy rather than to punish a party merely for having caused harm.[34] On this view, the curator is properly held liable only where a creditor's loss results from the curator's fault or negligence, not simply because a loss occurred while the curator held authority over the bankrupt assets. The curator is treated as a professional answerable for departures from legal obligation, not as a guarantor of every risk inherent in the bankruptcy process. From the creditor's perspective, however, this same provision remains incomplete, since the absence of clear parameters for fault or negligence can make it difficult for a creditor to prove the curator's fault and obtain recovery.

From the perspective of utility, the threat of liability under Article 72 encourages curators to act professionally and prudently, which protects the economic interests of creditors in the proceeds of the bankrupt assets. The principle of liability based on fault is well suited to this function, since it allows curators to exercise the business and administrative judgment that the settlement process requires without exposing them to automatic liability for every adverse outcome, while preserving the creditor's right to compensation where a loss does result from fault. This social benefit is currently undermined by the absence of clear normative parameters for curator conduct, which leaves dispute resolution dependent on inconsistent judicial interpretation from one case to the next.

From the perspective of legal certainty, Kelsen's account of liability requires a normative relationship between an act and its legal consequence as fixed by legal

33 Radbruch, "Statutory Lawlessness and Supra-Statutory Law (1946)."
34 Aristotle, *The Nicomachean Ethics*.

norms.[35] Article 72 supplies that relationship in outline by stipulating that fault or negligence is the basis of liability, but the certainty it provides remains limited, since the norm does not specify the standard of conduct expected of curators, the classification of fault and negligence, the scope of a breach of professional obligation, the limits of the causal relationship between conduct and loss, or any defense available to a curator who has acted in good faith. Taken together, these three perspectives indicate that the reconstruction needed here is not a change in the underlying principle of liability based on fault, but a refinement of the normative structure surrounding that principle, so that justice, utility, and legal certainty can be achieved in closer balance than Article 72 currently allows.

**Reconstruction Viewed Through the Theory of Responsibility**

The theory of responsibility explains the relationship between a legal obligation, its violation, and the legal consequence that follows. Kelsen holds that a person is legally responsible where a sanction can be attributed to that person as the consequence of conduct determined by legal norms, which means that responsibility requires more than the existence of a loss; it requires a normative link between the obligation violated, the party responsible, and the consequence that follows.[36] Salmond similarly locates the core of responsibility in the breach of a duty fixed by law rather than in the loss itself.[37] Measured against this standard, the principal defect of Article 72 is not its choice of fault as the basis of liability but the incompleteness of the structure built around that choice, since the article identifies “fault or negligence” without specifying how fault is measured, how causation is established, or what defenses are available.

This incompleteness produces what Hart describes as ambiguity in the attribution of responsibility, since a workable system of liability must first clarify the conditions under which a person may properly be called to account before it can be applied consistently.[38] Reconstructing Article 72 along these lines requires attention to four interrelated dimensions of responsibility, namely responsibility, accountability, answerability, and liability. On responsibility, the article should clarify that fault or negligence must be measured against the legal and professional obligations attached to the position of curator, rather than against the outcome alone. On accountability, Bovens' definition of accountability as a relationship between an actor and a forum in which the actor must explain and justify conduct supports subjecting the curator's decisions to objective review based on process and

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[35] Hans Kelsen, *General Theory of Law & State*, ed. Hans Kelsen and A. Javier Treviño (Routledge, 2017), https://doi.org/10.4324/9780203790960.
[36] Kelsen.
[37] Sir John Salmond, *Jurisprudence* (Alpha Edition, 2019).
[38] H.L.A. Hart and John Gardner, *Punishment and Responsibility* (Oxford University Press, 2008), https://doi.org/10.1093/acprof:oso/9780199534777.001.0001.

compliance, not only on final outcome.[39] On answerability, a curator who can show that a decision rested on adequate information, reasonable professional judgment, and good faith should be entitled to rely on that showing as part of a legitimate defense. On liability proper, compensation should be limited to losses connected to the curator's conduct by an adequate causal relationship, consistent with von Kries's doctrine of adequate causation, under which legal responsibility extends only to consequences that, according to general experience, can reasonably be expected to follow from the act in question, not to every condition that happens to precede a loss.[40]

Taken together, this analysis indicated that the appropriate reconstruction model was not to convert Article 72 into a rule of strict liability, absolute liability, or presumed liability, since any such conversion would shift the curator from a professional answerable for fault into a default insurer of all bankruptcy risk. The more proportionate path, consistent with both the comparative evidence and the theory of responsibility, is to retain liability based on fault while supplying the standards of conduct, causation parameters, and defense mechanisms that Article 72 currently lacks, so that the resulting system of curator liability becomes more measurable, more consistent, and better able to protect creditors and curators in balanced measure.

**Positioning the Findings within Prior Research**

The finding that Article 72 suffers from an incomplete liability structure rather than a misplaced choice of fault as its basis is consistent with Aprita, Wulandari, and Qosim's observation that the absence of a clear, independent appointment mechanism for curators creates a structural conflict of interest that exposes curators to legal action even where genuine fault may be absent.[41] Their study identified the source of this exposure in the appointment process, while the present study locates a parallel weakness in the liability provision itself, particularly the absence of defined standards of conduct and causation parameters. The two findings therefore extend one another: structural uncertainty in how a curator is appointed and structural uncertainty in how a curator is held liable appear to be two expressions of the same underlying gap in the Bankruptcy Law's professional governance framework, rather than separate or unrelated problems.

The present analysis also extended Mulkan and Aprita's finding that criminal liability for a curator's alleged lack of independence is, in practice, decided by reference to general provisions of the Criminal Code rather than to any settled

[39] Mark Bovens, *The Quest for Responsibility: Accountability and Citizenship in Complex Organisations* (Cambridge, United Kingdom: Cambridge University Press, 2008).
[40] Keith K. Niall, *Johannes von Kries: Principles of the Probability Calculus*, vol. 59, Studies in History and Philosophy of Science (Cham: Springer International Publishing, 2023), https://doi.org/10.1007/978-3-031-36506-5.
[41] Aprita, Wulandari, and Qosim, "Criminal Liability of the Curator for Illegal Acts in the Independence Principle."

standard within the Bankruptcy Law itself.[42] Where their study traced this gap into the criminal domain, the comparative results in Table 3 show that several jurisdictions close an equivalent gap in the civil domain through a defined threshold of gross negligence or willful misconduct, together with a pre-litigation ethics review. This suggests that the absence of a settled standard is not confined to criminal exposure, as Mulkan and Aprita's study observed, but is a more general feature of Indonesia's curator liability framework, civil and criminal alike, which the reconstruction proposed in this study is intended to address on the civil side specifically.

By contrast, the present findings complicated rather than confirmed the position taken by Widyaningrum and Bagiastra, who treated liability for losses connected to mismanagement in an insolvency context as personally attached to the responsible party without drawing a sharp line between attributable negligence and ordinary business risk.[43] The theory of responsibility applied in this study suggests that such a line is necessary rather than optional, since a system that holds curators liable for ordinary business risk indistinguishably from gross negligence would, as Hart's account of responsibility-attribution predicts, generate the same ambiguity that the present study identifies in Article 72 itself.[44] On this point, the present study departs from Widyaningrum and Bagiastra's framing and instead aligns with Amini, Yusdiansyah, and Rivandi's conclusion that responsibility within bankruptcy administration should follow the party that actually supplied the inaccurate information or committed the underlying fault, rather than the party that merely held authority when the loss materialized.[45] his alignment supported the proportionality principle set out in Table 2 and reinforces the case for reconstructing Article 72 around graduated fault rather than undifferentiated personal liability.

## CONCLUSION

The curator's liability for creditor losses in the settlement of bankrupt assets, as stipulated in Article 72, rests on the principle of liability based on fault. Viewed through the theory of the purpose of law, this provision supplies a legal basis for holding curators accountable and supports the sociological goal of sustaining professionalism within the curator's role, but it does not yet deliver substantive justice for creditors, since it fails to define clear parameters for fault, negligence, and the scope of liability. This gap makes it difficult for creditors who suffer losses

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[42] Mulkan and Aprita, "PERTANGUNGJAWABAN PIDANA KURATOR YANG MELAKUKAN PERBUATAN MELAWAN HUKUM DALAM KAITANNYA DENGAN PRINSIP INDEPENDENSI BERDASARKAN UNDANG-UNDANG NOMOR 37 TAHUN 2004."
[43] Widyaningrum and Bagiastra, "CORPORATE ORGANS' ACCOUNTABILITY IN CASE OF SOLE PROPRIETORSHIP BANKRUPTCY."
[44] Hart and Gardner, *Punishment and Responsibility*.
[45] Amini, Yusdiansyah, and Rivandi, "LEGAL PROTECTION OF DISPUTED LAND DEED OFFICIALS IN THE BANKRUPTCY ESTATE BY THE CURATOR IN RELATION TO THE PRINCIPLE OF JUSTICE."

during the settlement process to prove fault and obtain recovery, which weakens the practical legal certainty that Article 72 is meant to provide.

Viewed through the theory of responsibility, the appropriate response to this gap is not to abandon liability based on fault but to refine its structure. Reconstruction should proceed through a clearer formulation of the standard of conduct expected of curators, a workable classification of professional fault and negligence, a defined causal relationship between the curator's conduct and the creditor's loss, and a defense mechanism available to curators who act lawfully and in accordance with professional standards. Such a reconstruction would establish a more complete liability structure, one capable of balancing protection for creditors, who bear the risk of loss, against protection for curators, who carry out the function of managing and settling bankrupt assets in good faith.

Taken together, the doctrinal and comparative findings of this study indicate that Indonesia's curator liability framework remains incomplete rather than fundamentally misdirected, and that the reforms required are structural refinements within the existing fault-based model rather than a wholesale shift toward strict or absolute liability. This conclusion responds directly to the objective set out at the outset of this study, namely to produce a more proportionate and operable standard of curator liability than Article 72 currently provides, and it sets the basis for the specific legislative and practical recommendations that follow.

## RECOMMENDATION

The House of Representatives of the Republic of Indonesia is advised to amend Article 72 of Law Number 37 of 2004 to provide a clearer formulation of the standard of conduct expected of curators, a workable classification of professional fault and gross negligence, a defined causal relationship between the curator's actions and creditor losses, and a defense mechanism for curators who act in accordance with the law and applicable professional standards. These amendments are necessary to strengthen creditor protection while ensuring legal certainty regarding curator liability.

Commercial court judges, curators, and creditors are advised to apply and interpret the existing provisions on curator liability in line with the principles of professionalism, prudence, independence, accountability, and adequate causation between the curator's conduct and the creditor's loss, pending any legislative amendment. This interpretive approach would support a fairer application of bankruptcy law, provide greater legal certainty in current practice, and encourage a more balanced protection of the interests of both creditors and curators.

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