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Reexamination of the Curator's Authority in Convening a General Meeting of Shareholders (GMS) for the Liquidation Bankrupt Estate Assets

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Abstract

This study examines the authority of the curator in convening or facilitating a General Meeting of Shareholders (GMS) in a Limited Liability Company (LLC) declared bankrupt, with a particular focus on the curator's role in the settlement of the bankrupt estate. This research employed a normative juridical approach using statutory, case, and conceptual approaches, with secondary legal materials obtained through library research. Three core issues were analyzed: first, the normative conflict between bankruptcy law (Law No. 37 of 2004) and company law (Law No. 40 of 2007) concerning the position of the GMS in bankrupt LLCs; second, the appropriate legal construction for addressing the normative gap regarding the curator's authority to convene a GMS based on authority theory and the principle of legal certainty; and third, a future model for the curator's authority in implementing a GMS for the settlement of bankrupt estate assets. The findings reveal the existence of a normative conflict and legal vacuum regarding the relationship between the curator's authority and the GMS in bankrupt LLCs, resulting in legal uncertainty in practice. This study proposes a legal reconstruction model that positions the curator as the party authorized to convene a GMS under specific circumstances related to the settlement of bankrupt estate assets, subject to approval from the supervisory judge and compliance with the GMS mechanisms established under company law. It concludes that reconstructing the curator's authority through harmonization between Law No. 37 of 2004 and Law No. 40 of 2007 is necessary to achieve legal certainty, strengthen creditor protection, and ensure the effective settlement of bankrupt estate assets

INTRODUCTION

In bankruptcy practice, the curator holds a broad mandate to manage and settle the bankrupt estate in order to maximize the fulfillment of creditors' rights. However, Indonesian positive law has not yet provided explicit authority for the curator to convene a General Meeting of Shareholders (GMS), even though various strategic management and settlement actions require GMS decisions, particularly those related to changes in corporate organs, transfers of material assets, and the determination of settlement strategies. This normative gap creates regulatory uncertainty that may hinder the effectiveness of the curator's duties because the curator is required to act promptly and independently while remaining dependent on corporate organs that, under bankruptcy conditions, may be inactive, unavailable, or uncooperative (Sjahdeini, 2010).

From a legal perspective, there are at least three fundamental distinctions between the GMS as a corporate organ and the curator's actions in bankruptcy proceedings. First, from a functional perspective, the GMS is an internal corporate organ responsible for establishing strategic policies, whereas the curator is an independent party appointed to manage and settle the bankrupt estate. Second, from the perspective of legal principles, the GMS operates based on the principle of corporate autonomy, while the curator performs duties based on the principles of fairness and creditor protection in the settlement of the bankrupt estate. Third, from an accountability perspective, the GMS is accountable to shareholders, whereas the curator is accountable to the supervisory judge and may be subject to personal liability in cases of negligence or misconduct (Afreeportamara, 2019).

The issue of the curator's authority to convene a GMS reflects not only a legal vacuum but also the existence of research, legal, and methodological gaps. The research gap is evident because previous studies have primarily focused on the curator's authority in managing and settling bankrupt estates in general, without specifically examining the normative legitimacy of the curator's authority to convene a GMS as an instrument for effective bankruptcy settlement. The legal gap arises from the fact that Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU) grants the curator authority to manage and settle the bankrupt estate, while Law No. 40 of 2007 concerning Limited Liability Companies (UUPT) recognizes the GMS as the corporate organ with the highest authority in making strategic corporate decisions. The methodological gap is reflected in the dominance of previous studies that adopt a descriptive-normative approach without offering a legal reconstruction model capable of responding to practical needs in bankruptcy proceedings (Mulyatno, 2022; Tryadi & Ananingsih, 2024).

Several previous studies have examined related aspects. Rumelda Silalahi and Onan Purba (2020) stated that the bankruptcy of a limited liability company does not automatically result in the dissolution of the company, as the company remains a legal entity, and the curator is authorized to undertake legal actions necessary for the settlement of the bankrupt estate under the supervision of the supervisory judge. Ariestawaty, (2025) examined the reconstruction of bankruptcy settlement regulations and provided a theoretical foundation for restructuring the scope of curator authority. Toni Triyanto (2024) analyzed conflicts between general attachment and criminal attachment affecting the boundaries of curator authority, while Anak Agung Ngurah Jayalantara (2024) examined the legitimacy of institutional authority within the bankruptcy system, which is conceptually relevant to the curator's authority in conducting corporate actions, including GMS. Collectively, these studies demonstrate that no previous research has comprehensively examined the normative conflict between the UUPT and Bankruptcy Law specifically regarding the curator's authority to convene a GMS during bankruptcy proceedings (Wibowo, 2023).

The urgency of regulating the curator's authority to convene a GMS is further strengthened because the issue extends beyond technical and procedural aspects and relates to the fundamental reconstruction of the relationship between bankruptcy law and company law. In practice, there have been cases where the board of directors of a bankrupt company refused to attend or convene a GMS required for the settlement process, preventing the curator from effectively carrying out settlement actions because the UUPT positions the GMS as the highest corporate organ in strategic decision-making. In response, the curator may undertake settlement actions without GMS approval; however, such actions may subsequently be challenged by shareholders who question their legal validity. This situation demonstrates the need for clear legal regulation regarding the curator's authority to assume limited GMS functions for the purpose of ensuring effective settlement of the bankrupt estate (Munir Fuady, 2014; Abdul Manan, 2018).

The novelty of this research lies in the formulation of a legal reconstruction model that positions the curator as a quasi corporate organ with legal legitimacy to convene a GMS within specific limitations for the effective settlement of the bankrupt estate. This model is developed through the harmonization of bankruptcy law and company law based on authority theory, legal certainty theory, and the principle of creditor protection. Unlike previous studies that have primarily focused on descriptive analyses of existing legal provisions, this research proposes concrete normative reforms and operational mechanisms that may be applied in bankruptcy practice.

The issue of the curator's authority to convene a GMS must also be examined from the perspectives of legal sociology, legal theory, and legal philosophy. From the perspective of legal sociology, it is necessary to analyze the practical implementation of GMS convened by curators and the extent to which such practices receive recognition within the positive legal system, particularly in cases where corporate organs actively resist curator-initiated actions involving GMS. From the perspective of legal theory, this issue relates to the principle of legal certainty, which requires clear norms governing the authority of legal subjects. From the perspective of legal philosophy, the curator's exercise of GMS-related functions can be understood through a teleological approach, which evaluates law based on its ultimate purpose of achieving beneficial outcomes and justice for all parties involved. In this context, the curator is not merely a technical executor of legal provisions but also an agent responsible for ensuring that bankruptcy law achieves its broader objectives of maximizing asset value, protecting creditors, and maintaining systemic fairness.

Based on the foregoing background, this research aims to: (1) analyze the normative conflict between bankruptcy law and company law regimes in regulating the position and function of the GMS in bankrupt limited liability companies; (2) examine the appropriate legal construction for addressing the normative gap concerning the curator's authority to convene a GMS based on authority theory and the principle of legal certainty; and (3) formulate a future model for the curator's authority to convene a GMS for the settlement of bankrupt company assets. The novelty of this research lies in the formulation of a legal reconstruction model that positions the curator as a quasi corporate organ with legal legitimacy to convene a GMS within certain limitations for effective bankruptcy estate settlement, developed through the harmonization of bankruptcy law and company law based on authority theory, legal certainty theory, and creditor protection principles.

METHOD

In bankruptcy practice, the curator held a broad mandate to manage and settle the bankrupt estate to maximize the fulfillment of creditors' rights. However, Indonesian positive law did not explicitly grant the curator authority to convene a General Meeting of Shareholders (GMS), even though various strategic management and settlement actions required GMS decisions, particularly those related to changes in corporate organs, transfers of material assets, and the determination of settlement strategies. This normative gap created regulatory uncertainty that hindered the effectiveness of the curator's duties, as the curator was required to act promptly and independently while remaining dependent on corporate organs that, under bankruptcy conditions, were often inactive or uncooperative.

From a legal perspective, there were three fundamental distinctions between the GMS as a corporate organ and the curator's authority in bankruptcy proceedings. First, from a functional perspective, the GMS served as an internal corporate organ responsible for establishing strategic policies, whereas the curator was responsible for managing and settling the bankrupt estate. Second, from the perspective of legal principles, the GMS operated based on corporate autonomy, while the curator performed duties based on fairness and creditor protection principles in the settlement of the bankrupt estate. Third, from an accountability perspective, the GMS was accountable to shareholders, whereas the curator was accountable to the supervisory judge and could be held personally liable in cases of negligence (Afreeportamara, 2019).

The issue of the curator's authority to convene a GMS revealed not only a legal vacuum but also research, legal, and methodological gaps. The research gap was evident because previous studies primarily examined the curator's authority in managing and settling bankrupt estates in general, without specifically addressing the normative legitimacy of the curator's authority to convene a GMS as an instrument for bankruptcy settlement. The legal gap arose because Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU) granted the curator authority to manage and settle the bankrupt estate, while Law No. 40 of 2007 concerning Limited Liability Companies (UUPT) maintained the GMS as the corporate organ with the highest authority in making strategic corporate decisions. The methodological gap was reflected in previous studies that were predominantly descriptive-normative and had not yet proposed a legal reconstruction model capable of addressing practical bankruptcy needs (Mulyatno, 2022; Tryadi & Ananingsih, 2024).

Several previous studies examined related aspects. Rumelda Silalahi and Onan Purba (2020) stated that the bankruptcy of a limited liability company did not automatically dissolve the company, as it remained a legal entity, and the curator was authorized to undertake legal actions necessary for the settlement of the bankrupt estate under the supervision of the supervisory judge. Nevi Ariestawaty (2025) examined the reconstruction of bankruptcy settlement regulations and provided a theoretical basis for restructuring the scope of curator authority. Toni Triyanto (2024) analyzed conflicts between general attachment and criminal attachment affecting the boundaries of curator authority, while Anak Agung Ngurah Jayalantara (2024) examined institutional authority within the bankruptcy system, which was conceptually relevant to the curator's authority to conduct corporate actions such as GMS. These studies demonstrated that no previous research had comprehensively examined the normative conflict between the UUPT and Bankruptcy Law regarding the curator's authority to convene a GMS during bankruptcy proceedings.

The urgency of regulating the curator's authority to convene a GMS was further emphasized because the issue involved not only technical and procedural aspects but also the fundamental reconstruction of the relationship between bankruptcy law and company law. In practice, there were cases where the board of directors of a bankrupt company refused to attend or convene a GMS required for the settlement process, preventing the curator from effectively carrying out settlement actions because the UUPT positioned the GMS as the highest corporate organ in strategic decision-making. The curator subsequently carried out settlement actions without GMS approval but faced objections from shareholders questioning the validity of those actions. This situation demonstrated the need for clear regulation concerning the curator's authority to perform limited GMS functions to ensure effective settlement of the bankrupt estate (Munir Fuady, 2014; Abdul Manan, 2018).

The issue of the curator's authority to convene a GMS also needed to be understood from the perspectives of legal sociology, legal theory, and legal philosophy. From the perspective of legal sociology, the analysis focused on the practical implementation of GMS conducted by curators and the extent to which such practices were recognized within the positive legal system, particularly in cases where corporate organs resisted curator-initiated actions related to GMS. From the perspective of legal theory, this issue was related to the principle of legal certainty, which required clear norms governing the exercise of authority by legal subjects. From the perspective of legal philosophy, the curator's exercise of GMS-related functions could be understood through a teleological approach that assessed law based on its ultimate objectives of achieving beneficial outcomes and justice for all parties. In this context, the curator was not merely a technical executor of legal provisions but also an agent responsible for ensuring that bankruptcy law achieved its social objectives of asset maximization, creditor protection, and systemic fairness.

Based on the foregoing background, this research aimed to: (1) analyze the normative conflict between bankruptcy law and company law regimes in regulating the position and function of the GMS in bankrupt limited liability companies; (2) examine the appropriate legal construction for addressing the normative gap regarding the curator's authority to convene a GMS based on authority theory and the principle of legal certainty; and (3) formulate a future model for the curator's authority to convene a GMS for the settlement of bankrupt company assets. The novelty of this research lay in the formulation of a legal reconstruction model that positioned the curator as a quasi corporate organ with legal legitimacy to convene a GMS within certain limitations to ensure effective settlement of the bankrupt estate. This model was developed through the harmonization of bankruptcy law and company law based on authority theory, legal certainty theory, and the principle of creditor protection.

RESULTS AND DISCUSSION

Legal Position of the GMS in a Bankrupt Limited Liability Company

Under Law No. 40 of 2007 on Limited Liability Companies, the GMS is defined in Article 1 paragraph 4 as the organ of the company that has authority not granted to the Board of Directors and the Board of Commissioners, within the limits determined by law and/or the articles of association. The GMS is positioned as the highest decision-making authority on strategic corporate matters, including appointment and dismissal of the Board of Directors and Board of Commissioners, approval of annual reports, profit allocation, and approval of specific legal actions undertaken by the Board of Directors (Harahap, 2016). UUPT distinguishes two types of GMS as stipulated in Article 78, as presented in Table 1.

Table 1. Types of General Meeting of Shareholders (GMS) under UUPT

Aspect	Annual GMS (RUPS Tahunan)	Extraordinary GMS (RUPS Luar Biasa)
Legal Basis	Article 78 paragraph (2) UUPT	Article 78 paragraph (4) UUPT
Frequency	Mandatory, held annually no later than 6 months after the financial year ends	Held at any time when needed without a fixed time limit
Main Agenda	Ratification of annual reports, financial reports, profit allocation, and appointment of public accountants	Amendments to articles of association, appointment/dismissal of directors or commissioners, mergers, acquisitions, spin-offs, dissolution
Purpose	Annual accountability of the Board of Directors to shareholders and acquit et de charge	Making urgent or extraordinary strategic decisions that cannot wait for the next Annual GMS

Source: Analysis of Law No. 40 of 2007 on Limited Liability Companies

The authority to convene a GMS is regulated in Articles 79–80 UUPT, which identifies three parties authorized to do so: (1) the Board of Directors as the primary convener; (2) the Board of Commissioners, subsidiarily when the Board of Directors fails to convene GMS; and (3) shareholders representing at least 1/10 of all shares with voting rights, as a final remedy through court petition (Article 80 UUPT). The call for GMS must be made at least 14 days before the GMS is held, mentioning the date, time, place, and agenda of the GMS. Failure to comply with these requirements makes the GMS and its resulting decisions potentially invalid or voidable. Table 2 presents the authorized parties in the GMS convening mechanism.

Table 2. Parties Authorized to Conduct GMS under UUPT

Party	Legal Basis	Conditions and Authority
Board of Directors	Article 79(1) UUPT	Primary and mandatory convener; establishes time, place, and agenda; responsible for Annual GMS; if negligent, may be sued by shareholders
Board of Commissioners	Article 79(2) UUPT	Subsidiary authority when Board of Directors: (a) is negligent; (b) deliberately refuses; or (c) has conflict of interest. Reflects checks and balances function
Shareholders	Article 79(3) and Article 80 UUPT	Shareholders representing at least 1/10 of shares may request GMS in writing; if not followed up, may apply for Commercial Court permission (ultimum remedium)
Commercial Court	Article 80 UUPT	Last resort: grants permission to shareholders; determines procedures; GMS decisions have legally binding force on the company

Source: Analysis of Law No. 40 of 2007 on Limited Liability Companies

The legal position of the GMS experiences a fundamental change when a Limited Liability Company is declared bankrupt by a commercial court decision. Since the declaration of bankruptcy, the principle of general attachment (sita umum or general beslag) applies to all company assets. The legal consequence of general attachment is the loss of the company's right—through its organs—to control and manage its assets, as all assets become the bankrupt estate (boedel pailit) managed by the Curator under the supervision of the Supervisory Judge (Ginting, 2019). Nevertheless, bankruptcy does not automatically dissolve the company and does not eliminate the existence of the GMS as a legal organ.

The GMS remains legally recognized as a corporate organ, but its authority is residual and subordinate to bankruptcy law. The GMS cannot make decisions that impact the bankrupt estate, including investment decisions, asset transfers, security encumbrances, or corporate policies affecting creditors' positions. From the perspective of the hierarchy of legal norms, during the bankruptcy period, the principle of lex specialis derogat legi generali applies, whereby bankruptcy law as a special law supersedes the application of the GMS's general authority under company law Sriwidodo & Tumanggor, 2024; Tandra, (2022). This subordination of corporate autonomy under bankruptcy law is not the permanent elimination of shareholders' rights, but rather a temporary suspension required to protect creditors' collective interests and maintain the integrity of the settlement process.

The implications of bankruptcy on the validity of GMS decisions not only concern formal aspects, but primarily touch on the dimension of authority and legal effect. In normal circumstances, the validity of GMS decisions is assessed based on two main parameters: fulfillment of formal requirements (quorum, call procedures, voting mechanisms) and material requirements (not contrary to laws, articles of association, and propriety). However, in bankruptcy, these parameters are supplemented by an additional layer of testing, namely conformity with the bankruptcy law regime. Since the bankruptcy declaration, every GMS decision touching upon asset management, transfers, encumbrances, or utilization of company assets falls outside the GMS's competence—even if made through valid company law mechanisms, substantively it exceeds authority (ultra vires) in the bankruptcy context. Thus, bankruptcy creates an objective limitation on the scope of decisions the GMS can make, and any GMS decision that imposes a new obligation on the bankrupt estate or reduces the potential for debt repayment has no binding force against the estate and cannot be enforced against creditors Nadifa & Priyono, (2025)

The limitation of the GMS's legal position in bankruptcy also reflects the principle of paritas creditorum, namely the principle of equality among creditors in obtaining debt repayment. If the GMS retains authority to influence asset management, there is a risk of violating this principle, because shareholders could push for policies that indirectly benefit certain creditors or even the shareholders themselves. By placing the Curator as a neutral party, bankruptcy law seeks to maintain fair and proportional distribution. Furthermore, from a good corporate governance perspective, limiting the GMS's position actually strengthens the principles of accountability and transparency: the Curator, as the manager of the bankrupt estate, operates under the Supervisory Judge's oversight and is legally accountable for every action, which is considered more capable of ensuring openness and accountability compared to internal GMS decisions that are closed and only represent shareholder interests Triantini & Laksana, 2020; Yuwono, 2015).

From a theoretical perspective, the concept of bankruptcy marks a shift from the paradigm of shareholder primacy to creditor primacy. In a solvent state, shareholders are the parties most interested in increasing company value because they bear the last risk. However, in an insolvent state, economic risk has effectively shifted to creditors. Therefore, the moral and legal legitimacy of corporate control also shifts to mechanisms that protect creditors. The GMS thus transitions from the highest decision-making organ to an organ with a residual and subordinate position in the bankruptcy process, with any of its decisions touching the boedel pailit being subject to Curator review and potential rejection if deemed harmful to creditors' interests.

Curator's Authority to Conduct GMS in a Bankrupt LLC

The basis for the transfer of authority from the Board of Directors to the Curator in bankruptcy is grounded in the normative construction of bankruptcy law, which positions the bankruptcy declaration as the turning point of the debtor's legal status. Under Article 69 paragraph (1) of Law No. 37 of 2004, the Curator is tasked with managing and settling all the bankrupt estate. The Curator's authority is attributive, derived directly from legislation and the court's decision, not from the Board of Directors, GMS, or Board of Commissioners. However, bankruptcy law does not state that the Curator replaces the GMS or becomes a corporate organ—the Curator is not part of the corporate organ structure, but rather an official performing a public function to manage and settle the bankrupt estate.

In practice and systematic legal construction, the Curator can: (1) permit or facilitate the conduct of GMS if required for the interest of bankruptcy; (2) attend GMS to ensure that decisions taken do not violate bankruptcy law; and (3) reject or disregard GMS decisions that touch upon the bankrupt estate without its consent. This means the Curator does not become a formal "convener" of the GMS as an internal organ, but has controlling authority to determine whether the GMS can be conducted and the extent to which its decisions have legal consequences against the bankrupt estate. This controlling authority, however, is not substitution authority—the Curator does not replace the GMS but every GMS decision impacting the bankrupt estate is subject to the supremacy of bankruptcy law.

Based on authority theory Philipus M. Hadjon, (2002); Bagir Manan, (2003), the Curator's authority in bankruptcy can be qualified as functional authority (kewenangan fungsional) arising from the need for bankruptcy resolution, not as structural authority (kewenangan struktural) replacing corporate governance. The involvement of the Curator becomes relevant when the GMS discusses matters such as: changes in capital structure; approval of corporate actions affecting company assets; appointment or dismissal of Directors and Commissioners that could affect coordination with the Curator; and implementation of peace agreement (akkoord) results such as debt-to-equity conversion. Whenever a GMS decision touches upon the bankrupt estate without the Curator's approval, that decision has no binding force against the estate and is not enforceable against creditors (Kharisma, 2023; Sukananda, 2022).

The analysis of the normative conflict between the two laws shows that the problem is not merely a difference in interpretation, but rather the existence of a legal vacuum (legal gap) regarding the Curator's authority in conducting GMS. This vacuum is evidenced by the absence of provisions explicitly regulating: the legal basis for the Curator to conduct GMS; the procedure for its implementation; the party authorized to grant approval or supervision; the scope of agenda that can be decided; and the legal force of GMS decisions organized by the Curator. Table 3 presents the differences between normal GMS and GMS implemented by the Curator.

Table 3. Differences between Normal GMS and GMS Conducted by the Curator

Aspect	Normal GMS (Healthy Company)	GMS by Curator (Bankrupt Company)
Legal Basis	Law No. 40 of 2007 on LLCs	Law No. 37 of 2004 on Bankruptcy and PKPU; UUPT applies insofar as not contrary to bankruptcy regime
Convener	Board of Directors on behalf of Company; Board of Commissioners or shareholders in certain circumstances	Curator as party managing and settling bankrupt estate based on bankruptcy judgment
GMS Purpose	Strategic corporate policy, performance evaluation, ratification of annual reports, dividend allocation, articles of association amendments	Obtaining shareholder approval for specific legal actions still required by UUPT, related to the interest of settling the bankrupt estate
Interest Orientation	Company and shareholder interests to increase company value	Settlement of boedel pailit and protection of creditors' rights under the pari passu prorata parte principle
Object of Decision	All corporate affairs under GMS authority per UUPT	Limited to legal actions directly requiring GMS approval in the context of settling bankrupt assets
Legal Consequence	Binding on all corporate organs per UUPT	Binding in bankruptcy proceedings and becomes the legal basis for the Curator to take legal action over the bankrupt estate
Supervision	Not under supervision of Supervisory Judge	All Curator actions under supervision of Supervisory Judge; may require consent from certain parties per Bankruptcy Law
Applicable Principles	Good Corporate Governance (GCG), company interests, and shareholder protection	Bankruptcy principles: creditor protection, settlement of bankrupt estate, balance of interests, and effectiveness of bankruptcy process

Source: Analysis of Law No. 37 of 2004 and Law No. 40 of 2007

Table 4 presents the obstacles faced by the Curator in conducting GMS, which arise as consequences of the identified legal vacuum.

Table 4. Obstacles Faced by the Curator in Conducting GMS

Type of Obstacle	Description	Legal Implication
Normative Obstacle	Absence of explicit provisions in Law No. 37/2004 regarding the Curator's authority to conduct GMS; UUPT maintains GMS as the highest organ without a special mechanism for bankruptcy	Legal uncertainty about who is authorized to conduct GMS; different interpretations; risk of legal actions against Curator's acts
Practical Obstacle	Curator faces rejection from Board of Directors and shareholders; delays in decision-making for bankruptcy settlement; inconsistent commercial court practices across jurisdictions	Delayed settlement of bankrupt estate; disputes regarding validity of GMS by the Curator; ineffectiveness of bankruptcy process; creditor losses
Institutional Obstacle	No clear coordination between Curator, Supervisory Judge, Board of Directors, Board	Overlapping authority between corporate organs and Curator; risk of

Type of Obstacle	Description	Legal Implication
	of Commissioners, and shareholders regarding GMS conduct; unclear whether Supervisory Judge approval is required	delayed settlement due to unclear coordination mechanisms; risk of challenge to Curator's actions
Implementation Obstacle	No regulation on technical GMS conduct: who calls GMS, who chairs, voting procedures, agenda scope, and legal force of GMS decisions organized by Curator	Curator faces dilemma between obligation to effectively settle bankrupt assets and risk of being considered to have exceeded authority; inconsistent court decisions

Source: Author's analysis, 2026

Future Reconstruction Model for the Curator's Authority in Conducting GMS

Based on the analysis of normative conflicts and legal vacuums identified above, this study proposes a legal reconstruction model that does not stop at recommending normative changes to Law No. 37 of 2004, but is directed at forming an operational model for the conduct of GMS by the Curator that can be practically applied. The reconstruction model is premised on the following foundational principles: (1) the Curator is not a corporate organ and does not replace the GMS as the highest decision-making authority of the LLC; (2) the Curator's involvement in GMS is functional and limited, derived from the mandate of the Bankruptcy Law; and (3) every GMS decision that touches upon the bankrupt estate must be subject to the Curator's review and the supervision of the Supervisory Judge. These principles ensure that corporate autonomy and bankruptcy supremacy can coexist without creating institutional confusion or conflicts of interest (Soeprapto, 2019).

The reconstruction model positions the Curator as the party that can conduct GMS only in certain circumstances, namely when the process of managing or settling the bankrupt estate requires a decision that, under Law No. 40 of 2007, can only be made through GMS. Thus, the conduct of GMS by the Curator is not a general authority replacing the GMS as a corporate organ, but a special authority granted to ensure the effectiveness of the bankrupt estate settlement process. This model also proposes that the conduct of GMS by the Curator can only be done after obtaining approval from the Supervisory Judge, which functions as a judicial control instrument to ensure that the conduct of GMS is genuinely necessary and is not used outside the bankruptcy purpose. The GMS forum still follows the mechanism regulated in Law No. 40 of 2007, insofar as it is not contrary to Law No. 37 of 2004, while the Curator acts as the meeting organizer after obtaining the Supervisory Judge's approval.

Pursuant to the three-layer analysis proposed in this study, the normative layer confirms that since bankruptcy status is established, the Board of Directors loses the right to manage and control bankrupt assets, and every GMS agenda related to asset transfers, capital structure changes, or other legal actions impacting the bankrupt estate's value must involve the Curator's control authority. The corporate implications layer demonstrates that GMS often serves as a formal prerequisite for certain corporate actions—such as approval of material asset disposal, articles of association amendments, or stock restructuring—that in the context of bankruptcy could increase the company's sale value as a going concern, making it in the Curator's interest to facilitate GMS as a legal instrument for optimizing settlement. The creditor protection layer affirms that the essence of bankruptcy is the collective protection of creditors through a fair and proportional distribution mechanism, meaning every GMS implementation touching upon bankrupt estate must be tested by the fundamental question: does the decision increase or reduce the potential debt repayment? Table 5 summarizes the proposed reconstruction model.

Table 5. Proposed Reconstruction Model for Curator's Authority in Conducting GMS

Normative Aspect	Proposed Provision
Authorization Basis	Curator is authorized to conduct GMS when settlement of bankrupt estate requires a decision that, under Law No. 40/2007, can only be made through GMS (limited/special authority, not general authority)
Prerequisite	Curator may only conduct GMS after obtaining written approval from the Supervisory Judge, serving as a judicial control instrument to ensure necessity for bankruptcy interests
Procedure	Conducted in accordance with Law No. 40/2007 (GMS call at least 14 days prior, quorum, voting, and minutes preparation by Notary), insofar as not contrary to Law No. 37/2004
Participants	Curator (as organizer), shareholders (as GMS participants), Board of Directors and Board of Commissioners (if needed for information), Notary (authentic deed), Supervisory Judge (if needed for oversight)
Agenda Scope	Limited to: (a) approval of legal actions requiring GMS decisions; (b) articles of association amendments related to liquidation; (c) approval of specific asset transfers; (d) other decisions directly supporting boedel pailit settlement
Legal Force	GMS decisions have legally binding force on all corporate organs, shareholders, Curator, creditors, and third parties, as long as conducted in accordance with applicable laws and Supervisory Judge's approval

Source: Author's reconstruction model, 2026

The normative implementation of this reconstruction model requires adding three new provisions to Law No. 37 of 2004: (1) "In the event that the settlement of the bankrupt estate requires a decision of the GMS as regulated in Law No. 40 of 2007, the Curator is authorized to conduct GMS after obtaining the approval of the Supervisory Judge"; (2) "The conduct of GMS as referred to in paragraph (1) shall be implemented in accordance with the provisions of Law No. 40 of 2007 insofar as not contrary to Law No. 37 of 2004"; and (3) "GMS decisions organized by the Curator have legally binding force on corporate organs, shareholders, Curator, and other interested parties, insofar as conducted in accordance with applicable laws." As a transition step before legislative amendments, the Supreme Court of Indonesia should draft Supreme Court Regulations (PERMA) or Circulars (SEMA) providing guidance for Supervisory Judges, Curators, and Commercial Courts regarding the GMS implementation mechanism, thereby creating uniformity of legal application and legal certainty in bankruptcy practice.

The philosophical foundation of this reconstruction rests on Gustav Radbruch's three legal values: legal certainty demands clear norms regarding Curator's authority boundaries in GMS conduct so as not to cause multiple interpretations; justice demands proportional protection for both creditors and shareholders; and utility demands that the legal arrangement actually supports effective bankrupt estate resolution. From the perspective of legal development theory (Mochtar Kusumaatmadja, 2006), law must function as an instrument of national development in the economic field, and the bankruptcy process—including management of bankrupt LLCs through the GMS mechanism—must run effectively while still respecting corporate governance principles. This reconstruction ultimately creates a complementary relationship between UUPT and Bankruptcy Law, whereby the GMS provides corporate legitimacy and the Curator ensures the integrity of the bankruptcy process, oriented not merely toward formal debt settlement but toward creating efficient, economically valuable resolution mechanisms that uphold creditor protection, legal certainty, and balance of interests for all involved parties (Ranovianto & Lyanthi, 2024; Karangan & Purwanto, 2023).

The future development of the Curator's authority in the context of GMS also tends toward a coordinative-strategic function. This means the Curator does not merely supervise or approve GMS agendas touching upon the boedel pailit, but can also proactively encourage GMS to be organized when necessary to increase the value of the bankrupt estate. For example, in the context of divestiture of business units, capital restructuring, limited merger or spin-off to increase asset sale value, or implementation of debt-to-equity conversion schemes. In this context, GMS becomes a corporate instrument that is functioned to support a more efficient and value-added settlement strategy (Agustina & Saraswati, 2021; Sukananda, 2022).

The increasing complexity of modern corporate structures—including holding companies, cross-jurisdictional ownership, or hybrid financial instruments—also necessitates greater clarity regarding the Curator's role in GMS proceedings. GMS decisions in such complex structures can have significant implications for the value and distribution of the bankrupt estate, affecting priority creditor rights, security arrangements, and post-restructuring ownership structures. Therefore, explicit normative clarity is required to provide predictability for all parties—shareholders, creditors, the Board of Directors, and the Curator—enabling them to understand their respective rights and obligations within the bankruptcy process. Without such clarity, the risk of prolonged litigation over GMS validity or Curator authority will continue to undermine the effectiveness of Indonesia's bankruptcy resolution framework (Tirayo & Halim, 2019; Alweni et al., 2022).

Moreover, the evolution of bankruptcy practice shows that settlement does not always take the form of passive liquidation (piecemeal liquidation), but can instead involve going concern sale, share transfer, or establishment of a new entity as an investment vehicle. In such schemes, GMS often becomes a formal prerequisite for approving certain corporate actions before transactions are completed. In this context, the Curator's authority to coordinate and oversee GMS implementation becomes an important instrument to ensure that the transaction structure remains within the corridor of bankruptcy law and does not deviate from the principle of balance of creditors' interests. As a final guardrail, every decision for the Curator to initiate, permit, or restrict GMS implementation must always be linked to concrete settlement objectives and must not exceed those interests, with transparency, reporting to the Supervisory Judge, and adequate documentation of every action being essential elements in maintaining the legitimacy of the Curator's authority Munir Fuady, (2014); Soedeson Tandra, (2026).

CONCLUSION

This study concludes that a normative conflict exists between Law No. 40 of 2007 concerning Limited Liability Companies and Law No. 37 of 2004 concerning Bankruptcy and

Suspension of Debt Payment Obligations (PKPU) regarding GMS authority after a limited liability company is declared bankrupt. While the UUPT maintains the GMS as the highest corporate decision-making organ, the Bankruptcy Law transfers management and control authority over the bankrupt estate to the curator under the supervision of the supervisory judge, resulting in legal uncertainty that requires harmonization between the two legal regimes. Furthermore, a legal gap exists concerning the curator's authority to convene or facilitate a GMS in a bankrupt limited liability company, as neither legal framework explicitly regulates the legal basis, procedures, supervisory mechanisms, scope of agenda, or legal validity of GMS decisions during bankruptcy proceedings. This situation causes curators to operate without clear legal authority and may generate disputes with corporate organs, thereby hindering the effectiveness of the bankruptcy settlement process.

The reconstruction model proposed in this study positions the curator as an authorized party to convene a GMS only under specific circumstances directly related to the settlement of bankrupt estate assets and after obtaining approval from the supervisory judge. The implementation of the GMS should follow the procedures established under the UUPT, involving the curator as the organizer, shareholders, the board of directors, the board of commissioners, and a notary. The agenda of such GMS should be limited to matters directly related to the settlement of bankrupt estate assets (boedel pailit), and the resulting decisions should have binding legal force for all relevant parties. This reconstruction provides harmonization between the UUPT and Bankruptcy Law, strengthens creditor and shareholder protection, and supports legal certainty and effectiveness in bankruptcy settlement.

As an operational transitional measure before legislative reform is implemented, the Supreme Court should establish a PERMA or SEMA as technical guidelines for legal practitioners. Furthermore, the Government and the Parliament should introduce additional provisions into Law No. 37 of 2004 that explicitly regulate: the conditions under which the curator may convene a GMS, the requirement to obtain approval from the supervisory judge, GMS procedures during bankruptcy proceedings, the types of matters that may be decided through such GMS, and the legal force of GMS decisions convened by the curator.

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