

ABSTRACT

This dissertation is a normative law research aimed to criticize the juridical basis of scope of crime mentioned on Law Number 37 of 2004. This research focuses on criminal responsibility of a curator based on independence principle of bankruptcy law. Essentially, bankruptcy is a part of civil law. However, some bankruptcy cases eventually evolve into criminal matters when a bankruptcy curator who is responsible in handling and administering bankruptcy case is positioned as defendant charged for conducting criminal acts. As stated on Article 234 Verse (2) of Law Number 37 of 2004, a curator who is proven not independent during bankruptcy court may be charged with criminal law. However, in some criminal cases involving bankruptcy curators, the charges on the curators are based on the terms stated on Criminal code of Indonesia (Kitab Undang-undang Hukum Pidana/KUHP) rather than referring to Law Number 37 of 2004. Viewed from criminal law perspective, criminal sanction sentenced on an individual cannot be separated from 3 (three) principles of criminal law, namely: criminal acts, iniquity which leads to criminal responsibility, and court and criminal sanction. Criminal law is enforced towards any individuals conducting criminal acts without discrimination whereas the crime stated on Law Number 37 of 2004 only administers bankruptcy curators. Of the three criminal cases studied in this research, two curators were found guilty while one curator was freed from any charges. Based on these findings, this dissertation attempts to examine and analyze the correlation between independency of the curators and criminal sanction sentenced towards them in terms of judgments in order to find out ratio decidendi of the judges in declaring a judgment towards bankruptcy curator and to reveal ratio legis of criminal sanction against bankruptcy curators stated on Law Number 37 of 2004. Finally, this research provides some recommendations to improve Law Number 37 of 2004 in terms of criminal responsibility of bankruptcy curators.

Keywords: Curator, Bankruptcy, Independency, and Criminal Responsibility