

Juridical Analysis Among Special Confiscation At The Criminal Procedure Code And General Confiscation In Bankruptcy Law

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Abstract

Bankruptcy means all matters relating to bankruptcy. Since the opinion of bankruptcy towards the debtor must go through a litigation process through the examination phase, everything related to the bankruptcy event is called bankruptcy. According to M. Hadi Shubhan, bankruptcy is a place where debtors are unable to make payments on creditors' debts. The management and empowerment of bankrupt assets are carried out by the curator under the supervision of a supervising judge with the main objective of the proceeds of the sale being to pay all debtor debt expenses proportionally and in accordance with the creditor structure. The curator is not the owner of bankruptcy property. Curators can only rely on creditors and debtors who meet the requirements and tidy up bankrupt assets for the benefit of creditors. Criminal law and civil law are two laws that often intersect or intersect, including in the bankruptcy compilation law the confiscation of assets belonging to the debtor. In carrying out their duties, curators are often confronted by police investigators or prosecutors compiling with confiscation of freedom over the portion of debtor's bankrupt assets. Conflicts between the interests of the police and the Attorney General's Office to carry out responsibility for the interests of the curator to conduct general confiscation of bankruptcy still frequently occur in the field. Article 39 paragraph (1) and paragraph (2) of the Criminal Procedure Code seized by investigators including objects that are in confiscation due to civil cases or bankruptcy can also be confiscated for the purposes of investigation, prosecution and trial of cases necessary. Article 39 Paragraph (2) of the Criminal Procedure Code gives the investigator legitimacy for confiscation of objects that have exceeded the general bankruptcy confiscation, as referred to in Article 39 paragraph (2) of the Criminal Procedure Code in conflict with Article 31 Paragraph (2) shall be made void and if requested by the Supervising Judge have to ask for a strike. This second article discusses clashes and difficulties in their application. One of the cases discussed was about general confiscation which was then confiscated by murder. Article 31 paragraph (2) of this UUK only covers in the realm of civil law and in accordance with the bankruptcy research event can be confiscated because of bankruptcy due to the pronouncement of bankruptcy by the judge, then all confiscation of bankrupt assets becomes invalid again. Article 39 Paragraph (2) of the Criminal Code states that objects in a bankruptcy case can be confiscated by investigators for the purpose of investigating, prosecuting and prosecuting court cases, therefore confiscation in legal proceedings must take precedence.

Keyword: Bankruptcy, General Confiscation, Criminal Confiscation.

1. INTRODUCTION

Bankruptcy is an event that can happen to anyone, ranging from individuals and legal entities (legal entities). Bankruptcy also does not recognize the term rich or poor. In the practice of life we find that a millionaire or multinational company can also experience bankruptcy or bankruptcy. Charles J. Tabb states that: "Bankruptcy has become a central feature in society, touching the lives of almost everyone." Bankruptcy has become an inseparable part of society, touching the lives of almost everyone. Therefore, in accordance with adagium ibi ius, ibi society,

bankruptcy law is actually applied to all legal subjects, namely individuals and legal entities. But unlike other legal sciences, such as criminal or civil law, bankruptcy law is classified as a unique and very complex law. This uniqueness is created because the modern bankruptcy law that we know today is the result of legal convergence of various legal systems in the world.¹

The main source of the Indonesian Banking Law was the Dutch Bankruptcy Law, enacted on September 30, 1893. The basic concept of bankruptcy as set forth in the Faillissements-Verordening, Staatsblad 1905-217 jo. Staatsblad 1906-348, later in 1997 with the advent of Indonesia's monetary crisis, came to the fore to develop a process of bankruptcy by improving legislation in the field of banking, as it was later changed to the Government of the Government of the Year (No. 1) 1998 of the Bankruptcy Law Amendment, which in its course was later enacted under Law No. 4 of 1998 (UUK). Therefore it is not exaggerated to say that the Law No. 4 of 1998 was a duplication of the Dutch Bankruptcy Law which was based on the principle of "concordance" promulgated and declared effective in the Dutch East Indies in 1906. Later, with various constraints in its implementation, the modern Banking Law (Yustianti & Roesli, 2018), a national government product, was created to respond to the needs and development of community law, as set out in the Noomor Law 37 of 2004 on the Current Bankruptcy and Suspension of Debt Payment, in lieu of Law No. 4 of 1998.²

In French, faillite means strike or traffic jam in making payments. Whereas in English the term "to fail" is used and in Latin the term "faillire" is used. In the Dutch language the term "failliet" is used. Whereas in the Anglo America law, the Bankruptcy Act is known. Bankruptcy means all matters related to bankruptcy. Since the statement of bankruptcy to the debtor must go through a court process through phases of investigation, everything related to bankruptcy is called bankruptcy.³

According to M. Hadi Shubhan, bankruptcy is a condition when the debtor is unable to make payments on the creditors' debts. This state of being unable to pay is due to the financial condition of the debtor (financial distress) and the debtor's business has declined. Whereas bankruptcy, according to M. Hadi Shubhan, is a court decision which results in the general confiscation of the assets of both existing and future bankruptcy debtors. The management and settlement of bankrupt assets are carried out by the curator under the supervision of a supervising

¹ Elyta Ras Ginting, *Hukum Kepailitan Teori Kepailitan*, Sinar Grafika, Jakarta, 2018, h.1.

² Susanti Adi Nugroho, *Hukum Kepailitan Di Indonesia Dalam Teori Dan Praktik Serta Penerapan Hukumnya*, Prenadamedia Group, Jakarta, 2018, h. 1.

³ Serlika Aprita, *Hukum Kepailitan Dan penundaan Kewajiban Pembayaran Utang (Perspektif Teori)*, Setara Press, Malang, 2018, h. 1.

judge with the main objective of the sale being to pay all debtors' debts proportionately and in accordance with the creditor structure.⁴

Insolvency or being unable to pay indicates that the debtor has been unable to manage his assets and business. This principle is actually a legacy from the negative stigma of bankruptcy that prevailed in ancient times, where the act of not paying debts is considered a despicable act and classified as a crime against property. General confiscation of bankrupt debtor assets is taken as the first step to secure bankrupt assets so that they are not transferred by the debtor to other parties or taken by other creditors.⁵

In the Bankruptcy and PKPU Law, the principle of general confiscation of debtor assets has two dual functions namely, on the one hand it freezes the debtor's power over his property and the second function freezes the creditor's right to execute the debtor's property directly after the debtor is declared bankrupt by imposing automatic stays on parate execution rights separatist creditor. Levinthal sees bankruptcy as a general objective of the bankruptcy law, which is to protect creditors from debtors and other creditors.⁶

The debtor loses his right to take care of his property does not cause the debtor to lose the property. The two authorities must be distinguished. The debtor is still positioned as the owner based on the creditor's trust until the asset is converted into a sum of money to pay the creditors' debts. This is because, only bankrupt debtor assets that can be subject to public confiscation and can be earmarked to pay all debts. Placing the debtor under the control of the curator does not result in the transfer of the rights to the debtor's bankrupt property to the curator. The curator is not the owner of bankruptcy property. The curator only supports the interests of creditors and debtors who are tasked with managing and clearing bankrupt assets for the benefit of creditors. That is why the Bankruptcy and PKPU Law regulates strictly the consequences of bankruptcy for debtors who are married with a mixture of assets with debtors who are married with a marriage agreement.⁷

Criminal law and civil law are two laws that often intersect or intersect, including the case of bankruptcy law when a debtor's asset is confiscated. In carrying out their duties, curators are often confronted by police or prosecutor investigators when dealing with criminal confiscation of part of the debtor's bankrupt assets. Conflicts between the interests of the police and the Attorney General's Office to carry out criminal confiscation and the interests of curators to conduct general confiscation of bankruptcy are still common in the field.

⁴ *Ibid.*, h. 2.

⁵ Elyta Ras Ginting, Elyta Ras Ginting, *Hukum Kepailitan Teori Kepailitan*, Sinar Grafika, Jakarta, 2018, h. 63.

⁶ *Ibid.*, h. 63.

⁷ *Ibid.*, h. 63.

Public confiscation is a form of confiscation known in the civil law regime, especially private bankruptcy law. In public law in this case the criminal law also recognizes confiscation which in the Criminal Procedure Code (KUHAP) is called confiscation which in Dutch is known as "inbeslagneming". Confiscation in the Criminal Procedure Code is regulated separately in 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 portion is regulated in Chapter XIV.

Confiscation in Article 1 number 16 is defined as a series of investigative actions to take over and or keep under his control movable or immovable, tangible or intangible objects for the purpose of proof in investigation, prosecution and trial. Confiscation is an act of "forced effort" carried out by investigators containing insults and rape and is contrary to the values of Human Rights, but on the other hand for the public interest in resolving criminal cases, the law specifically exempts confiscation. Since confiscation is a form of "forced effort" that may conflict with human rights, confiscation carried out by investigators must be based on the permission of the Chairperson of the District Court Chair as regulated in Article 38 Paragraph (1) of the Criminal Procedure Code, in Paragraph (2) mentions in circumstances which it is very necessary and urgent that the investigator must act and it is not possible to obtain a permit first, the Criminal Procedure Code provides an exception.

Article 39 paragraph (1) and paragraph (2) of the Criminal Procedure Code regulates objects that can be confiscated by investigators including objects that are in confiscation due to civil cases or because of bankruptcy can also be confiscated for the purposes of investigation, prosecution and trial of criminal cases. Article 39 Paragraph (2) of the Criminal Procedure Code gives the investigator legitimacy to confiscate objects that have been confiscated under general bankruptcy, the existence of Article 39 Paragraph (2) of the Criminal Procedure Code conflicts with Article 31 Paragraph (2) UUK-PKPU which states that all confiscations that have been confiscated made to be deleted and if needed the Supervisor Judge must order deletion. Both of these articles create conflicts and problems in their application. One case related to general confiscation which was later confiscated criminal.

As a result, there are two confiscations on one item whereas Article 436 Rv regulates that goods that have been confiscated cannot be confiscated for the second time. This confirms that it is not possible to place a general bankruptcy and criminal confiscation at the same time. With the clash between public confiscation and criminal confiscation, the resulting legal uncertainty arises, so that the creation of legal certainty must be determined how the actual position of the confiscation of the general confiscation of bankruptcy.

General Confiscation (*Gerechtelijk Beslag*) at The Criminal Procedure Code

Bankruptcy is a condition where the debtor is unable to make payments on the debts of his creditors. The situation of being unable to pay is usually caused by financial distress from the debtor's business that has suffered a setback.⁸

Whereas bankruptcy is a court decision which results in general confiscation of the entire assets of bankrupt debtors, both existing and future ones. The management and settlement of bankrupt assets shall be carried out by the curator under the supervision of a supervising judge with the main purpose of using the proceeds of the sale of these assets to repay all bankrupt debts in proportion and in accordance with the creditor structure.⁹

Confiscation comes from the terminology *beslag* (Dutch), and the Indonesian term is *beslah* but the default term is confiscation or confiscation. The economic law dictionary gives the meaning of confiscation as safekeeping of disputed goods to a third party, appointed by the parties to the dispute or by the court. The third party is obliged to submit the disputed goods to the party declared entitled after a court decision.¹⁰

M. Yahya Harahap's own definition of seizure is 1) The act of forcing the defendant's property into custody (to take into custody the property of a defendant); 2) The forcible action of the custody shall be made by official or judicial order; 3) The goods placed in such custody, in the form of disputed goods, but may also be the goods to be used as a means of payment or settlement of the debtor or defendant, by way of sale of the executorial *verkoop* of the confiscated goods; and 4) Determination and custody of confiscated goods, during the course of the investigation, until a court of law has established a valid authority, declaring whether or not the seizure is valid.¹¹

Whereas in the case of Wildan Suyuthi, *sita* (*beslag*) is the legal action of the Court on the motion of the Defendant or the motion of the Defendant on the application of the Plaintiff to be monitored or taken to ensure that Plaintiff's claim / Plaintiff's authority does not become void. In another sense, it is said that the seizure of or possession of property (property of another person's power) is done on the basis of the decree and order of the Chairman of the Court or the Chairman of the Assembly.¹²

⁸ Hadi Shubhan, *Hukum Kepailitan: Prinsip, Norma, dan Praktik di Peradilan*, Ctk. Kedua, Kencana Prenadamedia Group, Jakarta, 2008, h. 163-164

⁹ *Ibid.*

¹⁰ Sri Rejeki Hartono, et. all, *Kamus Hukum Ekonomi*, Ghalia Indonesia, Bogor, 2010, hlm. 169.

¹¹ M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP (Penyidikan dan Penuntutan)*, Edisi Kedua, PT Sinar Grafika, Jakarta, 2012, h. 265.

¹² Wildan Suyuthi, *Sita Eksekusi: Praktek Kejaksaan Pengadilan*, PT Tatanusa, Jakarta, 2004, h. 20.

Article 21 The UUK expressly states that bankruptcy covers the entire debtor's wealth at the time the bankruptcy statement is pronounced as well as everything acquired during bankruptcy. Hadi Shubhan said the fact of the general confiscation of the debtor's property was that the purpose of the bankruptcy was to stop the action against the bankruptcy trustee by his creditors and to stop the transaction of bankruptcy by the debtor which is likely to harm his creditors.¹³

Article 242 of the UUK-PKPU clearly states that all confiscations that have been placed fall and in the event that the Debtor is held hostage, the Debtor must be released immediately after the verdict is announced postponing the obligation to pay the fixed debt or after the decision of ratification of peace receives permanent legal force, and at the request of the management or the Supervising Judge , if it is still needed, the Court is obliged to lift the confiscation that has been placed on the object which is included as Debtor's property. So in taking the conclusion that a general seizure can raise another special seizure if the debtor's assets are declared bankrupt when declared.

Criminal Confiscation at The Criminal Procedure Code (KUHAP)

The most important issue in any criminal process is proof, because from the answer to this problem the accused will be found guilty or acquitted. For the purposes of this verification, the presence of objects involved in criminal offenses is necessary. The objects intended are commonly known as evidence or *corpus delicti*, which is evidence of crime. The evidence has a very important role in criminal proceedings. Evidence that is not an object, evidence or offense but can also be used as evidence as long as the evidence has a direct relationship with a criminal offense, for example the money used by the victim when he committed a crime of corruption can be used as evidence.

Speaking of evidence, of course, previously discussed confiscation, because in order to obtain evidence, the investigator is required to confiscate. Evidence confiscated by the investigator was confiscated. According to the Criminal Procedure Code Confiscation is a series of investigative actions to take over or keep under his control movable or immovable, tangible or intangible objects, for the purpose of proving in investigations, prosecutions and trials.¹⁴

From the above definition it can be concluded: 1) Confiscation includes the investigation stage because it is said to be a series of investigative actions for evidence in criminal proceedings; 2) Confiscation is a takeover of storage under the authority of the investigator of an object

¹³ Hadi Shubhan, *Op. Cit.*, h. 163-164.

¹⁴ Pasal 1 butir 16 KUHAP

belonging to someone else; 3) Confiscated objects are moving and immovable, tangible and intangible objects; and 4) Confiscation is for the purpose of proof. Here there is a real shortage of confiscation that should be done not only for pieces of evidence, but also for objects that can be confiscated.¹⁵

The purpose of confiscation is for evidentiary purposes, primarily intended as evidence before a court hearing. Most likely without evidence, the case cannot be brought before a court hearing. Therefore, in order for a case to be complete with evidence, the investigator conducts a foreclosure act to be used as evidence in the investigation, at the level of prosecution and the level of court hearing examination.¹⁶

According to the provisions stipulated in Article 38 of the Criminal Procedure Code, Confiscation can only be carried out by an investigator after a license is issued by the Chair of the District Court. In accordance with this provision, the investigator must first submit a letter of request for confiscation before the District Court before investigating the foreclosure. Confiscation can be carried out at every level of the examination process, this is guided by Article 39 paragraph (2) of the Criminal Procedure Code, which enforces confiscation including investigation, prosecution and examination of court proceedings. According to Article 39 paragraph (2) of the Criminal Procedure Code, confiscation in the criminal proceedings, includes confiscation of goods that have been confiscated beslag in the confiscation of civil cases and confiscation of goods that are in "confiscation" or bankruptcy.

According to Article 39 paragraph (2) of the Criminal Procedure Code, for the purpose of investigating criminal matters, items confiscated in civil and criminal matters may be confiscated in criminal cases. Accordingly, it is seen in the context of the seizure that the seizure is for the purpose of examination, as stipulated in Article 39 paragraph (2) of the Code.

2. DISCUSSION

Position of General Confiscation and Special Confiscation

The meaning of confiscation as regulated in Article 31 paragraph (2) of the Law on whether the foreclosure covers civil and criminal domains. The purpose of the discussion is in the context of finding clarity of all confiscations referred to in Article 31 paragraph (2) of the Law, which has so far caused a conflict between civil law in the sense of bankruptcy law and criminal law. Furthermore, the discussion focuses on the ideal idea of the position of confiscated criminal

¹⁵ Andi Hamzah, *Pengusutan Perkara Melalui Saranan Teknik dan Sarana Hukum*, Ghalia Indonesia, Jakarta, 1986, hlm. 121.

¹⁶ *Ibid.*

charges against public confiscation in bankruptcy assets. The purpose of the discussion is to find the most ideal "middle ground" for the conflicting confiscation of crime based on the provisions of 39 paragraph (2) of the Criminal Procedure Code with Article 31 paragraph (2) of the Law

Before examining the meaning of confiscation as regulated in Article 31 paragraph (2) of the Law, whether it includes confiscation in the civil and criminal domain, it is necessary to review civil confiscation and criminal confiscation first. Confiscation comes from the terminology *beslag* (Dutch), 139 and the Indonesian term is *beslah* but the default term is confiscation or confiscation. The economic law dictionary gives the meaning of confiscation as safekeeping of disputed goods to a third party, appointed by the parties to the dispute or by the court. The third party is obliged to submit the disputed goods to the party declared entitled after a court decision.¹⁷

On the other hand, criminal confiscation according to the Criminal Procedure Code is a series of acts of investigators to take over or keep under his control movable or immovable, tangible or intangible objects, for the purpose of proof in investigations, prosecutions and trials. The purpose of confiscation is for evidentiary purposes, primarily intended as evidence before a court hearing. Most likely without evidence, the case cannot be brought before a court hearing. Therefore, in order for a case to be complete with evidence, the investigator conducts a foreclosure act to be used as evidence in the investigation, at the level of prosecution and the level of court hearing examination.¹⁸

So for the purpose of this evidence, the presence of objects that are involved in a crime is very necessary. The objects intended are commonly known as evidence or *corpus delicti*, which is evidence of crime. The evidence has a very important role in criminal proceedings.¹⁹

Based on the theory of civil confiscation and criminal confiscation above, it is also necessary to examine the general confiscation within the framework of bankruptcy. Bankruptcy is a condition where the debtor is unable to make payments on the debts of his creditors. The situation of being unable to pay is usually caused by financial distress from the debtor's business that has suffered a setback. Whereas bankruptcy is a court decision which results in general confiscation of the entire assets of bankrupt debtors, both existing and future ones. The management and settlement of bankrupt assets shall be carried out by the curator under the supervision of a supervising judge with the main purpose of using the proceeds of the sale of these assets to repay all bankrupt debts in proportion and in accordance with the creditor structure.²⁰

¹⁷ Sri Rejeki Hartono, et.al, *Loc. Cit.*

¹⁸ *Ibid.*

¹⁹ Ratna Nurul Afiah, *Loc. Cit.*

²⁰ *Ibid.*

Referring to the provisions of Article 31 paragraph (2) of the Law on Manpower which stipulates that: (1) Decisions of the bankruptcy statement result that all judgments regarding the implementation of the Court of any part of the debtor's wealth that began before the bankruptcy, must be stopped immediately and since then no decision can be made carried out including or also holding the debtor hostage. (2) All confiscations that have been made will be deleted and if necessary a supervisory judge must order the deletion. (3) Without prejudice to the enactment of the provisions referred to in Article 93, debtors who are in detention must be released immediately after the verdict of the bankruptcy statement is pronounced.

From the provisions of this Article it is stated that all confiscations that have been carried out will be deleted and if necessary a supervisory judge must order the deletion. In the explanation of Article 31 paragraph (2) it states that what is meant by "if necessary a supervisory judge must order the deletion" includes crossing of the confiscation of land or registered ship. Provisions and explanations of Article 31 paragraph (2) of the UUK are the root of the problem regarding the scope of confiscation which is terminated immediately and becomes void when there is a bankruptcy decision. Because the provisions and explanations of the Article do not explicitly mention the scope of confiscation.

Professor of Criminal Law at the Faculty of Law, Gadjah Mada University, Edward Omar Sharif Harief said "public law takes precedence over private law. Criminal law is public law. For this reason, public law has the characteristics of coercion by state officials. If the item the investigator intends to seize is an item which has been under the control of a curator, the item will still be confiscated considering the nature and character of the criminal law. But Edward insisted that the items to be confiscated were not automatically taken over by investigators".²¹

AKBP Marbun W, a representative of the Indonesian National Police's Legal Division, responded to the issue of the position of a confiscation of public confiscation in bankruptcy assets. In addition to referring to the principle of the interests of public law as priority over civil law, that authority is also given by Article 39 paragraph (2) of the Criminal Procedure Code. Furthermore, Marbun said, the purpose of the confiscation itself was in the interests of proof from both the investigator, the prosecution, and the evidence at the trial. After the criminal case is finished, the confiscated goods can only be returned to those entitled or seized or destroyed in accordance with the decision of the Panel of Judges".²²

²¹ <http://www.hukumonline.com/berita/baca/lt51836ecd9bbf8/prokontra-sita-pidana-vs-sita-umumpailit>, Diakses terakhir tanggal 10 Februari 2020 pukul 18.22 WIB.

²² *Ibid.*

Seeing the provisions of Article 31 paragraph (2) of the UUK and Article 39 paragraph (2) of the Criminal Procedure Code, the author is of the opinion that the scope of Article 31 paragraph (2) of the UUK is only in the context of civilization. This is because criminal confiscation of bankruptcy assets cannot be forced to fall due to public confiscation in bankruptcy. Although in this case Article 31 paragraph (2) of the Law provides an opportunity for it. To address the conflicting norms between Article 31 paragraph (2) UUK and Article 39 paragraph (2), it is necessary to understand that in interpreting the provisions of the article it is not enough to just read the sound of the article alone. But it is also necessary to understand the principles contained in the provisions of the article and also the legal doctrine that is able to answer the conflict between legal norms. So if there is a conflict with the law, it is necessary to look again at the principles or doctrines that govern it.

Thus according to the author, the provisions of Article 31 paragraph (2) of the Law and Article 39 paragraph (2) of the Criminal Procedure Code are analyzed with Article 28 J paragraph (2) of the 1945 Constitution of the Republic of Indonesia, then related to the teachings of Indonesian legal collectivism containing meaning that the scope of the meaning of all confiscations as regulated in Article 31 paragraph (2) of the Law is only included in the civil sphere. According to the author, it is necessary to make a procedural law that can explicitly determine the termination or deletion of a confiscation as referred to in Article 31 paragraph (2) of the UUK. Because the provisions of this Article are difficult to apply, because it is in direct contact with other judicial procedural law but does not have strict provisions regarding termination or deletion of confiscation.

In this way, conclusions can be drawn regarding the ideal idea of the position of confiscation of crime against public confiscation in bankrupt assets, namely, First, concerning bankrupt assets confiscated for evidence in criminal cases, judges in deciding the status of confiscated goods should really determine the ownership status of the confiscated goods. So that if a bankruptcy asset has been confiscated first but the criminal has not been proven criminal, then it must be returned to the bankrupt property in the context of public confiscation. But on the contrary, if the assets can indeed be proven that originated or used from proceeds of crime, then in the interest of the law the property was confiscated for the state or seized to be destroyed. Secondly, it is necessary to establish a legal program that can clearly determine the confiscation, and Third, the bankrupt assets must be based on the right of rights according to law.

3. CONCLUSION



Based on the explanation above, the writer concludes that :

1. Analyzed with Article 28 J paragraph (2) of the 1945 Constitution of the Republic of Indonesia, then linked to the teachings of the interests of public law Article 39 paragraph (2) of the Criminal Procedure Code takes precedence over private law Article 31 paragraph (2) of the Law, legally implies that the scope of all confiscations as stipulated in Article 31 paragraph (2) of the Law only covers the civil sphere.
2. According to the criminal procedure code for bankruptcy assets can be confiscated criminal whereas according to the bankruptcy law since the bankruptcy verdict was pronounced by the judge, the entire confiscation of bankrupt assets becomes invalid again. Article 39 paragraph (2) of the Criminal Code states that objects that are in bankruptcy cases can be confiscated by investigators for the purposes of investigating, prosecuting and prosecuting criminal cases. Article 31 paragraph (2) of the bankruptcy law says otherwise, namely all confiscation is stopped since the verdict of the bankruptcy is pronounced. When the verdict of bankruptcy is said to end all confiscation of the assets of the bankrupt debtor and the general confiscation of bankruptcy applies. Thus, there is an overlap between bankruptcy law and criminal procedure law. If assets that are in the process of bankruptcy are confiscated by an investigator, this means that the assets cannot be cleared and distributed to their creditors. This causes a violation of the principles of bankruptcy law and results in the non-fulfillment of the rights of creditors and debtors. Apart from all that, confiscation in criminal procedural law has a higher public urgency compared to individual interests in the field of civil law, especially bankruptcy. Therefore confiscation in criminal procedure law must take precedence

Suggestion

The suggestions that can be given by researchers in this study are:

1. There needs to be an adjustment between bankruptcy law and criminal law and criminal procedure law to avoid overlapping between the two fields of law. According to the author, even though bankruptcy assets have been confiscated, the investigators of these bankruptcy assets are not automated, and their authority is in the hands of investigators. Therefore, the

investigator can still confiscate the items to be confiscated, but his control remains with the party who has confiscated the first time, in this case the curator.

2. To the Curator, Investigator and Public Prosecutor to dismiss the sectoral ego in conducting law enforcement in relation to the confiscation of criminal assets in bankruptcy. Because the conflict with the provisions of the Criminal Procedure Code and the provisions of the Judicial Commission can be anticipated more wisely in the form of referring back to the existing legal principles or doctrines. In addition, the Judge must be serious in determining the status of ownership of confiscated goods. Therefore, if a bankruptcy which has already been confiscated but which has not been proven criminal, must be returned to bankrupt assets in the context of public confiscation, and vice versa.

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