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DETERMINATION OF A SUSPECT AS A BANKRUPT DEBTOR WHO SOLD ASSETS BEFORE BEING DECLARED BANKRUPT (Analysis of Pretrial Decision Number 13/Pid Pra/2023/PN Mdn)

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ABSTRACT

The bankruptcy case of PT. Sarana Perdana Indoglobal (PT. SPI) is a reminder for business owners to refrain from committing criminal violations in their operations. PT. SPI was declared bankrupt due to its inability to pay its debts, or default, based on the decision of the Central Jakarta Commercial Court No. 20/ Pailit /2007/PN Niaga . Jkt Pst , dated May 18, 2007. Bankruptcy status the No become barrier sentenced to sanctions criminal to The commissioners, managers, and employees of PT. SPI were still subject to criminal penalties for carrying out company activities in violation of criminal law. The research method used in this study is normative. The results of the study state that the validity of the determination of a suspect against a legal subject is the standard of truth to assess whether or not the determination of a suspect against a legal subject is valid in accordance with the rules stated in the Indonesian criminal procedure law which is currently contained in the 2025 Criminal Procedure Code. The validity of the determination of a suspect against a bankrupt debtor is the standard of truth to assess whether or not the determination of a suspect against a bankrupt legal subject is valid in accordance with the rules stated in the Indonesian criminal procedure law which is currently contained in the 2025 Criminal Procedure Code. The judge who examined and tried the Pretrial Case Number 13 / PID PRA / 2023 / PN MDN, has carefully applied the law as it should be in accordance with the legal principles stipulated in the Constitutional Court Decision No. 21 / PUU-XII / 2014 and Article 1 number 14 of the 1981 Criminal Procedure Code. The decision has also properly applied the theory of legal protection.

Keywords: Determination of Suspect, Bankruptcy, Debtor

INTRODUCTION

The bankruptcy case of PT. Sarana Perdana Indoglobal (PT. SPI) is a reminder for business owners to refrain from committing criminal violations in their operations. PT. SPI was declared bankrupt due to its inability to pay its debts, or default, based on a court ruling. Central Jakarta Niaga No.20/ Bankruptcy /2007/PN Niaga . Jkt Pst , dated May 18, 2007. Bankruptcy status the No become barrier sentenced to sanctions

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criminal to The commissioners, managers, and employees of PT. SPI were still subject to criminal penalties for carrying out company activities in violation of criminal law.

The curator has been given a legal obligation by the commercial court, the provisions of which are regulated in the Bankruptcy Law and PKPU, namely to manage and settle the assets of the bankrupt debtor. Losses incurred due to negligence or errors of the curator are the full responsibility of the curator. This is expressly explained in the provisions of Article 72 of the Bankruptcy Law and PKPU, which states that "The curator is responsible for errors/negligence in carrying out management and/or settlement duties that result in losses to the bankrupt estate." [1]Based on this, since the court declared bankruptcy, responsibility for the bankrupt estate is fully transferred from the debtor to the curator.

This shift in responsibility is often used as a legal justification for debtors to escape criminal suspect status through pretrial proceedings. Pretrial proceedings are an institution used for law enforcement in Indonesia. This institution can guarantee the implementation of restrictions on a suspect's personal freedom.[2]

Constitutional Court Decision Number 21/PUU-XII/2014 dated April 28, 2015, expanded the object of pretrial. The authority of pretrial was expanded not only to adjudicate pretrial as regulated in Article 79 to Article 83 of Law Number 8 of 1981 concerning Criminal Procedure Code (KUHAP), but the authority of pretrial can also adjudicate the process of handling cases regarding the determination of suspects.

The President Director of PT. Hardys Retailindo, hereinafter referred to as PT. HR, as the Bankrupt Debtor, filed a pretrial motion for the determination of his status as a suspect. PT. HR was declared in a state of suspension of debt payment obligations (PKPU) by the Commercial Court at the Surabaya District Court, based on decision No. 29/Pdt.Sus-PKPU/2017 PN.Niaga. Sby, dated September 25, 2017. Then, it was declared bankrupt based on decision No. 29/Pdt.Sus-PKPU/2017 PN.Niaga. Sby, dated November 19, 2017.

Before PT. HR was declared bankrupt by the court, the Bali Regional Office of the Directorate General of Taxes issued a letter No. Pemb.BP-2/WPJ.17/2017, dated May 5, 2017 regarding notification of preliminary evidence examination regarding the alleged occurrence of a criminal act in the field of taxation as referred to in Article 1 number 27 of Law Number 6 of 1983 as amended by Law Number 16 of 2009 concerning General Provisions and Tax Procedures hereinafter referred to as the KUP Law. The letter was addressed to PT. HR, meaning that the police report on the alleged

[1] Atika Ismail, "Analisis Alternatif Restrukturisasi Utang atau Penutupan Perusahaan Pada Pandemi Covid-19 Melalui PKPU, Kepailitan dan Likuidasi", *Jurnal Kepastian Hukum Dan Keadilan*, Vol. 3 No.1 (2021), p. 48.

[2] Shandy Herlian Frimansyah, Achmad Mifta Farid, "Politik Hukum Praperadilan sebagai Lembaga Perlindungan Hak Tersangka Ditinjau dari Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014 mengenai Penetapan Tersangka", *Jurnal Penegakan Hukum dan Keadilan*, Vol. 3, No. 2 (2022), p. 92

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tax crime originated from a report from a Creditor of PT. HR. The Police Report was followed up by the Police until the Director of PT. HR was named a suspect in a tax crime.

The President Director of PT. HR as a Bankrupt Debtor filed a pretrial motion against the determination of his status as a suspect in a tax crime to the Denpasar District Court. One of the legal reasons for the applicant filing the pretrial motion is that related to taxes, it should have been the Curator's duty to pay it from the bankruptcy estate because PT. HR was in a state of bankruptcy. Based on the pretrial motion, the Denpasar District Court issued Decision Number 19 / Pid.Pra / 2018 / PN Dps . dated November 23, 2018, with amar the decision on the main thing is state :

1. Grant the Applicant's pretrial motion in part;
2. Declares that the determination of the applicant Ir I Gede Agus Hardiawan (President Director of PT. HR) as a suspect by the Respondent is invalid;
3. Declares that all decisions and determinations issued further by the Respondent, relating to the Determination of the Suspect against the Applicant Ir. I Gede Agus Hardiawan, as long as they are carried out using the same procedure, are invalid.

This pretrial institution is also used by Edwin Witarsa as the Main Commissioner who was previously also the Director of PT. Stareast Sejahtera Group hereinafter referred to as PT. SSG. In this case, PT. SSG, is in bankruptcy with all its legal consequences, based on the decision of the Commercial Court at the Medan District Court number 5 / Pdt.Sus-Pembanalan Perdamaian / 2018 / PN Niaga Mdn., Jo number 11 / Pdt.Sus- PKPU / 2017 / PN Niaga Mdn., dated February 14, 2019.

While in bankruptcy, several creditors of PT. SSG namely Ena Koman, Roslily , Rudi filed a police report on suspicion of fraud and/or embezzlement against Edwin Witarsa as referred to in the police report number: LP/324/II/2021/SUMUT/SPKT, dated February 12, 2021, at the North Sumatra Regional Police. The initial chronology, PT. SSG made an offer/percentage related to the construction of an apartment unit at the Swiss-Bell Hotel Lagoi Bay-Bintan at the JW Marriot Hotel Medan. The creditors were interested in the offer, so that in May 2012, the creditors purchased the apartment unit with payments to PT. SSG in installments and have been paid in full.

PT. SSG promised to complete the apartment construction in April 2014 and to hand over the apartment within 60 days of completion. This agreement was stated in the deed of sale and purchase agreement for the apartment units. However, after the agreed date had passed, PT. SSG did not hand over the apartment, but instead transferred or sold the apartment to PT. Alam Indah Bintan on June 30, 2017.

PT. SSG canceled the agreement with the Creditors and returned part of the purchase money for the apartment. However, PT. SSG did not pay off the remaining money for the purchase of the house in full because PT. SSG was declared bankrupt on

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February 14, 2019. Due to this incident, the Creditors suffered losses amounting to billions of rupiah, namely the Creditor on behalf of Ena Koman suffered a loss of Rp. 1,979,922,000,-, Roslily suffered a loss of Rp. 1,432,800,000,- and Rudi suffered a loss of Rp. 1,979,922,000,-

Then, based on the report, Edwin Witarsa was named a suspect. Edwin Witarsa filed a pretrial motion to the Medan District Court against the determination of himself as a suspect. One of Edwin Witarsa's arguments in the motion was that the applicant's (Edwin Witarsa) actions were not criminal acts on the grounds that PT. SSG had been declared bankrupt by the Commercial Court at the Medan District Court. However, the Medan District Court issued a pretrial decision number 13/Pid Pra/2023/PN Mdn, dated February 27, 2023, which essentially rejected the applicant's motion in its entirety. The judge in his legal considerations was of the opinion that the determination of the suspect against the applicant (Edwin Witarsa) was in accordance with legal procedures and therefore must be declared legally valid . In addition, the judge also argued that the reason because PT. SSG was in a state of bankruptcy had entered the main case.

The creditors have paid off the purchase price of the apartment, meaning that they are the parties entitled to ownership of the apartment units, so PT. SSG should not have the right to sell the apartment. Ena Koman, Roslily , and Rudi, who are creditors of PT. SSG, have also submitted a list of bills and verification of receivables to PT. SSG as the bankrupt debtor.

Legal remedies for the cancellation of legal acts including sales and purchases carried out by the Debtor against his assets are regulated in Article 41 paragraph (1) and (2) of the Bankruptcy and PKPU Law. This is also known as an *actio pauliana lawsuit* , which can only be carried out by the Curator. In the case of PT SSG, there is a fact that the curator also did not carry out an *actio pauliana lawsuit* on the grounds that the sale and purchase event between PT. SSG and PT. Alam Indah Bintan had been more than 1 year ago. Therefore, the apartment that had been sold was not included in the bankruptcy estate. The Bankruptcy and PKPU Law also does not specifically regulate criminal sanctions for PT SSG's actions.

This situation is certainly very detrimental to creditors, especially since there are no specific criminal offenses in the Bankruptcy Law and the PKPU Law that regulate this matter. Sunarmi also emphasized that even if the bankruptcy petition filed by the debtor is granted by the judge, the bankruptcy process does not waive criminal charges. This is intended to protect the interests of creditors. [3]The implementation of bankruptcy law does not provide balanced protection for creditors and debtors. Judges' decisions provide more protection to debtors. This is evident in the lengthy bankruptcy proceedings, the infrequent audit of debtor books, and the elimination of *gizjeling* (seizure), which results in debtors fleeing. Furthermore, debtors abuse bankruptcy

[3] Sunarmi, *Prinsip Keseimbangan Dalam Hukum Kepailitan di Indonesia Edisi 2*, (Jakarta : PT. Sofmedia, 2010) p. 213

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petitions to avoid criminal charges, avoid debt repayment, and transfer bankruptcy assets, so that when the bankruptcy decision is issued, the bankruptcy assets no longer exist.[4]

Therefore, it is interesting to discuss the event of determining the suspect and the rejection of the Pretrial Application made by Edwin Witarsa as per the Pretrial Decision number 13/Pid Pra/2023/PN Mdn, dated February 27, 2023 , at the Medan District Court. Based on all the descriptions above, it is necessary to discuss and review the thesis with the topic of study, whether or not the determination of the suspect of a bankrupt debtor who sold assets before being declared bankrupt (analysis of the pretrial decision number 13/Pid Pra/2023/PN Mdn).

METHOD

This study uses normative legal research. It focuses on analyzing legal norms, legal principles, and legal doctrines and theories regarding legal facts or events[5] related to the validity of the determination of a suspected bankrupt debtor who sold assets. before being declared bankrupt in pretrial decision number 13/Pid Pra/2023/PN Mdn, at the Medan District Court .

DISCUSSION

The Validity Of Determining A Suspect In Criminal Law

Determination of suspect to someone , related close with eligibility And peace right comfortable life on somebody And regarding with right basic human beings . Article 1 number 14 of the 1981 Criminal Procedure Code states that suspect is Wrong a person who because his actions or the situation based on proof beginning worthy allegedly as perpetrator action criminal . Apart from the 1981 Criminal Procedure Code, the phrase proof quite a start Also found in several Constitution namely :

1. Article 28 of the Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism, as enacted by Law Number 15 of 2003 concerning the Determination of Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law (Terrorism Criminal Acts Law) states that investigators can arrest any person who is strongly suspected of committing a criminal act of terrorism based on sufficient initial evidence as referred to in Article 26 paragraph (2) for a maximum of 7 x 24 (seven times twenty-four) hours.
2. Article 44 paragraph (1) of Law Number 30 of 2002 concerning the Corruption Eradication Commission states that if investigators in conducting investigations find sufficient preliminary evidence of suspected corruption,

[4]Ibid. p. 222
[5] Eka NAM Sihombing, Cynthia Hadita, *Penelitian Hukum*, (Malang: Intrans Publishing, 2022), P. 48.

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within a maximum of 7 (seven) working days from the date on which sufficient preliminary evidence is found, investigators must report to the Corruption Eradication Commission.

3. Article 22 of Law Number 09 of 2013 concerning the Prevention and Eradication of Criminal Acts of Terrorism Financing, states that Blocking is carried out on Funds that are directly or indirectly or are known or reasonably suspected to be used or will be used, either in whole or in part, for Criminal Acts of Terrorism. The explanation of the Article states that the Blocking referred to in this provision is the blocking of Funds that are based on sufficient initial evidence reasonably suspected to be used or will be used for Criminal Acts of Terrorism that are tried in Indonesia. Blocking is carried out on Funds based on sufficient initial evidence, which are known or strongly suspected to be used or will be used, either in whole or in part, for Criminal Acts of Terrorism.

4 (four) institutions enforcer law namely Chairman Court Agung , Minister Justice , Prosecutor Agung , and Head Police Republic of Indonesia, issued Letter Decision Joint (SKB) as results Meeting Work MAKEHJAPOL-I Joint Working Meeting (“ Rakergab Makehjapol ”) about Improvement Coordination In Handling Case Criminal , on March 21 , 1984,. One of the topic discussion in Joint Working Meeting Makehjapol the is regarding “ evidence” quite a start ” as condition in arrest according to Article 17 of the Criminal Procedure Code.[6]

In the meeting, 4 (four) opinions were inventoried regarding sufficient initial evidence, namely:[7]

a. Police report only;
b. Police report plus witness's statement/crime scene statement/investigation report/evidence;
c. Police report plus witness's report and crime scene report/investigation report/evidence; and
d. Police report plus all other evidence.

Regarding these four opinions, the Makehjapol Regional Working Meeting decided that what is meant by sufficient initial evidence should be a Police Report plus one other piece of evidence. Or in other words, it is formulated that what is meant by sufficient initial evidence, sufficient initial evidence must concern the pieces of

[6] Keputusan Bersama Ketua Mahkamah Agung, Menteri Kehakiman, Jaksa Agung, dan Kepala Kepolisian Republik Indonesia Nomor : 08/KMA/1984, Nomor : M.02-KP.10.06 Th.1984, Nomor : KEP-076/J.A/3/1984, No Pol : KEP/04/III/1984 Tentang Peningkatan Koordinasi Dalam Penangan Perkara Pidana, Bab III Permasalahan.

[7] Ibid.

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evidence regulated in Article 184 (1) of the Criminal Procedure Code, not others such as: Police reports and so on.[8]

According to M. Yahya Harahap , regarding What do you mean with beginning sufficient evidence , maker Constitution deliver fully to evaluation investigators . However , it is very realized method such an application can creates " uncertainty " in practice law as well as at a time bring difficulty for pretrial For evaluate about There is or No beginning sufficient evidence . The most rational And realistic , if the word " beginning " was dropped , so sentence That reads : " suspected " hard do action criminal based on sufficient evidence".[9]

Decision Court Constitution No. 21/PUU-XII/2014 affirms that the phrase " evidence" beginning " , " evidence sufficient beginning " , and " sufficient evidence " as determined in Article 1 number 14, Article 17, and Article 21 paragraph (1) of the 1981 Criminal Procedure Code is contradictory with Constitution The 1945 Constitution throughout No interpreted that " the evidence beginning ", " evidence sufficient beginning ", and " sufficient evidence " is a minimum of two tool the evidence contained in Article 184 of the 1981 Criminal Procedure Code.

Decision Court Constitution the Also in line with draft the suspect in question in Article 1 number 28 of the 2025 Criminal Procedure Code states that A suspect is a person who, due to his actions or circumstances, can be suspected of being the perpetrator of a crime based on at least 2 (two) pieces of evidence.

Court Constitution in the verdict numbered 21/PUU-XII/2014 provides more interpretation concrete to Article 1 number 14, Article 17 and Article 21 of the Criminal Procedure Code which states the main thing is mention that For set suspect to a person must at least filled two tool evidence . However , the decision Court Constitution This No Also give limitation duration somebody has suspect status , so that potential cause occurrence abuse authority And violation to right basic man .

Change second Invite Invite The 1945 Constitution provides strong commitment against . enforcement law And protection to right basic human beings . Article 28D of the Law Invite The 1945 Constitution states that " Everyone has the right on recognition , guarantee , protection , and certainty just law as well as equal treatment in front of law ". Certainty just law is right everyone who is very means And must filled when face to face with legal process , because only with in such a way that person will believe to law That alone . Related with certainty law going to objective law That Alone that is justice , we remember to a philosopher leading law namely Gustav Radbruch who also a legal scholar from Germany teaches draft three basic ideas

[8] Harun M. Husein, *Penyidikan dan Penuntutan Dalam Proses Pidana*, (Jakarta: Rineka Cipta, 1991), p. 112.

[9] M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP (Penyidikan dan Penuntutan*) *Edisi Kedua*, (Jakarta: Sinar Grafika, 2007), p 158.

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law . According to Gustav Radbruch , law must contains 3 (three) values identity , namely as following .[10]

1. The principle of legal certainty (*rechtmatigheid*), where this principle is reviewed from a juridical perspective.
2. The principle of legal justice (*gerectigheit*), where this principle is viewed from a philosophical perspective, where justice is equal rights for all people before the court.
3. The principle of legal utility (*zwechmatigheid or doelmatigheid or utility*).

Must recognized of course happen debate among expert law related matter which one should prioritized between certainty law , justice And benefits law . According to Utrecht, certainty law contain two meaning , namely First , there is rules that are general make individual know actions what is allowed or No may done , and second , in the form of security law for individual from arbitrariness government Because with existence rules that are general That individual can know What only those who are allowed charged or done by the State against individual .[11]

Teachings certainty law This originate from teachings juridical- dogmatic based on flow thinking positivism in the world law , which tends to see law as something that is autonomous , that is independent , because for adherents thinking this , law nothing but gathering rules . Share adherents flow this , the goal law nothing other than just ensure realization certainty law . Certainty law That realized by law with its nature is only make something rule law of a legal nature general . Nature general from rules law prove that law No aim For realize justice or benefit , but rather solely For certainty .[12]

A interesting problem For reviewed related with certainty law is in matters of enforcement process law , in particular in legal process program criminal , where someone who is appointed as suspect No given limit definite time when will his suspect status be ? That ended . This is Of course bring consequence law alone for suspect said , because although in a way juridical Not yet There is certainty stated guilty , will but in a way the person 's social Already considered guilty And bear the shame in society . Even in things certain , in one side si suspect No Can use rights the law in a way maximum , so that assessed very harm And No provide a sense of justice . On on the other hand , no what we can be certain of is when is the suspect status That will end very potential occurrence violation right basic Human From the angle investigator , uncertainty law This can used For do extortion to suspect with reason for the case No processed . Based on uncertainty suspect status law the above , linked with potential violation right basic man in framework enforcement law right basic human , then

[10] Dwika, "Keadilan dari Dimensi Sistem Hukum", http://hukum.kompasiana.com. (02/04/2011), diakses pada 23 Februari 2026.

[11] Riduan Syahrani, *Rangkuman Intisari Ilmu Hukum*, (Bandung : Citra Aditya Bakti, 1999), p 23.

[12] Achmad Ali, *Menguak Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis)*, (Jakarta : Gunung Agung, 2002), p 82-83.

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writing This try For study in a way normative what is the suspect's status ? in perspective law program criminal And Invite Invite Number 39 of 1999 concerning Right Basic Man .

Before determining suspect status, the judge first warns the witness with the threat of sanctions for providing false testimony. If the witness continues to provide testimony suspected of being false, the judge will immediately order the witness's detention and prosecution by the public prosecutor for perjury. This means that, as explained previously, we can see that the judge can directly determine a witness as a suspect, or indirectly determine a witness as a suspect by requesting other law enforcement officials, such as the prosecutor's office, the police, or the Corruption Eradication Commission (KPK), an independent state institution.

The status of a suspect for a witness can be determined if the witness who was properly summoned consciously does not want to come to court. Such a witness may be determined to have violated Article 224 of the 1946 Criminal Code which is currently regulated in Article 285 of the 2023 Criminal Code which states that Any Person who unlawfully does not appear when summoned as a witness, expert, or interpreter, or does not fulfill an obligation that must be fulfilled in accordance with the provisions of laws and regulations, shall be punished with:

a. imprisonment for a maximum of 9 (nine) months or a maximum fine of category II, for criminal cases; or
b. imprisonment of up to 6 (six) months or a maximum fine of category II, for other cases.

The Validity Of The Determination Of A Suspect Against A Bankrupt Debtor

A suspect is a person who, due to their actions or circumstances, is reasonably suspected of being the perpetrator of a crime based on at least two pieces of evidence. [13]The decision by investigators to designate someone as a suspect is a follow-up to a legal investigation process carried out by the police.

Based on the provisions of Article 1 number 8 of Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP 2025) it states that "Investigation is a series of actions by investigators to search for and find events suspected of being criminal acts in order to determine whether or not an investigation can be carried out according to the methods regulated in this Law." The determination of a suspect is carried out after the investigator has succeeded in collecting and obtaining clarity on the occurrence of a criminal act based on a minimum of 2 (two) pieces of evidence.[14]

[13] Pasal 1 angka 28 Undang-undang Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana

[14] Pasal 1 angka 31 Undang-undang Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana

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Determination as a suspect is usually followed by arrest, search, and confiscation of the suspect by law enforcement officers. Confiscation of movable or immovable objects, tangible or intangible that have a point of contact in a criminal event, in the 2025 Criminal Procedure Code, it is stated that the definition of confiscation is an action by investigators to take over and/or store under their control movable or immovable objects, tangible or intangible, for the purpose of evidence in investigations, prosecutions, and/or examinations in court.[15]

Article 31 paragraph (1) of the Bankruptcy and PKPU Law also regulates the position of general seizures when faced with other seizures. This article explicitly states that, "All seizures that have been carried out are deleted and if necessary the Supervisory Judge must order their deletion." Article 31 paragraph (1) and paragraph (2) of the Bankruptcy and PKPU Law emphasizes that the position of general seizures is higher than other seizures because with the existence of a general seizure all seizures are deleted and if forced the supervisory judge can delete seizures outside of general seizures.

In the case of a bankrupt debtor who is named as a suspect for a criminal act and upon the determination of the suspect, the objects or assets belonging to the bankrupt debtor are confiscated by investigators, this will have legal consequences. There are differences between criminal confiscation and general confiscation in the legal context in Indonesia. In terms of the position of criminal confiscation and general confiscation, legal experts also have their own views.

Criminal and tax law experts are guided by the public interest represented by criminal and tax law. [16]Meanwhile, civil and bankruptcy experts also consider bankruptcy cases to be public matters concerning the public interest because they involve numerous creditors, as in the Abu Tour case (1,822 creditors). [17].

Civil law experts believe that general seizures should be prioritized because, from a justice perspective, creditors' rights will be fulfilled and there will be no further violations of their rights. [18]The aspect of justice in criminal law means that those guilty must be punished. To achieve this, evidence, including confiscated assets, is essential. According to civil law experts, if general seizures are prioritized, debt issues can be resolved quickly and fairly, thus avoiding disruption to the economy, whether on a small or large scale. Conversely, if other seizures, such as criminal seizures, are

[15] Pasal 1 angka 35 Undang-undang Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana

[16] Siti Hapsah Isfardiyana, "Sita Umum Kepailitan Mendahului Sita Pidana dalam Pemberesan Harta Pailit", *Padjadjaran Jurnal Ilmu Hukum*, Vol. 3, No. 3, Tahun 2016, hal. 644-655, http://jurnal.unpad.ac.id/pjih/article/viewFile/7177/5419, diakses tanggal 21 Februari 2026.

[17] Himawan, 9 Mei 2018, "Nilai Tagihan Kreditur PKPU Abu Tours Capai Rp1 Triliun", http://news.rakyatku.com/read/100477/2018/05/09/nilai-tagihan-kreditur-pkpu-abu-tours-capairp1-triliun, diakses tanggal 21 Februari 2026.

[18] Siti Hapsah Isfardiyana, *Op.Cit*, p 648

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prioritized, the security of assets is guaranteed, and the seizure proceeds can be used as evidence.[19]

Civil law experts are of the opinion that general confiscation is prioritized because based on the principle of *lex parterior derogate legi priori* where newer regulations trump older regulations, the provisions of Article 31 of the Bankruptcy Law are newer compared to the provisions of criminal confiscation in the Criminal Procedure Code and tax confiscation in Law No. 19 of 2000. According to criminal law experts, legal certainty is based on all perpetrators of criminal acts being subject to punishment according to their actions, [20]so the existence of criminal confiscation is very important.

Civil law experts state that general confiscation must be prioritized because it is a judge's decision while confiscation is only a determination. In civil procedural law, a decision and a determination are two different things. A decision is a judge's statement made in a court hearing, while a determination is a court decision on a *voluntary application* . According to Hadi Shubhan, a court decision can only be annulled by a court decision. [21]Meanwhile, criminal and tax law experts do not consider the difference between a decision and a determination, they are guided by Article 39 paragraph (1) of the Criminal Procedure Code and Article 6 paragraph (1) of Law No. 19 of 2000. Several opinions above show that the debate regarding the position of general confiscation between the realm of civil science as part of private law and criminal and tax law as part of public law both have strong reasons. Therefore, one way to reduce this conflict is by using legal principles.

The principle of law is a basic thought that is general and abstract, or is the background of concrete regulations contained in and behind every legal system that is embodied in statutory regulations. [22]In other words, the principle of law is the reason for the birth of legal regulations, or is the ratio legis of legal regulations. [23]Furthermore, Satjipto Rahardjo stated that the principle of law is the heart of legal regulations, because from its definition it can be seen that the principle of law is the broadest foundation for the birth of a legal regulation, so that if problems arise in the legal regulations, they can ultimately be returned to these principles.[24]

The legal principle has two functions, namely:[25]

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[19] Ibid.

[20] Badan Pembinaan Hukum Nasional," Lembaga Peyitaan dan Pengelolaan Barang Hasil Kejahatan", Jakarta: BPHN, 2013, hal.21 https://www.bphn.go.id/data/documents/laphir_lembaga_penyitaan_dan_pengelolaan_barang_hasil_kejahatan.pdf, diakses tanggal 21 Februari 2026.

[21]Siti Hapsah Isfardiyana, Op.Cit, p 645.

[22] Fence M. Wantu, *Pengantar Ilmu Hukum*, (Gorontalo: UNG Press, 2015), p 25.

[23] Dian Latifiani, "Permasalahan Pelaksanaan Putusan Hakim", *Jurnal Hukum Acara Perdata Adhaper*, Vol. 1, No. 1, Tahun 2015, p 28.

[24] Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2012), p 89..

[25] *Ibid* ., p. 27

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1) The function of legal principles in law is to validate and bind the parties by basing their existence on formulations by legislators and judges.
2) The function of legal principles in legal science is to regulate and explain so that they are not normative in nature and do not fall under positive law.

Legal principles are divided into two, namely general legal principles, which relate to all areas of law, and special legal principles, which are legal principles that only function in a narrow area, for example, civil law is known for the principle of consensualism. [26]The principle of *lex specialis derogat legi generalis* is a general legal principle, meaning that special legal rules will override general legal rules. According to Bagir Manan, in applying the principle of *lex specialis,* there are several things that must be considered related to the existence of this principle, namely:[27]

1) The provisions found in general legal rules remain valid, except those specifically regulated in the special legal rules;
2) The provisions of *lex specialis* must be equal to the provisions of *lex generalis* (law with law);
3) The provisions of *lex specialis* must be within the same legal environment (regime) as *lex generalis* . The Commercial Code and the Civil Code both fall within the civil legal environment.

Bagir Manan's third limitation clarifies that general seizures applicable to the bankruptcy regime, which is part of civil law, will also apply as *lex specialis* to civil law, so that general seizures will override civil seizures. However, for seizures outside civil law, general seizures cannot override them.

In addition to the principle of *lex specialis derogate legi generalis,* this condition is also related to the theory of legal systems, where harmonization of legislation must be carried out on legislation that is a subsystem of a legal system and is intended to ensure that a legislation can be compatible with the legal system. [28]The goal is to prevent difficulties in implementing the provisions of said legislation.

The differences in the foreclosure provisions in the Bankruptcy and PKPU Law and the Criminal Procedure Code indicate problems within the legislation itself. One law is apparently not in harmony with the other. This disharmony is categorized as horizontal disharmony, which can result in overlapping between sectors. According to Sapto Budoyo, this condition is very dangerous because it can create legal uncertainty and ambiguity in the application of laws and regulations, which will ultimately disrupt the achievement of the objectives of the law itself. [29]This opinion is in line with

[26] *Ibid*

[27] Letezia Tobing, 29 November 2012, "Mengenai Asas Lex Specialis Derogat Legi Generalis", http://www.hukumonline.com/klinik/detail/lt509fb7e13bd25/mengenai-asas-lex-specialis-derogat-legi-generalis, diakses tanggal 21 Februari 2026.

[28]Sapto Budoyo, "Konsep Langkah Sistemik Harmonisasi Hukum dalam Pembentukan Peraturan Perundang-Undangan", *Jurnal Ilmiah CIVIS*, Vol. 4 No. 2 Tahun 2014, p 617.

[29]Ibid, p. 616.

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Soerjono Soekanto's theory regarding factors influencing law enforcement, one of which is weaknesses in legislation. According to Soerjono Soekanto, legal weaknesses are also a factor influencing law enforcement.[30]

This is the current situation. Differences in confiscation regulations have also given rise to various disputes not only among legal experts but also among law enforcement officials, from police and prosecutors to judges. These differences initially arise between curators and police or prosecutors. To resolve these disputes, the disputing parties typically first attempt to resolve the matter persuasively out of court with the assistance of a supervising judge. If persuasive efforts fail, curators typically file a lawsuit in court.

The rules or procedural law for determining a suspect for a bankrupt debtor are basically the same as the process for determining a suspect for other legal subjects as regulated in the 2025 Criminal Procedure Code. However, determining a suspect for a bankrupt debtor has the potential to hinder the work of the curator, because bankrupt assets suspected of being the result of a criminal act or related to a criminal act can be confiscated by the Police, Prosecutor's Office, or the Court for the purposes of examination or legal proceedings for the bankrupt debtor.

This situation will require longer processing time for the curator to settle the bankruptcy estate, as they await the status of the assets, which could be destroyed or confiscated by the state. The process for determining suspects for bankrupt debtors is clearly regulated in the 2025 Criminal Procedure Code (KUHAP), thus ensuring legal certainty. However, the status of the bankruptcy estate cannot be determined quickly, potentially creating legal uncertainty for the curator and creditors, particularly concurrent creditors, as the extent of the distribution of the bankruptcy estate also depends on the size of the bankruptcy estate.

Analysis Of The Validity Or Otherwise Of The Determination Of A Bankrupt Debtor Suspect Who Sold Assets Before Being Declared Bankrupt In The Pretrial Decision Number 13/Pid Pra/2023/PN Mdn

There are 2 (two) main reasons for the applicant in the pretrial application which are the basis for asking the Judge to cancel or declare the suspect determination against the applicant invalid, namely, firstly, the status of PT SSG which has gone bankrupt and the failure to receive a notification letter regarding the commencement of investigation (SPDP) from the investigator.

The mechanism for resolving bankruptcy cases has been regulated in the Bankruptcy Law and PKPU, namely in this case the Curator manages the bankruptcy estate which includes the announcement of the court decision, inventory and security of the bankruptcy estate, holding creditor meetings to verify receivables, meetings for voting on peace, to settlement which includes the sale of assets, preparation of a list of

[30]Soerjono Soekanto, Op.Cit. p. 21.

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receivables distribution, and payment of receivables. The creditors will receive payment of their receivables according to their portion based on the principle of *pari passu pro rata parte* .

The value of receivables to be distributed to creditors, particularly unsecured creditors, depends heavily on the total value of the creditor's receivables, the total receivables of all creditors, and the total bankruptcy estate after deducting bankruptcy costs and preferred creditors' debts. Therefore, if the amount or value of the bankruptcy estate is lower, this will be detrimental to creditors. Meanwhile, the pretrial applicant is seeking protection from PT SSG's bankruptcy status to escape suspect determination. The applicant interprets that bankruptcy status can waive criminal sanctions. Therefore, the applicant is requesting that the investigation process and his determination as a suspect be canceled or declared invalid.

The potential for criminal bankruptcy can occur for subjects of criminal acts both before and after being declared bankrupt. This is based on Article 396 of Law Number 1 of 1946 concerning Criminal Law Regulations (KUHP 1946), which is also regulated in Articles 511 and 512 of Law Number 1 of 2023 concerning the Criminal Code (KUHP 2023).

The potential for criminal penalties before bankruptcy is if the debtor is very aware that he will definitely go bankrupt but deliberately surrenders his assets to pay his debts to certain creditors or sells his assets to other people or deliberately wastes and squanders his assets and then bankrupts himself, then he can be punished. The criminal provisions are regulated in Article 397 of the 1946 Criminal Code which states that a businessman who is declared bankrupt or is permitted to release his assets by the court, is threatened with causing fraudulent losses to the creditor if the person concerned fraudulently reduces the creditor's rights:

1. making expenses that do not exist, or not recording income, or withdrawing goods and other things;
2. has *given away (uerureemden)* something for free or clearly below its price;
3. in a way that benefits one of the creditors at the time of his bankruptcy or at a time when it is known that such a situation cannot be prevented;
4. does not fulfill the obligation to keep records according to Article 6 paragraph one of the Commercial Code or to keep and display the books, letters and writings referred to in paragraph three of the article.

Article 512 of the 2023 Criminal Code also regulates the criminal provisions which state that entrepreneurs who are declared bankrupt or who are permitted to dispose of their assets based on a court decision, shall be punished for causing fraudulent losses to creditors, with a maximum prison sentence of 7 (seven) years or a maximum fine of category VI, namely IDR 2 billion, if:

a. fabricating debts, not accounting for profits, or withdrawing goods from company property;

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b. release company property, either for free or at a price far below its value;
c. in a way that benefits one of the creditors at the time of bankruptcy or when it is known that the bankruptcy cannot be prevented; or
d. does not fulfill the obligation to record everything in accordance with the provisions of laws and regulations, store and show books, letters and other letters as referred to in Article 511 letter c.

The qualification/name of the crime in Article 512 is causing fraudulent harm to creditors. Article 512 is a legal provision that regulates criminal sanctions for entrepreneurs who commit fraudulent acts against creditors during bankruptcy. This article aims to ensure that the bankruptcy process is transparent and fair. Entrepreneurs are expected to act honestly and openly regarding the company's financial condition and treat creditors fairly. This article provides creditors with strong legal protection against possible fraudulent acts by bankrupt entrepreneurs. This can increase creditor confidence in channeling their funds to the company.[31]

Article 511 and Article 511 of the 2023 Criminal Code are included in Chapter XXVIII, part one concerning criminal acts against trust in running a business and detrimental and fraudulent acts against creditors. In this case, the Reported Party or Pretrial Applicant has sold an apartment unit purchased by the Reporter/victim and the Reported Party cannot show or provide a certificate of ownership of the apartment unit, because the Reported Party has sold it to Grand Lagoi Village (ex Swissbel-hotel) without permission from the owner, namely the Reporter/Victim. In addition, because the apartment unit has been sold to another party, this causes the apartment unit to not be included in the list of bankrupt assets/assets so that it is beyond the reach of the curator. Therefore, the Pretrial Applicant is very likely to be subject to criminal sanctions as per Article 511 and/or Article 512 of the 2023 Criminal Code.

The explanation of Article 512 letter a of the 2023 Criminal Code states that what is meant by "withdrawing goods from company assets" is any act to place goods beyond the reach of the curator before or at the time of bankruptcy, including leaving the company's receivables idle. In this case, the curator did not include the object of the dispute, namely the apartment unit sold by the pretrial applicant, because it had been sold to a third party, so the pretrial applicant has the potential to be subject to criminal sanctions as referred to in Article 512 of the 2023 Criminal Code.

In addition to criminal charges, bankrupt debtors or pretrial applicants as in the case above can also be sued civilly based on Article 41 of the Bankruptcy Law and PKPU in conjunction with Article 341 of the Civil Code concerning *Actio Pauliana* . The potential for criminal liability after bankruptcy is if the debtor intentionally hides or alienates or sells his assets either for free or at a price below the price. This is also regulated in Articles 396 to 405 of the 1946 Criminal Code and regulated in Article 512

[31]Eddy O.S. Hiariej, Topo Santoso, *Anotasi KUHP Nasional*, (Depok : Rajawali Pers, 2025),p 533-534.

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of the 2023 Criminal Code. Thus, the bankrupt debtor in this case can be prosecuted criminally and sued civilly to be responsible for legal actions (buying and selling) against creditor assets including the reporting assets carried out before being declared bankrupt. In this case, bankruptcy status cannot be a reason for the applicant to be released from the status of a suspect.

Regarding the failure of the SPDP (Supreme Court Decision) by the applicant for a pretrial motion, the author agrees with the judge that the SPDP is merely a means of coordination so that the accused can prepare the necessary matters for their legal defense. However, defenses or objections to the determination of suspect status can also be made through a pretrial motion, so that none of the rights of the applicant/accused are violated in the context of their defense.

A bankrupt debtor, as in the case described above, is potentially subject to criminal charges and civil prosecution. Meanwhile, the pretrial applicant's argument regarding the failure to receive the SPDP cannot legally be used as a reason to be released from suspect status. Therefore, the application of the law in Pretrial Decision Number 13/PID PRA/2023/PN MDN is appropriate.

The definition of pre-trial is stated in Article 1 number 10 of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP 1981), which states that pre-trial is the authority of the District Court to examine and decide according to the method regulated in this law, regarding;

a. Whether or not an arrest and/or detention is valid at the request of the suspect or his/her family or another party with the suspect's authority;
b. Whether or not the termination of an investigation or prosecution is valid upon request for the sake of upholding law and justice;
c. Request for compensation or rehabilitation by a suspect or other party on behalf of his/her attorney whose case has not been submitted to court.

The pretrial institution functions to guarantee and protect the human rights of suspects or defendants when investigators or prosecutors engage in unlawful coercive measures for the purposes of investigation and prosecution. The role of pretrial proceedings arises in the context of enforcing existing regulations to protect the rights of suspects. It is noteworthy that different judicial decisions in the same pretrial case can occur due to differences in interpretation among the pretrial judges.[32]

Over time, legal practice has evolved, and attention to human rights protection has also increased. This situation has given rise to legal dynamics that have led to a phenomenal Constitutional Court (MK) decision, one of which has implications for expanding the scope of pretrial proceedings. Constitutional Court Decision Number 21/PUU-XII/2014 broadened the scope of pretrial proceedings beyond arrest, detention, or termination of investigations, to encompass other issues related to the

[32] Johalden, *Praperadilan dan Pembaharuan Hukum Pidana*, (Serang, CV AA Rizky, 2021) p 6-7.

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actions of law enforcement officials, including the authority to assess other coercive measures, such as examining the legality of suspect determinations, searches, and seizures.

The 2025 Criminal Procedure Code also regulates pretrial proceedings, which are regulated in Articles 158 to 164. The general explanation of the 2025 Criminal Procedure Code states that "Pretrial proceedings are a legal mechanism aimed at testing the validity of the actions of investigators and public prosecutors in criminal trials." The preparation of the legal substance of the new Criminal Procedure Code has also adopted several decisions of the Constitutional Court. Article 158 letter a in the 2025 Criminal Procedure Code stipulates that the District Court has the authority to examine and decide, in accordance with the provisions of this Law regarding the validity or otherwise of the implementation of Coercive Measures. Furthermore, Article 89 of the 2025 Criminal Procedure Code also explains the object of pretrial proceedings, namely the form of coercive measures which include the determination of suspects, arrests, detentions, searches, confiscations, wiretapping, examination of letters, blocking, and prohibitions for suspects or defendants from leaving Indonesian territory. In addition, the 2025 Criminal Procedure Code has been strengthened by expanding the objects of pretrial, such as the confiscation of objects that are not related to criminal acts by third parties, delays in handling cases without valid reasons (undue delay), and suspension of detention.

The determination of a suspect for someone is closely related to the suitability and peace of the right to a comfortable life for a person and is related to their human rights. Therefore, to determine a legal subject as a suspect must follow the applicable legal principles. According to the Constitutional Court Decision No. 21/PUU-XII/2014 and Article 1 number 14 of the 1981 Criminal Procedure Code, the determination of a suspect must be based on sufficient initial evidence. Meanwhile, Article 90 paragraph (1) of the 2025 Criminal Code states that the Determination of a Suspect is carried out by Investigators against someone suspected of committing a crime based on a minimum of 2 (two) pieces of evidence. The meaning of sufficient initial evidence is a minimum of two valid pieces of evidence as regulated in Article 184 of the 1981 Criminal Procedure Code, namely witness statements, expert statements, letters, clues, and statements from the defendant (if there is a confession). Then it was updated through Article 235 paragraph (1) of the 2023 Criminal Code which states that evidence consists of witness statements, expert statements, letters, defendant statements, evidence, electronic evidence, judge's observations, and everything that can be used for the purposes of proof in court proceedings as long as it is obtained in a manner that is not against the law.

If there is only one piece of evidence or the evidence is insufficient, then the determination of the suspect is not legally valid. In the Pretrial Decision Number 13/PID PRA/2023/PN MDN, it has been explained that the evidence that forms the

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basis for determining the suspect of the pretrial applicant is the witness and the sale and purchase agreement of the apartment unit between the reporter/victim and the pretrial applicant and the witness. Based on this, in accordance with the Constitutional Court Decision No. 21/PUU-XII/2014 and Article 1 number 14 of the Criminal Procedure Code, it is very reasonable for the police or the Respondent to determine the applicant as a suspect.

Based on the description above, the Judge who examined and tried the Pretrial Case Number 13/PID PRA/2023/PN MDN, has carefully applied the law as it should be in accordance with the legal principles stipulated in the Constitutional Court Decision No. 21/PUU-XII/2014 and Article 1 number 14 of the 1981 Criminal Procedure Code. The decision has also properly applied the theory of legal protection. This can be seen from the legal process that has gone through the stages of investigation and inquiry, even the suspect has also used his rights without being hindered by the investigators to conduct a pretrial. The legal process in the investigation stage and pretrial efforts not only protects the suspect to use his rights, but as a positive step to protect the rights of victims from alleged criminal acts committed by the suspect.

CONCLUSION

The validity of the determination of a suspect against a legal subject is the standard of truth for assessing whether or not the determination of a suspect against a legal subject is valid in accordance with the rules contained in Indonesian criminal procedure law which is currently contained in the 2025 Criminal Procedure Code. This is important so that the law enforcement process is in accordance with the principle of legal certainty in order to bring justice to both the victim and the perpetrator. The determination of a suspect must be carried out on the condition that at least 2 (two) pieces of evidence have been fulfilled as regulated in Article 235 paragraph (1) of the 2025 Criminal Procedure Code.

The validity of the determination of a suspect against a bankrupt debtor is the standard of truth for assessing the validity or otherwise of the determination of a suspect against a bankrupt legal subject in accordance with the rules contained in Indonesian criminal procedure law which are currently contained in the 2025 Criminal Procedure Code. The process of determining a suspect against a bankrupt legal subject is the same as the process of determining a suspect against other legal subjects.

The judge who examined and tried the Pretrial Case Number 13/PID PRA/2023/PN MDN, has carefully applied the law as it should be in accordance with the legal principles stipulated in the Constitutional Court Decision No. 21/PUU-XII/2014 and Article 1 number 14 of the 1981 Criminal Procedure Code. The decision has also properly applied the theory of legal protection. This can be seen from the legal process that has gone through the stages of investigation and inquiry, even the suspect has also used his rights without being hindered by the investigators to conduct a pretrial.

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The legal process in the investigation stage and pretrial efforts not only protects the suspect to use his rights, but as a concrete step to protect the rights of victims, especially creditors, from alleged criminal acts committed by the suspect.

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