

## **Mechanism For Resolving Criminal Cases After A Bankruptcy Decision**

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### **ABSTRACT**

Problems then arise when, before or after the bankruptcy declaration decision is pronounced, it turns out that the bankrupt debtor's bankrupt assets which are included in the Curator's inventory list have been confiscated by investigators in connection with alleged criminal acts committed by the bankrupt debtor, where the confiscation action carried out by the investigator is based on Article 39 Paragraph (2) of the Criminal Procedure Code which must be in accordance with the provisions of Article 39 Paragraph (1) of the Criminal Procedure Code. The provisions on general confiscation are in conflict with criminal confiscation, because Article 31 of the Bankruptcy and PKPU Laws gives priority to general bankruptcy confiscation, whereas criminal confiscation is regulated in Article 39 paragraph (2) of the Criminal Procedure Code, which also gives priority to criminal confiscation. This conflict is further strengthened by the dichotomy between public law and private law, thus giving rise to legal uncertainty and hindering the curator in carrying out his duties to settle the bankrupt's assets, which automatically harms the creditors as victims.

**Keywords: Criminal Cases, Bankruptcy Decision.**

### **A. Introduction**

Since the bankruptcy declaration decision was pronounced, it resulted in the debtor's assets being removed and included in the bankruptcy estate. Therefore, as a result of the bankruptcy decision, the debtor's assets changed their status to bankruptcy estate. The bankruptcy estate is subject to general confiscation so that the debtor is no longer authorized to manage and carry out any legal actions concerning his assets. The debtor has been declared to be under guardianship as far as his assets are concerned, in this case the guardian is the curator.<sup>1</sup>

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<sup>1</sup> Putra, F.M.K., "Eksistensi Kreditor Separatis dalam Proses Persidangan Sebagai Pemohon Dalam Perkara Kepailitan, *Jurnal Perspektif*, Vol. 1 No. 2 (2014), 19.

The debtor's assets that are included in the bankrupt estate are general confiscations along with what was obtained during the bankruptcy. According to Nindyo Pramono, who stated that; General confiscation of bankrupt estates is an action of the curator or the Estate Office (BHP) in the form of collecting the assets of the bankrupt debtor before a verification meeting (debt matching) with his creditors is held. This general confiscation is carried out by receiving a letter of appointment as curator, securing bankrupt estates, and storing all letters, documents, money, jewelry, securities and other valuables by providing a receipt.

Problems then arise when, before or after the bankruptcy declaration decision is pronounced, it turns out that the bankrupt debtor's bankrupt assets which are included in the Curator's inventory list have been confiscated by investigators in connection with alleged criminal acts committed by the bankrupt debtor, where the confiscation action carried out by the investigator is based on Article 39 Paragraph (2) of the Criminal Procedure Code which must be in accordance with the provisions of Article 39 Paragraph (1) of the Criminal Procedure Code.

## **B. Research Methods**

A research cannot be said to be research if it does not have a research method.<sup>2</sup> Research methods are one of the factors of a problem that will be discussed.<sup>3</sup> The study was carried out using secondary data which was analyzed qualitatively using the Desk Research Method. The literature materials used in writing this research are several references originating from the results of research, studies and reviews of several papers which are then summarized into a work of scientific.

## **C. Analysis And Discussion**

### **1. Legal Provisions Relating to Bankruptcy**

The term "Bankrupt" comes from the Dutch word "Failliet". The word Failliet comes from the French word "Failite" which means to strike or stop paying. A person

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<sup>2</sup> Ismail Koto, "Perlindungan Hukum Terhadap Korban Tindak Pidana Terorisme", *Proceeding Seminar Nasional Kewirausahaan*, 2.1, (2021): 1052-1059.

<sup>3</sup> Ida Hanifah, Ismail Koto, "Problema Hukum Seputar Tunjangan Hari Raya Di Masa Pandemi COVID-19", *Jurnal Yuridis* 8.1, (2021): 23-42.

who strikes or stops paying in French is called "Le Failli". The verb Faillir means to fail. In English we know the word "To Fail" which also means to fail. In countries that use English for the meaning of Bankruptcy, the term Bankruptcy is used for Bankruptcy. In Indonesian, the terms Bankruptcy and Bankruptcy are used. Bankruptcy is a condition where the debtor is unable to make payments on debts from his creditors. The state of being unable to pay is usually caused by financial distress from the debtor's business which has experienced a decline. While bankruptcy is a court decision that results in a general seizure of all the assets of the bankrupt debtor, both existing and future. The management and settlement of bankruptcy may be carried out by the Curator under the supervision of the supervising judge with the main aim of using the proceeds from the sale of the assets to pay all of the debts of the bankrupt debtor proportionally (prorate parte) and in accordance with the creditor structure.<sup>4</sup>

According to Article 1 number 1 of Law Number 37 of 2004, bankruptcy is a general seizure of all assets of a bankrupt Debtor whose management and settlement are carried out by the Curator under the supervision of the Supervisory Judge as regulated in this law. Meanwhile, bankruptcy is a condition where the Debtor stops paying his debts to his creditors, which is generally caused by the Debtor experiencing financial distress as a result of the Debtor's business experiencing decline. According to Article 2 paragraph (1) of Law Number 37 of 2004, a Debtor who is declared bankrupt must go through a court decision, meaning that the Debtor or creditor does not suddenly declare bankruptcy. The decision on the bankruptcy of the Debtor results in a general seizure of all the assets of the bankrupt Debtor, the management and settlement of which 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 the assets (boedel) to pay all the debts of the bankrupt Debtor proportionally (prorata parte)

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<sup>4</sup> Kartini Mulyadi, *Kepailitan dan Penyelesaian Utang Piutang*, (Bandung: Alumni, 2004), hlm. 168.

and in accordance with the structure or order of creditors. The assets in question are both assets or property that already exist or that will exist in the future.

This can be proven from the text of Article 2 paragraph (1) of Law Number 37 of 2004, that a Debtor who has two or more creditors and does not pay in full even one debt that has matured and can be collected is declared bankrupt by court decision, either at his own request or at the request of one or more of his creditors, the creditors referred to in this article are confirmed by the explanation of Article 2 paragraph (1) as concurrent creditors, separatist creditors and preferred creditors.

## **2. Settlement of Criminal Cases After Bankruptcy Decision**

The legal basis for confiscation in criminal cases is regulated in Article 1 number 16 of Law No. 8 of 1981 concerning Criminal Procedure Code (KUHAP). The article reads "Confiscation is a series of actions by investigators to take over and/or store under their control movable or immovable, tangible or intangible objects for the purpose of evidence in investigations, prosecutions, and trials."

In Article Objects that are in confiscation due to civil cases or due to bankruptcy can also be confiscated for the purposes of investigation, prosecution and trying criminal cases, as long as they meet the provisions of paragraph (1) (Article 39 paragraph (2) of the Criminal Procedure Code). Article 39 paragraph (1) of the Criminal Procedure Code regulates objects that can be subject to confiscation: a. objects or claims of suspects or defendants that are wholly or partly suspected of being obtained from criminal acts or as the result of criminal acts; b. objects that have been used directly to commit criminal acts or to prepare for them; c. objects used to obstruct the investigation of criminal acts; d. objects that are specifically made or intended to commit criminal acts; e. other objects that have a direct relationship with the criminal acts committed. Meanwhile, bankruptcy is a general confiscation of all assets of the Bankrupt Debtor whose management and settlement are carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law (Article 1 number 1 of the Bankruptcy Law). Bankruptcy includes all of the debtor's assets at the

time the bankruptcy declaration decision is pronounced as well as everything obtained during the bankruptcy (Article 21 of the Bankruptcy Law).

Bankruptcy seizure is the seizure of all of the debtor's assets, to be settled by the Curator for the benefit of the creditors. General seized objects in bankruptcy are under the authority of the Curator to be settled, unlike criminal cases where seized objects are under the authority of the state. With the declaration of bankruptcy, by law the debtor loses his right to control and manage his assets included in the bankruptcy estate (Article 24 of the Bankruptcy Law). And the main function of the Bankruptcy Law is a legal means for settling debts, either by force or coercion.

Then in Article 31 paragraph (2) of the Bankruptcy Law it is stipulated that with the existence of a bankruptcy declaration decision, all seizures of the bankrupt estate are removed, meaning that it becomes the authority of the Curator in the context of the bankruptcy estate asset settlement process. There is a conflict of norms between Article 39 paragraph (2) of the Criminal Procedure Code and Article 31 paragraph (2) of the Bankruptcy Law. According to Article 39 paragraph (1) of the Criminal Code in conjunction with Article 39 paragraph (1) letter a of the Criminal Procedure Code, confiscation can be carried out on goods owned by convicts that were obtained from a crime or were intentionally used to commit a crime. Paragraph (2) states that goods that are also confiscated in civil/bankruptcy disputes can also be confiscated criminally for the purposes of investigation and prosecution. Article 46 of the Criminal Procedure Code, paragraph (1) states that confiscated goods are returned to those who are most entitled if the investigation and prosecution no longer require it; the case is not prosecuted because there is insufficient evidence; or the case is closed by law/set aside for the public interest, except if the object was obtained from a crime or used to commit a crime. In paragraph (2) it is stated that there is an obligation to return confiscated goods after the case is decided unless the judge states otherwise, such as confiscated goods are confiscated for the state, to be destroyed, to be damaged, or if the object is still used for another case. Based on the articles above, the decision of the Panel of

Judges regarding the confiscation of confiscated goods for the state in the First Travel case, according to the researcher, does not violate existing regulations because basically according to Article 46 paragraph (2) of the Criminal Procedure Code, the judge does have absolute authority to decide. This means that the judge's consideration as a form of legal discovery/rechtvinding is correct, even though the nature of the decision is rigid in the sense of following the existing articles without considering the justice of the parties (legal certainty).

#### **D. Conclusion**

The provisions on general confiscation are in conflict with criminal confiscation, because Article 31 of the Bankruptcy and PKPU Laws gives priority to general bankruptcy confiscation, whereas criminal confiscation is regulated in Article 39 paragraph (2) of the Criminal Procedure Code, which also gives priority to criminal confiscation. This conflict is further strengthened by the dichotomy between public law and private law, thus giving rise to legal uncertainty and hindering the curator in carrying out his duties to settle the bankrupt's assets, which automatically harms the creditors as victims.

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