

**LEGAL CERTAINTY ON THE IMPLEMENTATION OF
GENERAL FORESTS IN INDONESIAN LAW
*LEGAL CERTAINTY OF THE IMPLEMENTATION OF
GENERAL CONFISCATION OF INSOLVENCY AGAINST
CRIMINAL CONFISCATION IN INDONESIAN LAW***

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Abstract

A court decision declaring a debtor bankrupt results in the debtor by law losing the right to control and manage the assets included in the bankruptcy estate and all of the debtor's assets will automatically be placed under general confiscation. creditors, and all the assets of the bankrupt debtor that have been placed under public confiscation will later be managed by the Curator under the supervision of the Supervisory Judge, but Article 39 Paragraph (2) of the Criminal Procedure Code conflicts with Article 31 Paragraph (2) of the Bankruptcy Law and PKPU, which states that all confiscations that have been carried out are erased and if necessary the Supervisory Judge must order the deletion, so the Author is interested in researching how the legal position of general confiscations for bankruptcy is on objects that are also placed in criminal confiscations, and legal certainty in general confiscations and criminal confiscations in Indonesian law, as well The analysis carried out used the theory of legal protection. The method used in this research is normative legal research which is carried out as an effort to obtain the necessary data related to the problem. The results of the study obtained the legal position of general confiscation for bankruptcy over objects that were also placed under criminal confiscation, namely general confiscation of bankruptcy preceded criminal confiscation because seen from justice the creditor's rights are fulfilled and there is no violation of rights anymore, and in terms of the benefits of the problem of debts and receivables can be resolved as soon as possible and in the fairest way so that the economy will not be disrupted, both on a small scale and on a large scale, while for the State, it can be used as a creditor holding privileges that get priority in the settlement of bankruptcy assets, and legal certainty in general confiscations and criminal confiscations in Indonesian law is where general confiscation which is a legal consequence of a court decision and criminal confiscation which is a legal consequence of a court order decision shows that there should have been an answer to all the problems that occurred as stated in Article 31 paragraph (1) of the Bankruptcy and PKPU, that since the bankruptcy declaration decision was pronounced, all forms of court decisions must be abolished, because basically a court decision can only be canceled with a court decision as well.

KEYWORDS - Bankruptcy General Confiscation, Criminal Confiscation

INTRODUCTION

Bankruptcy or bankruptcy is a general confiscation of all the debtor's assets in order to achieve peace between the debtor and creditors or so that the assets can be distributed fairly among creditors, bankruptcy is also said to be a joint effort¹ to get payments for all debtors fairly,² wherein in Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Obligations for Payment of Debt (hereinafter referred to as the "Bankruptcy Law and PKPU"), Bankruptcy is a General Confiscation of all the assets of a bankrupt debtor whose management and settlement is carried out by the Curator under the supervision Supervisory Judge, and in simple terms, bankruptcy can be interpreted as a confiscation of all the debtor's assets included in the bankruptcy application used to pay off the debtor's debt to the creditor whose management is carried out by the creditor.³

Bankruptcy is a situation where the debtor is unable to make payments on the debts of the creditor, with the condition of being unable to pay is usually caused by financial distress *from* the debtor's business which has experienced setbacks,⁴ bankruptcy provisions are rules that have the aim of dividing the debtor's assets to the creditors by conducting general confiscation of all debtor assets which are then distributed to creditors in accordance with their right of proportion. Bankruptcy itself is an embodiment of the *Creditorium Parity Principle* and the *Pari Passu Prorateparte Principle* in the property law regime;

The principle of *Parity Creditorium* is adhered to in the civil law system in Indonesia, this principle is contained in Article 1131 and Article 1132 of the Civil Code (hereinafter abbreviated as "KUHPPerdata"), which in the formulation of Article 1131 of the Civil Code shows that: in the field of assets will always have an impact on his assets, both those that increase the amount of assets (credit) and those that will reduce the amount of assets (debtors)". Meanwhile, if it turns out that in a legal relationship with these assets, a person has more than one obligation that must be fulfilled to more than one person who is entitled to fulfill this obligation, then Article 1132 of the Civil Code determines that: "Every party or creditor who is entitled to fulfill the agreement must receive fulfillment of the agreement from the assets of the obligated party (debtor) on a *pari passu basis*, (jointly obtaining repayment, without any precedence), and *pro rata*, (proportionally calculated based on the amount of each receivable compared to their total receivables as a whole, against the assets of the debtor).

A court decision declaring a debtor bankrupt causes the debtor by law to lose the right to control and manage the assets included in the bankruptcy estate and all of the debtor's assets will automatically be placed under general confiscation, where the general confiscation of all of the debtor's assets is aimed at protecting the interests of the creditor. against the actions of the debtor which may harm the bankrupt assets and to stop the execution of the debtor's assets by the creditors to obtain payment of their respective receivables.

Placing general confiscations can also maximize the collection of bankruptcy assets for payment to all creditors, with the maximum accumulation of debtor assets, all debtor debts can be paid to the maximum as well so that the bankruptcy process is not in *vain*. All assets of the bankrupt debtor that have been placed under public confiscation will later be managed by the Curator under the supervision of the Supervisory Judge.

General confiscation is a form of confiscation that is known in the civil law regime, especially bankruptcy law which is private, and in public law, in this case, criminal law also recognizes confiscation which in the Criminal Procedure Code (hereinafter

¹ Munir Fuady, *Bankruptcy Law*, Citra Aditya Bakti, Bandung, 2002, p. 8.

² R. Subekti, *Fundamentals of Commercial Law*, Intermedia, Jakarta, 1995, p. 2.

³ Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Obligations for Debt Payment

⁴ M. Hadi Shubhan, *Bankruptcy Law*, Prenadamedia Group, Jakarta, 2009, p. 1

abbreviated as "KUHAP") is referred to as confiscation which in Dutch is known as "*inbeslagneming*".⁵ Confiscation in the Criminal Procedure Code is regulated separately in 2 (two) places, most of which are regulated in Chapter V, the fourth part of Article 38 to Article 46 of the Criminal Procedure Code and a small part is regulated in Chapter XIV. Confiscation in Article 1 number 16 is defined as a series of Investigator actions to take over and or keep under his control movable or immovable, tangible or intangible objects for the purposes of evidence in Investigations, Prosecution and Trials.

The two articles above, between Article 39 Paragraph (2) of the Criminal Procedure Code, and Article 31 Paragraph (2) of the Bankruptcy Law and PKPU, caused conflicts and problems in their application, which resulted in 2 (two) confiscations on one object even though Article 436 *Wetboek op de Burgerlijke Rechtsvordering* (hereinafter abbreviated as "Rv"), which stipulates that goods that have been confiscated cannot be confiscated a second time. This confirms that it is not possible to place a general confiscation for bankruptcy and a criminal confiscation at the same time, and the existence of a conflict between a general confiscation and a criminal confiscation results in legal uncertainty, and in order to create legal certainty it must be determined how the actual position of a criminal confiscation over a general confiscation for bankruptcy must be determined;

Bankruptcy and criminal institutions which are both *ultimum remedium* or the last ultimate weapon will result in the interests of which legal regime will take precedence, moreover, both of them have legal consequences for confiscations that occur, wherein bankruptcy will give birth to a general confiscation of all of the debtor's assets and in the settlement of criminal cases will result in criminal confiscation for the purposes of Investigation, Prosecution and Evidence.

From the description above, regarding the impossibility of placing a general confiscation of bankruptcy and criminal confiscation at the same time, this has happened to PT Aku Digital Indonesia ("PT Akumobil") which was filed for bankruptcy by its creditors and on the one hand, PT Akumobil has also been secured by the Police. from the Polrestabes Bandung with allegations of criminal acts of fraud and embezzlement, which were committed by criminal confiscation based on the Decision of the Supreme Court of the Republic of Indonesia No. 1040 K/Pid/2020 dated September 21 2020, which stated: "Punish the Directors of PT Akumobil with imprisonment for alleged fraud and confiscate all of their assets for other legal purposes", in this case the interest in other legal cases referred to is a criminal case registered money laundering in Case No. 484/Pid.Sus/2021/PN.Bdg dated 10 January 2022 which stated: "All assets of PT Akumobil are declared as part of a crime and will be confiscated by the State to be handed over to the victim, in this case the West Java High Prosecutor's Office has the authority, and based on Bankruptcy General Confiscation based on Decision No. 44/Pdt.Sus.Pailit/2021/PN.Niaga.Jkt.Pst dated 3 February 2020, which stated that: "PT. Akumobil is in bankruptcy status with the legal consequence that all movable and immovable assets become *bankrupt* under the authority of the appointed Curator.

Research methods

The type of research used in this study is the normative juridical method, which is a scientific research procedure to find the truth based on the scientific logic of law from

⁵ M. Yahya Harahap, *Discussion of Problems and Application of the Criminal Procedure Code Investigation and Prosecution*, Sinar Graphic, Jakarta, 2001, p. 264

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 a normative perspective. ⁶The research approach used is the Statute *Approach* and the
Case Approach .

DISCUSSION

Legal Position of General Confiscation Bankruptcy on Objects Also Placed Criminal Confiscations

The purpose of confiscation is an attempt to guarantee the implementation of a judge's decision in the future on the defendant's property, both movable and fixed objects during the course of the case. Thus the confiscated goods cannot be transferred, traded, rented or transferred to another party by the plaintiff with bad *faith* . ⁷By linking the purpose of the confiscation with the provisions of Article 199 HIR, 214 Rbg and Article 231 of the Civil Code, the plaintiff's strong protection is guaranteed for the fulfillment of the implementation of the court's decision at the time the execution is carried out. Concurrent creditors will receive a share of debt payments after separate and preferential creditors.⁸

The purpose of bankruptcy is contained in the general explanation of the Bankruptcy Law and PKPU with the main objective being to settle accounts payable cases fairly, quickly, openly and effectively, besides that bankruptcy also aims to avoid confiscation and individual execution of the debtor's assets that are unable to pay off his debts. Individual executions carried out simultaneously have the potential to cause conflict in the form of struggles between creditors, and another purpose of bankruptcy is to prevent creditors holding material security rights from claiming their rights by selling the debtor's goods without regard to the interests of the debtor or other creditors.

Bankruptcy also aims to avoid fraud committed by creditors or debtors, and to achieve the goal of bankruptcy, of course, the bankrupt debtor's assets must be secured and one way to secure them is by confiscating them. Another term for confiscation is confiscation which comes from the term *beslag* which is Dutch. Both civil confiscation and confiscation have the same meaning, namely the act of forcibly placing the defendant's assets into a state of custody which is carried out officially based on a court or judge's order.⁹

Goods that are placed in custody, in the form of disputed goods, however it is also permissible for goods to be used as a means of payment for repayment of the debt of the debtor or the defendant, by selling the confiscated goods at auction. ¹⁰Determination and safeguarding of confiscated goods, takes place during the inspection process, until there is a court decision that has permanent legal force, which states whether the confiscation is legal or not.¹¹

According to Article 10 of the Bankruptcy and PKPU Laws, confiscation of collateral is a confiscation carried out on part or all of the debtor's assets in order to protect the interests of creditors, and applications for confiscation of collateral can be submitted to court by any creditor, the Attorney General's Office, Bank Indonesia, the Capital Market Supervisory Agency, or Minister of Finance. ¹²Collateral confiscations in bankruptcy cases are requested before bankruptcy is decided, and the purpose of sequestering collateral in bankruptcy proceedings is as a preventive measure to prevent debtors from committing dishonest acts or fraudulent practices by

⁶ Jhonny Ibrahim, *Theory and Methodology of Normative Law Research* , Malang, 2007, p. 57

⁷ Muhammad Nasir, *Civil Procedural Law* , Djembatan, Jakarta, 2005, p. 89

⁸ Hadi M. Shubhan, *Op.Cit .* , p. 32

⁹ M. Yahya Harahap, *Civil Lawsuit Law, Trial, Seizure, Evidence, and Judgment Court* , Sinar Graphic, Jakarta, 2008, page 282

¹⁰ *Ibid .* ,

¹¹ *Ibid .* ,

¹² *Ibid .* , Article 2

deliberately diverting their assets so that they can harm creditors in the context of repayment of their debts.¹³

The collateral confiscation will end as soon as the judge decides on bankruptcy or permanent PKPU, ¹⁴once the judge decides on bankruptcy, the general confiscation will automatically apply to all assets belonging to the debtor. The purpose of this general confiscation is almost the same as the purpose of civil confiscation in general, namely to prevent debtors from committing acts that are detrimental to their creditors such as hiding or diverting assets, it's just that there is one specific goal of bankruptcy, namely preventing seizure of debtor assets by creditors.

Regarding this last objective, after the bankruptcy decision, the debtor's assets will be managed by the Curator. The curator will later manage and settle the bankruptcy assets as collateral for debts to creditors and distribute them to creditors according to the position of creditors. Although the Bankruptcy and PKPU Laws only regulate collateral and general confiscations, in practice there are several other types of confiscations in the bankruptcy process, namely civil, criminal and tax confiscations. Civil seizures in bankruptcy include: collateral seizures and execution seizures. According to Article 31 paragraph (2) of the Bankruptcy and PKPU Laws, all confiscations including collateral seizures stop when bankruptcy is decided and automatically become general confiscations, and criminal seizures are regulated in Article 1 point 16 of the Criminal Procedure Code, which regulates as a confiscation which is a series of Investigator actions to take over and/or keep under his control movable or immovable, tangible or intangible objects for the purpose of proof. It was further explained that confiscation can be carried out starting from the time of investigation, and finally tax confiscation stipulated in Law Number 19 of 2000, which based on Article 1 number 14 confiscation is the act of a tax bailiff to take possession of the goods of the tax bearer, to be used as collateral to pay off debts taxes according to statutory regulations.

The position of general confiscation compared to other confiscations in bankruptcy, where the Bankruptcy Law and PKPU regulates the position of general confiscation when dealing with other confiscations based on Article 31 paragraph (1) of the Bankruptcy Law and PKPU, in Article 31 paragraph (2) of the Law Bankruptcy and PKPU stipulate even more strictly that, "All confiscations that have been carried out will be deleted and if necessary the Supervisory Judge must order their removal". Article 31 paragraph (1) and paragraph (2) of the Bankruptcy Law and PKPU emphasizes that: "The position of general confiscation is higher than other confiscations because with a general confiscation all confiscations are deleted even if forced by the supervisory judge to be able to cross out the confiscation outside general confiscation".

Regarding civil confiscation and criminal confiscation related to general confiscation within the framework of bankruptcy where bankruptcy is a situation where the debtor is unable to make payments on the debts of his creditors, and the condition of being unable to pay is usually caused by financial distress *from* the the debtor's business has experienced setbacks, while bankruptcy is a court decision resulting in a general confiscation of all of the bankrupt debtor's assets, both existing and those that will exist in the future.

¹³ Sri Hesti Astiti, "Confiscation of Collateral in Bankruptcy", Journal Yuridika, Vol. 29, No. 1, Year 2014, page 64, <https://e-journal.unair.ac.id/YDK/article/view/358/192>, accessed August 27 2022, 10.00 WIB (Western Indonesian Time)

¹⁴ Shietra & Pathners, 18 September 2016, "Confiscated Collateral Died when Bankruptcy and PKPU occurred", <https://www.West Region>

PT Akumobil has *defaulted* on the car sale and purchase agreement, whereby PT Akumobil as a car seller has not carried out its obligations as a seller to deliver the goods, namely the car after the price of the car has been agreed upon and paid by the buyer. PT Akumobil also promises *a refund* if the car is not delivered within a period of 14 (fourteen) days, and PT Akumobil *defaults* not only on one buyer, but up to thousands of buyers, so taking into account the purpose of the bankruptcy itself PT Akumobil is being filed for bankruptcy by several creditor.

The actions of PT Akumobil not to hand over the car to its buyers and not heeding the *refund clause* which must be carried out after a period of 14 (fourteen) days after the agreement was made which was requested by the buyer and not heeding the mediation decision made by PT Akumobil with the buyers, gave rise to debt which has fallen due to PT Akumobil due to the lapse of the scheduling time which has become its obligation to excel. PT Akumobil has entered into a type of *default*, namely not making achievements in accordance with Article 1243 of the Civil Code, because PT Akumobil has actually not carried out its achievements to give something.

The condition of the creditor's *default* in the application for a bankruptcy statement has in fact fulfilled the elements of Article 2 paragraph (1) jo. 8 paragraph (4) of the Bankruptcy and PKPU Law, where *default results* in debts that must be fulfilled by the debtor, and one of the debt elements referred to in Article 1 point 6 of the Bankruptcy and PKPU Law is debt that arises because of an agreement, as debts that arising from *default* is a debt arising from the agreement.

Management and settlement of bankrupt assets is carried out by the Curator under the supervision of the Supervisory Judge with the main objective of using the proceeds from the sale of these assets to pay all debts of the bankrupt debtor proportionally and in accordance with the creditor structure, where Article 21 of the Bankruptcy Law and PKPU expressly states that bankruptcy includes all of the debtor's assets at the time the bankruptcy declaration decision was pronounced as well as everything that was obtained during the bankruptcy.

The essence of the general confiscation of the debtor's assets, then with bankruptcy is to stop the action against the seizure of bankrupt assets by the creditors and to stop the traffic of transactions against the bankruptcy assets by the debtor which is likely to harm the creditors, then in that sense, the general confiscation ends confiscation and execution individually carried out by the creditors, so that the creditors must submit together (*consursus creditorium*).

From the provisions of this Article it is stated that all confiscations that have been carried out are nullified and if necessary the Supervisory Judge must order their removal, and in the elucidation of Article 31 paragraph (2) it states that, what is meant by "if necessary the Supervisory Judge must order their removal" includes among others the elimination of confiscation of registered land or vessels.

The provisions and explanations of Article 31 paragraph (2) of the Bankruptcy Law and PKPU, are the root of the problem regarding the scope of foreclosures which are stopped immediately and become deleted when there is a bankruptcy decision, because the provisions and explanations of the articles do not explicitly state the scope of foreclosures. The provisions of Article 31 paragraph (2) of the Bankruptcy Law and PKPU do not clearly state whether the confiscation referred to in the civil and criminal realms, in this case the confiscation referred to in the Article is only in a civil context. The above understanding in the criminal aspect, public law is prioritized over private law, where criminal law is public law, and for that, public law has the characteristics of coercion by state officials, and if the goods that the investigator wants to confiscate are goods that have been under powers of the Curator, the goods are still confiscated considering the nature and character of the criminal law, and criminal confiscation of

general confiscations in bankrupt assets where criminal confiscation takes precedence over the general confiscation of bankruptcy, if referring to the principle of public law interests takes precedence over civil law, this authority also provided by Article 39 paragraph (2) of the Criminal Procedure Code.

The purpose of the criminal confiscation itself is for the benefit of proof both from the Investigator, the Prosecutor, and the evidence at trial, and after the criminal case is over, the confiscated goods can only be returned to those who are entitled or confiscated or destroyed in accordance with the decision of the Panel of Judges. But if referring to Article 31 paragraph (2) of the Bankruptcy Law and PKPU, including confiscations in the civil and criminal domains with contradictions in Article 39 paragraph (2) of the Criminal Procedure Code, then this criminal confiscation is still subject to general confiscation, except for investigators or public prosecutors. can prove that it is true that the confiscated evidence was indeed obtained from the proceeds of crime, then for the sake of law, criminal confiscation of confiscated objects is prioritized.

Regarding the conflicting norms between Article 31 paragraph (2) of the Bankruptcy Law and PKPU and Article 39 paragraph (2) of the Criminal Procedure Code, it is necessary to understand that in interpreting the provisions of the article it is not enough just to read the words of the article. But it is also necessary to understand the principles contained in the provisions of the article and also legal doctrines that are able to answer conflicts between legal norms, so that if there is a conflict with legislation, it is necessary to look again at the governing principles or doctrines.

In analyzing the conflict between Article 31 paragraph (2) of the Bankruptcy and PKPU Law, and Article 39 paragraph (2) of the Criminal Procedure Code, the author refers to the teachings of legal collectivism that are adhered to by the Indonesian legal system, as mandated by Article 28 J paragraph (2) of the 2011 Constitution of the Republic of Indonesia. 1945 which states that: "In terms of exercising his rights and freedoms, everyone is obliged to submit to the restrictions determined by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with the considerations conscience, religious values, security and public order in a democratic society". The provisions of this article contain the meaning that in exercising their rights, each person is obliged to comply with the restrictions stipulated by law, this means that in the context of the curator carrying out his duties of securing the assets of a bankrupt debtor in order to fulfill creditors' rights, it does not necessarily abort the existing public interest in the bankruptcy estate. Because in exercising their rights they are still limited by law, in other words, the exercise of a right cannot be carried out absolutely because it must pay attention to the public interest in the exercise of that right.

Legal collectivism is a force in understanding legal norms, because this is a reflection of the legal personality of the Indonesian nation, where the basic view of this legal collectivism is that public interests are prioritized over private interests, and more fully in the teachings of legal collectivism, the purpose of holding law is to provide protection for the public interest, but that does not mean ignoring private interests, because it is assumed that if the public interest is protected, then individual interests are also protected, therefore, in this case the interests of public law take precedence over civil law.

Thus, criminal confiscation in bankrupt assets does not necessarily fall when there is a general confiscation, while it relates to the protection of creditors' interests in bankrupt assets to which a criminal confiscation has previously been attached, does not necessarily abort the criminal confiscation, because the criminal confiscation is intended for the purposes of proving a crime. Because of that, its function is as a

means of evidence needed to prove a crime, and in the case of proven crime, then the possibility of the decision is to declare the confiscated goods for the State, or confiscated to be destroyed, but if the crime is not proven then the bankrupt assets are returned to who has the right, in this case the Curator, to pay creditors' receivables. Thus according to the author, the provisions of Article 31 paragraph (2) of the Bankruptcy and PKPU Laws and Article 39 paragraph (2) of the Criminal Procedure Code are analyzed with Article 28 J paragraph (2) of the 1945 Constitution, then associated with the teachings of Indonesian legal collectivism, which juridically implies that the scope of meaning of all confiscations as stipulated in Article 31 paragraph (2) of the Bankruptcy Law and PKPU only covers the civil domain.

Legal certainty in general confiscation and criminal confiscation in Indonesian law

In resolving debt and credit disputes in the business world, usually the parties will take the non-litigation route first on the grounds that resolving disputes through the litigation route will take quite a lot of money and time, but when the non-litigation route is no longer feasible, parties who have rights or creditors will usually use the litigation route, namely civil lawsuits and even bankruptcy requests / PKPU as *ultimum remedium*,¹⁵ and not infrequently in some cases of civil lawsuits and bankruptcy requests at the same time criminal charges are filed to put pressure on the party who are considered in bad faith.

Bankruptcy institution as one of the debt and credit dispute resolution institutions is a form of implementation of Article 1131 and Article 1132 of the Civil Code, where the formation of this institution is also a form of embodiment of national development, especially in the business world and more specifically in the world of debt and credit disputes as emphasized in Article 33 paragraph (4) of the 1945 Constitution, then in order to file an application for a declaration of bankruptcy, the creditor is required to prove the bankruptcy requirements stated expressly in Article 2 paragraph (1) Jo 8 paragraph (4) of the Bankruptcy Law and PKPU, which basically requires that the existence of 2 (two) or more creditors and at least one non-payment of a debt that has matured and can be collected and the debt must be proven simply.

By carrying out a sentence at the beginning before completing it through business means, namely bankruptcy and/or PKPU, it will create legal uncertainty regarding the settlement of civil rights that should be received by parties who have rights/creditors, especially when bankruptcy cases are found to be carried out concurrently. with criminal cases, this will lead to polemics in the future regarding the confiscation that occurred.

On the one hand, bankruptcy has legal consequences to carry out a general confiscation of all the bankrupt debtor's assets and on the one hand, criminal cases have an interest in confiscating for the evidentiary process in investigations and trials, even evidence obtained from a crime can be confiscated for the State. As happened in the Akumobil case, where the proceeds of crime were obtained by Akumobil, and this case reflects that there are rights from Akumobil's creditors who do not get back what should be their rights, and at the same time Akumobil is also undergoing an application process. bankruptcy where the evidence confiscated for the State is the assets of Akumobil which will be used to fulfill the rights of its creditors, even though Article 46 paragraph (1) of the Criminal Procedure Code has also stated that the confiscated objects will be returned to the most entitled person.

The legal principle contains values and ethical demands, is a bridge between legal regulations and the social ideals and ethical views of the community, so the solution

¹⁵ Sutan Remy Sjahdeini, *Op.Cit*, page 95

to this problem is to uphold the principles of justice, the principle of benefit and the principle of legal certainty as the goal of law, and as stated by Gustav Radbruch. The principle of justice in bankruptcy institutions is the enactment of a general confiscation on all the bankrupt debtor's assets to protect the bankrupt debtor's assets from parties with bad intentions, both the debtor himself and the creditor, where the purpose of this general confiscation is to uphold justice for creditors to get back the rights that should be his.

The application of criminal confiscation in settlement of debt and credit disputes through a bankruptcy institution which has criminal indications will cause injustice in the future if indeed a criminal confiscation occurs it will result in the confiscation of the debtor's assets for the State and the fulfillment of the rights of creditors will be hampered, furthermore, the debtor's assets Those required for Investigation/Prosecution will usually take quite a long time and have the potential to reduce the value of these assets so that the value of *the bankrupt* bankruptcies will also decrease which will be detrimental to concurrent creditors in fulfilling their rights.

The principle of expediency upholds happiness that should be received by society as wide as possible, with the enactment of general confiscations on top of criminal confiscations, creditors will be guaranteed the certainty of repayment of their receivables so that it will create the widest possible happiness for all creditors, where in a bankruptcy case basically there is there are quite a number of creditors, and when criminal confiscation takes precedence, the benefits received by creditors may not necessarily be acceptable due to the certainty that the debtor's assets are used as evidence in the investigation or prosecution.

Although indeed the public interest must take precedence over private interests, paying attention to bankruptcy cases which also have many creditors, the principle of expediency must also be upheld, and the potential for evidence to be confiscated for the State does not create broad benefits for the general public as was the case in the Akumobil case. . The principle of legal certainty is upheld by the application of a concrete, permanent and consistent law, where general confiscation is a legal consequence of a court decision and criminal confiscation is a legal consequence of a court order decision which shows that there should have been an answer to all the questions raised. happened as stated in Article 31 paragraph (1) of the Bankruptcy Law and PKPU, that since the bankruptcy declaration decision was pronounced, all forms of court decisions must be null and void, because basically a court decision can only be canceled with a court decision as well.

Thus, for a debt settlement dispute through a bankruptcy institution that has indications of a crime, it is necessary to review whether this case is a business case or not, where business cases must be resolved in a business (civil) manner first and criminal sanctions must be placed as *an ultimum remedium* or weapon. Finally, so that in the future there will be no more bankruptcy and criminal cases that will run concurrently, even if it still happens, the conflict of interest between general confiscation and criminal confiscation should have found a way out by upholding the principles of justice, benefit and legal certainty as the goal of the law itself. .

Conclusion

Based on the results of the research and discussion and analysis that has been carried out, conclusions can be drawn which are the answers to the problems in the research as follows:

The legal position of general confiscation for bankruptcy on objects that are also placed under criminal confiscation is that the general confiscation of bankruptcy precedes the criminal confiscation because, judging from justice, creditors' rights are fulfilled and

there is no violation of rights anymore. In terms of benefits, debt problems can be resolved as quickly and fairly as possible so that the economy will not be disrupted, both on a small scale and on a large scale, while for the State, it can be used as a privileged creditor who gets priority in dealing with bankruptcy assets.

Legal certainty in general confiscation and criminal confiscation in Indonesian law is where general confiscation is a legal consequence of a legal product of a court decision and criminal confiscation is a legal consequence of a legal product of a court order showing that there should have been an answer to all the problems that occurred as which is stated in Article 31 paragraph (1) of the Bankruptcy Law and PKPU, that since the bankruptcy declaration decision is pronounced, all forms of court decisions must be abolished, because basically a court decision can only be canceled with a court decision as well.

REFERENCES

Book

1. A Fuad Usfa & Tongat, *Introduction to Criminal Law* , Second Printing, UMM Press, Malang, 2004
2. Ahmad Ali, *Revealing the Law* , Ghalia Indonesia, Jakarta, 2008
3. Ahmad Yani & Gunawan Widjaja, *Business law series* , Raja Grafindo Persada, Jakarta, 1999
4. Bryan A. Garner, *Black Law's Dictionary* , West Group, St. Paul, 1999
5. CST Kansil, Christine ST Kansil, Engeliën R, Palandeng and Godlieb N Mamahit, *Dictionary of Legal Terms* , Jala Gem Script , Jakarta, 2009
6. HMN Purwosutjipto, *Basic Understanding of Indonesian Commercial Law* , Djtangan, Jakarta, 1988
7. JJ, Wuisman, *Social Science Research*, M. Hisyam Editor, UI Press, Jakarta, 1993
8. M. Hadi Shubhan, *Bankruptcy Law* , Prenadamedia Group, Jakarta, 2009
9. M. Yahya Harahap, *Discussion of Problems and Application of the Criminal Procedure Code Investigation and Prosecution* , Sinar Graphic, Jakarta, 2001
10. Munir Fuady, *Introduction to Business Law* , Citra Aditya Bakti, Bandung, 2001
11. Man S. Sastrawidjaja, *Bankruptcy Law and Postponement of Debt Payment Obligations* , Alumni, Bandung, 2006
12. Munir Fuady, *Bankruptcy Law* , Citra Aditya Bakti, Bandung, 2002
13. R. Subekti and Tjitrosoedibyo, *Legal Dictionary* , Pradnya Paramita, Jakarta, 1989

14. R. Subekti, *Fundamentals of Commercial Law* , Intermedia, Jakarta, 1995
15. Robintan Sulaiman & Joko Prabowo, *More About Bankruptcy* , Center for Business Law Studies Faculty of Law, Pelita Harapan University, Jakarta, 2007
16. Satjipto Raharjo, "Implementation of Justice in a Changing Society", *Journal of Legal Issues*, 1993.
17. Shidarta, *The Morality of the Legal Profession Offers a Thinking Framework*, Revika A ditama , Bandung, 2006
18. Siti Anisah, *Protection of the Interests of Creditors and Debtors in Bankruptcy Law at Indonesia Study of Court Decisions* , Total Media, Yogyakarta, 2008
19. Soerjono Soekanto, *Legal Effectiveness and Sanctions Application* , Ramadja Karya, Bandung, 1988
20. Soerjono Soekanto, *Factors Influencing Law Enforcement* , Raja Grafindo Persada, Jakarta, 2008
21. Soerjono Soekanto, *Introduction to Legal Research* , UI Press, Jakarta, 1986
22. Soerjono Soekanto and Sri Mamuji, *Normative Legal Research A Brief Overview* , Rajawali Press, Jakarta, 2003
23. Sudikno Mertokusumo in H. Salim Hs, *Theory Development in Law* , Raja Grafindo Persada, Jakarta, 2010
24. Sutan Remy Syahdeni, *Bankruptcy Law: Understanding Fallisment Verordering, Juncto Law Number 37 of 2004 Concerning Bankruptcy* , Grafiti Main Library, Jakarta, 2008
25. Sutrisno Hadi, *Research Methodology Volume I* , Faculty of Psychology UGM Publishing Foundation, Yogyakarta, 1978
26. Syamsudin M. Sinaga, *Indonesian Bankruptcy Law* , Tatanusa, Jakarta, 2012
27. Tjiptono Darmadji, *Restructuring: Restoring and Accelerating the National Economy* , Grasindo, Jakarta, 2001
28. V. Harlen Sinaga, *Limits of Civil Liability of Directors for the Bankruptcy of Limited Liability Companies in Theory and Practice* , Adinatha Mulia, Jakarta, 2012

Thesis

Immanuel Rivanda Sibagariang, "Legal Certainty Against Decisions on Postponement of Debt Payment Obligations (Study of Decisions No. 20/PDT.SUS-PKPU/2018/PN.Medan and No. 21/PDT.SUSPKPU/2018/PN.Medan)", Masters Program Law Studies, University of North Sumatra, Medan, 2018

Proceedings of International Seminar on Indonesian Lecturer is Born to Report Regularly
Maranatha Purba, " Homologation of Postponement of Debt Payment Obligations (PKPU) as an Effort to Prevent Bankruptcy (Study of Supreme Court Decision No. 137k/Pdt.Sus-Pkpu/2014)", Thesis, Masters Program in Law, University of North Sumatra, Medan, 2019

Legislation

The 1945 Constitution of the Republic of Indonesia

Code of Civil law
Criminal Code

The Criminal Procedure Code

Law Number 4 of 1998 concerning Bankruptcy as amended by Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt.

Journal

Siti Hapsah Isfardiyana, "General Confiscation of Bankruptcy Precedes Criminal Seizures in Settlement of Assets Bankruptcy", Padjadjaran Journal of Law Science, Volume 3 Number 3 of 2016

Sri Redjeki Hartono, "Civil Law as the Basis for Modern Bankruptcy Law", Business Law Journal, Volume 7, Business Law Development Foundation, Jakarta, 1999