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Table Of Content

Journal Cover	2
Author[s] Statement	3
Editorial Team	4
Article information	5
Check this article update (crossmark)	5
Check this article impact	5
Cite this article	5
Title page	6
Article Title	6
Author information	6
Abstract	6
Article content	7

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General Confiscation on Bankruptcy and Confiscation on Criminal Verdict

Sita Umum berdasarkan Kepailitan dan Sita berdasarkan Putusan pidana

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Abstract

General confiscation of bankruptcy and criminal confiscation often occur simultaneously, this has led to debate on both sides between the prosecutor and the curator. Prerihal who is most entitled to the property of palilit and confiscated goods into a long discussion. However, if explained clearly, it will be found that public confiscation can precede criminal confiscation. In this journal, the author tries to discuss the substance and outline of the forgery by using normative writing procedures and applicable statutory regulations. In terms of the benefits of the debt and debt problem can be resolved as soon as possible and as fair as possible so that the economy is disrupted, both economies of a small scale and economies of large scale by continuing to pay attention to the Principle of Proportionality which consumes rights and obligations so that everything is in context and achieves goals that are expected to be fair to every one. In terms of legal certainty, Article 31 of the KPKPU Law that mentions all confiscations, appointed when the debtor's bankruptcy is pronounced is a new regulation and a special regulation compared to the confiscation of criminal provisions contained in Article 39 paragraph (2) of the Criminal Procedure Code.

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Introduction

General confiscation is a form of confiscation known in civil law, especially bankruptcy law that regulates private interpersonal relations. Public law in this case the criminal law also recognizes confiscation, known as 'confiscation of crime'. Criminal confiscation in the Criminal Procedure Code (KUHP) is called confiscation. Foreclosure in the Criminal Procedure Code 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 justice.[1] Article 42 paragraph (1) of the Criminal Procedure Code states that the investigator has the authority to order the person who controls the object that can be confiscated, hands over the object to him for inspection purposes and to those who surrender the object must be given a receipt. Confiscation in a criminal case is intended for the purpose of proof, primarily intended as evidence in an investigation or investigation, the level of prosecution and the level of examination in court.[2] Objects subject to foreclosure can be returned if:

- a. the interests of investigation and prosecution no longer need it;
- b. the case was not prosecuted because there was not enough evidence or it turned out not to be a criminal offense;
- c. the case is set aside in the public interest or the case is closed by law, except if the object was obtained from a criminal offense or used to commit a criminal offense.

If the case has been decided, the object subject to confiscation is returned to the person or to those named in the decision except if the judge decides that the object is confiscated for the state, to be destroyed or to be damaged until it cannot be used anymore or if the object is still needed as an object evidence in another case.[1]

In practice, bankrupt assets that have been confiscated by the public and that have been taken care of and / or taken care of by the curator, apparently can be taken over by investigators for criminal confiscation. Investigators confiscated because there were indications that the property was related to criminal acts of corruption and money laundering.[3] objects that are in confiscation due to a civil case or because of bankruptcy can also be confiscated for the purposes of investigation, prosecution and prosecution of criminal cases.[1] Property that is confiscated in a civil case but has a connection with the criminal act that is being investigated, can be confiscated by the investigator.

However, in criminal justice processes that occur we often encounter several confiscated assets that intersect with assets that have been confiscated publicly by bankruptcy. This could have happened because the parties who became the perpetrators could have been hit by bankruptcy and also committed a crime to obtain the assets they owned.

The following are several cases related to public confiscation and criminal confiscation, including: This problem is a case between the Curator of PT SCR against the Criminal Investigation Police. The curator sued Bareskrim for confiscating PT SCR's bankruptcy assets which were under the control of the curator. Criminal confiscation of the common bankruptcy confiscation occurs because some of the bankruptcy assets are suspected to be the result of money laundering. In this case, the court of first instance granted a curator's suit. But this is not the case at the Supreme Court level. The Supreme Court overturned the decision of the Commercial Court.[4] As a result of bankruptcy assets confiscated by investigators, the acquisition of such assets cannot be carried out. In the end, the protection or collateral for the payment of credit to its creditors cannot be fulfilled. There is an overlap between criminal law and civil law, especially in bankruptcy law. Civil law stipulates that all confiscations that are carried out become erased[5] and then turn into general bankruptcy confiscation. Criminal law stipulates that objects that are in confiscation due to a civil case or because of bankruptcy can also be confiscated for the purposes of investigation, prosecution and prosecution of criminal cases. [5]

This issue has caused debate among curators, especially how the position of confiscation is above the general confiscation of bankruptcy law, which should take precedence if the debtor has been declared bankrupt by the judge, but in fact the assets of the bankrupt debtor are related to a criminal case and the bankruptcy assets are carried out by confiscation by investigator.

Understanding Types of Confiscation

Confiscation comes from the Dutch terminology, beslag and in Indonesia recognize beslah or the default language is confiscation.[6] Confiscation is confiscation of assets owned by a person, both movable and immovable property, to guarantee the rights of the plaintiff in a civil case or for goods to obtain evidence in a criminal case. Confiscation is used as collateral for goods under the court's attorney until the case is finished. According to M. Yahya Harahap, there are several meanings contained in the word seizure or confiscation, namely:

- 1) The act of placing the debtor's assets as long as he is forced into a state of custody (to make into the custody of the property of defendant);

Rechtsidee

Vol 6 No 2 (2020): June

DOI: <https://doi.org/10.21070/jihr.2020.6.226>

Article type: (Business Law)

2) The act of custody was officially revealed (official)

based on a court or judge request;

3) Goods placed in safekeeping, in the form of disputed goods, but may also be goods that will be used as a means of payment for paying off debtors or debtors by selling auction (executorial verkoop) of the confiscated goods;

4) Determination and safekeeping of confiscated goods, take place during the inspection process, until there is a court decision with permanent legal force, which states whether or not the act of confiscation is valid.

Confiscation aims to secure the debtor's assets due to allegations to the debtor, before the decision of the judge who defeats it is handed down or may be executed, seeks reason to embezzle or run away his goods, both movable and immovable with the intent to distance the item from the creditor. The main purpose of confiscation is to protect the interests of creditors from debtors' bad intentions so that the lawsuits are not empty (illusionary), at the time of the decision after having permanent legal force, as well as guaranteeing legal certainty for creditors against certainty of the object of execution, if the decision has legal force.[6]

Confiscation aims to maintain the integrity and presence of the debtor's assets during the dispute resolution process and if the debtor is proven guilty, the asset can be handed over to the creditor. Confiscated assets can be immediately handed over to creditors when the disputed assets are confiscated. However, if the disputed payment is a sum of money then the asset is used as a payment by auctioning it (executorial verkoop) first. However, if the confiscated assets are related to a criminal case, the assets can be returned to those who have or wait for the judge's decision first.

Viewed from the technical perspective of the judiciary, the aims of confiscation are:

1. Legal efforts for creditors to guarantee and protect their interests in the integrity and existence of the debtor's assets until the decision is obtained permanent legal force;

2. The effort is intended to avoid debtors' bad faith actions by trying to free themselves from fulfilling civil liabilities that must be carried out for acts against the law (PMH) or defaults committed;

3. Legally the defendant's assets are located and placed under the supervision and supervision of the court, until the order of appointment or revocation of confiscation;

4. If the confiscation has been announced through registration in an authorized office register for that purpose in accordance with Article 198 HIR, then as of the registration date and seizure announcement in accordance with Article 213 R.Bg. Therefore, the following conditions are attached:

a. Article 199 HIR and Article 215 R.Bg prohibit debtors from selling and moving confiscated goods to anyone.

b. Violation of that, raises two sides due to the law:

i. Legal consequences in terms of civil:

The act of buying and selling or the suppression of the rights or the said goods or actions shall be null and void. Therefore, the status of the goods returned to their original state (status quo) as confiscated goods, so that the act or act of transferring the rights of the goods is considered to never occur (never existed).

ii. Criminal legal consequences. Threatened to commit criminal acts Article 231 of the Criminal Code in the form of a crime that intentionally releases goods that have been confiscated according to applicable laws and regulations. These acts of crime are threatened with imprisonment of up to 4 years. Crimes regulated by Article 231 of the Criminal Code are actions against confiscated goods in the form of:

a. Releasing confiscated goods, either selling, or transferring the rights to the objects which are the objects of the dispute

b. Releasing the goods stored by the judge's order; and

c. Hide items released from confiscated items[6]

Some items that cannot be confiscated are animals and tools that are truly used to carry out the debtor's livelihood. Confiscation can be divided into several types, namely:

1. Confiscation (Revindicatoir). Revindicatoir comes from the word revindiceer which means to get.[7]

Revitalization seizure is the seizure requested by the owner of the movable object whose goods are in the hands of another person, both verbally and in writing to the head of the district court where the person holding the said goods lives.[8] Confiscation seizure is regulated in Article 226 HIR and 260 R.Bg.

Rechtsidee

Vol 6 No 2 (2020): June

DOI: <https://doi.org/10.21070/jihr.2020.6.226>

Article type: (Business Law)

Revocation of confiscation is only limited to property in the form of movable objects in the hands of others without rights. The seizure request was submitted by the owner so that the item be returned to him.

2. Sita marital (Maritale Beslag). Marital confiscation is confiscation carried out to ensure that confiscated goods are not sold, to protect the rights of the applicant during the examination of a divorce dispute in court between the applicant and the opponent by storing or freezing confiscated goods so as not to fall to the third party.[8] Marital confiscation is regulated in Articles 820 and 823 Rv. HIR and R.Bg did not regulate this marital confiscation. Husband and wife assets according to Law Number 1 of 1974 concerning Marriage (Marriage Law) are divided into two, namely joint property and inherited property. Common assets that are jointly owned by the husband and wife, and personal property (inherited) which is the full right of individuals for the husband or wife.[9] Marital confiscation is only for shared property and cannot reach inheritance. The sale of joint assets that have been confiscated by marital must obtain a judge's permission in advance based on a decision to avoid the possibility of transferring ownership of the joint property while the divorce process is being examined at court so as not to harm either party.
3. Sita conservatoir (conservatoir beslag). Sita conservatoir is confiscation of collateral belonging to the debtor to ensure that a civil court ruling can be carried out by cashing or selling the confiscated debtor's goods in order to meet the demands of the plaintiff.[8] S seizure conservatoir regulated in Article 227 HIR and 261 R.Bg. The object of confiscation can be in the form of movable and immovable property, both tangible and intangible objects (lychammelijk on lychammelijk).
4. Confiscate adjustments (Vergelijkende Beslag). Goods that have been confiscated cannot be confiscated for the second time, but confiscation can be made, as stated in Article 436 Rv. The procedure for seizure adjustments is in the Supreme Court Decision Number 1326 K / Sip / 1981.
5. 5. Confiscate execution (Executorial Beslag). Confiscation of seizure is confiscation of seizure, ie confiscation of the assets of the party defeated in a civil case, either in the form of movable or immovable property to carry out the decision of a judge who has obtained permanent legal force.[9] The procedures and conditions for seizure of execution are regulated in Article 197 HIR or Article 208 R.Bg. Confiscated executions can be divided into:

a. Confiscation of Direct Execution, which is confiscation of execution directly placed on movable and immovable property belonging to the debtor or the losing party; and

b. Immediate Sita Execution, is confiscation of execution originating from collateral that has been declared valid and valuable and in the context of execution automatically turns into confiscation of execution.

6. Confiscate publicly in bankruptcy. General confiscation in bankruptcy is confiscation of all debtors' assets which are now and will be in the future with the aim that the proceeds of the sale of these assets can be distributed fairly and proportionally among fellow creditors according to the amount of receivables from each except between those who have a reason to take precedence

7. Confiscate criminal. Confiscation of a crime, also called confiscation, is a series of actions taken by an investigator to take over or keep under his possession a movable or immovable, tangible or intangible object for the purposes of proof in an investigation, prosecution and trial.

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General Confiscation of Bankruptcy

Bankruptcy is a general confiscation of all assets of bankrupt debtors whose management and settlement is carried out by a curator under the supervision of the supervisory judiciary as stipulated in the KPKP Law.[5] General confiscation (public alachment, gerechtelijk beslag) is carried out on all debtors' assets in order to achieve a peace between the debtor and his creditors or so that the assets can be divided fairly among his creditors.

Rechtsidee

Vol 6 No 2 (2020): June

DOI: <https://doi.org/10.21070/jihr.2020.6.226>

Article type: (Business Law)

General confiscation applies to all debtors' assets that already exist and will exist during the bankruptcy process[10] The debtor's property becomes a joint guarantee for all creditors to him. The proceeds from the sale of the goods are divided according to the ratio of their respective receivables, except if the creditors have legitimate reasons to take precedence. The debtor's assets are the responsibility of all the commitments he does, even though the assets are not directly related to the agreement made by the debtor. The law provides certainty that the assets are jointly collateral for its creditors which will then be distributed according to the proportion of their receivables unless there is a reason to take precedence. This is a guarantee of justice for creditors if the debtor is unable to fulfill his obligations, both obligations arising from the agreement or obligations arising from the law. This, in bankruptcy law is contained in the principle of creditorium parity. The obligations referred to in the principle of creditorium parity, are limited to obligations in the field of assets, obligations in family law are not included. Guarantees are limited to rights contained only in the field of assets, rights in the field of family law cannot be used as collateral.

Every creditor has the same right to get the repayment of the receivables. Debtors whose default results in their assets will be guaranteed to fulfill their achievements. If the creditor feels his rights have not been fulfilled by the debtor, then the debtor can be sued by the creditor to fulfill his achievements in civil law in the district court and all the debtor's assets become the source of paying off the debt.[11] All creditors have the same rights to debtor's assets. Debt assets that have been confiscated are then executed and the money from the sale will be distributed to the creditors in accordance with the size of the respective receivables (according to the proportion of each), except if the creditor has a reason to take precedence. Bankruptcy law sets forth this in the principle of *pari passu pro rata parte*. Creditors who are entitled to fulfill fulfillment of agreements must obtain fulfillment of agreements from debtors on a *pari passu* and *pro rata* basis. *Pari Passu* are creditors who have the right of their debtors jointly obtaining repayments without prioritizing.[11] *Pro rata* is proportional calculated based on the amount of each receivable compared with their receivables as a whole, namely the assets owned by the debtor.

The reason for taking precedence is creditors who have privileges and rights of collateral. Creditors who have special rights and guarantee rights have a higher position than other creditors in terms of paying off their receivables. The reason for this precedence is in the form of the right held by the creditor on the right of discrimination in the form of collateral from the agreement made with the debtor or because it is determined by law. Bankruptcy law in this case adheres to the structured prorated principle (structured creditor), which is the principle that divides creditors into three groups. The classifications of creditors are:

1. Preferred creditor (secured creditor) is a creditor holding privileges;
2. A separatist creditor is a holder of a guarantee right; and
3. Unsecured creditors are ordinary creditors, creditors who do not hold privileges or guarantee rights.

Creditors included in the concurrent creditors' classification will receive the latest debt repayment after previously being paid for special creditors and separatist creditors. A privilege is a right granted by law to a creditor so that the level is higher than other creditors, solely based on the nature of their receivables. The creditor of the privilege holder gets a debt repayment guarantee first from the creditor of the collateral rights holder, only then will ordinary / concurrent creditors get the chance to fulfill their receivables.

Since the termination of the debtor's bankruptcy results in the debtor no longer having the right to control, use, or transfer the rights to the object and pledge the object which is the property of the bankruptcy.[5] Bankruptcy is general confiscation of debtor assets both at the time of the bankruptcy decision and assets to be obtained during the bankruptcy[5] Debtor assets confiscated generally are debtor assets in the form of both movable and immovable property obtained from the pronouncement of a bankruptcy and all assets obtained during the bankruptcy process.[5] Confiscated assets of all debtors are part of the management of bankrupt assets (management of estate) which is managed based on a systematic method to manage debtor assets while waiting for bankruptcy proceedings.[12] General confiscation is done by controlling all debtors' assets by appointing a curator. The curator is authorized to carry out the management and / or settlement of bankruptcy assets from the date the bankruptcy is pronounced.[5]

Due to the inability of the debtor, the Debtor by law loses the right to control and manage his wealth since the verdict of the bankruptcy was pronounced.[5] S\Since the verdict of the bankruptcy is pronounced, the debtor is no longer capable to administer and carry out legal actions against his assets, so that a manager of the assets is needed. The curator is appointed by the judge when the verdict is declared.

General confiscation is intended to prevent debtors from carrying out actions that can harm the interests of creditors[12] and stop the transaction traffic on bankrupt assets by debtors that may harm their creditors so that these assets can be utilized for the benefit of their creditors. In addition, a general seizure ensures that debtors are not contested by their creditors.[11] When the creditor executes his property in a timely manner

a alone will harm the debtor and other creditors so that control over bankruptcy assets needs to be placed under court control. This is stated in the principle of debt collection, namely that the debtor's debt must be immediately paid with the assets owned by the debtor as soon as possible so that the depositor does not claim his property

individually and to avoid bad intentions from the debtor by hiding and misappropriating his real assets which are pledged as collateral to the collateral. the creditors.[11] This general confiscation takes place by law so that it does not require a specific action or certain legal actions like other confiscation in civil law. All confiscations made have been deleted and if necessary the Supervisory Judge must order the deletion.[5]

Criminal Confiscation and Types of Civil Execution

Confiscation in criminal law is confiscation carried out on someone's movable / immovable property, to obtain evidence in a criminal case. Confiscation is 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 justice. The confiscation that is carried out is taking and seizing and controlling the rights of other people's property. Confiscation can only be carried out by an investigator with the permission of the chairman of the local district court.[1] This is done as a form of limitation in its implementation because it cannot be denied that deprivation of property rights of others is a violation of basic human rights.[13] Article 7 paragraph (1) letter d of the Criminal Procedure Code states that the investigator because of his obligation has the authority to confiscate.

Article 1 number 16 of Law Number 8 of 1981 concerning Criminal Procedure ("KUHAP") defines confiscation 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 investigations, prosecutions and trials."

Confiscation is used by investigators to secure objects related to the case being investigated, prosecuted, or brought to justice so that it is not lost or destroyed by the suspect or defendant as evidence in the case. Criminal cases that will be submitted before a court must be accompanied by evidence. The investigator is authorized to order the person who controls the object that can be confiscated, hands over the object to him for inspection purposes, and to the person who gives the object must be given a receipt[1]

Objects that can be confiscated are regulated in Article 39 Paragraph (1) of the Criminal Procedure Code, as follows:

1. Objects or claims of suspects or defendants which are wholly or partly suspected to have been obtained from a criminal offense or as a result of a criminal offense;
2. Objects that have been used directly to commit a crime or to prepare it;
3. Objects that are used to prevent criminal investigations;
4. Objects specifically made or intended to carry out criminal offenses; and
5. Other objects that have a direct relationship with a criminal offense.

The objects must be kept in a state confiscated storage house (RUP BASAN). P the storage of confiscated objects is carried out as well as possible and the responsibility lies with the authorized official according to the level of examination in the judicial process and the object is prohibited from being used by anyone. As long as there is no state confiscated storage house in the place concerned, the storage of confiscated objects can be carried out at the government police office and in a state of coercion in another storage place or remain where the object was confiscated. Objects that are in confiscation due to a civil case or because of bankruptcy can also be confiscated for the purpose of investigating, prosecuting, and prosecuting criminal cases, as long as they meet the provisions of Article 39 paragraph (1) of the Criminal Procedure Code. There are several forms of confiscation according to the Criminal Procedure Code, namely:

1. Ordinary confiscation, confiscation in the usual form and procedure constitutes the rule of confiscation law;
2. Confiscation is necessary and urgent as an exception for ordinary confiscation, Article 38 paragraph (2) of the Criminal Procedure Code provides the possibility to confiscate without going through ordinary procedures;
3. Foreclosure in a state of being caught red-handed. Confiscation in the case of being caught red-handed is regulated in Article 40 and Article 41 of the Criminal Procedure Code;
4. Confiscation of other letters or writ Confiscation of other letters or writings is regulated in Article 43 of the Criminal Procedure Code;

The procedure for confiscation can be described as follows:[1]

1. Foreclosures should only be carried out by investigators with the permission of the chairman of the local district court before confiscating them;

Rechtsidee

Vol 6 No 2 (2020): June

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Article type: (Business Law)

2. In a very necessary and urgent situation, the investigator must act immediately and it is impossible to obtain a permit in advance, without prejudice to the provisions of paragraph (1) the investigator can confiscate only movable objects and therefore must immediately report to the head of the local district court in order to obtain his approval;
3. Before confiscating, the Investigator shows the identification to the person from which the object was confiscated first;
4. The investigator shows the object to be seized to the person from which the object will be confiscated or to his family and can ask for information about the object to be seized by witnessing by the village head or head of the environment with two witnesses;
5. The Investigator prepares the minutes of the confiscation which is read to the person from where the object was confiscated or his family given a date and signed by the investigator as well as the person or family and / or village head or neighborhood leader with two witnesses;
6. If the person from whom the object was confiscated or his family does not want to sign it is recorded in the official report stating the reason;
7. The derivative of the official report is conveyed by the investigator to his supervisor, the person from whom the object was confiscated or his family, and the village head;
8. Confiscated objects before packaging are recorded, weight and / or amount according to their respective types, characteristics and characteristics, place, day and date of confiscation, identity of the person from which the object was confiscated and others which are then given rights and position tags and signed by the investigator;
9. In the event that a seized object is impossible to be wrapped, the investigator gives the record as referred to in Article 130 paragraph (1) of the Criminal Procedure Code, which is written on the label affixed and / or linked to the object;
10. In the case of a crime so that there is a strong suspicion that information can be obtained from various letters, books or books, accounts and so on, the investigator immediately goes to the place alleged to search, examine the letter, book or book, etc. and if need to confiscate it. With reference to the provisions stipulated in Article 129 of the Criminal Procedure Code.

In Article 39 of the Criminal Procedure Code, Law Number 31 of 1999 concerning Eradication of Corruption ("Corruption Act") specifically regulates the protection of third parties. Article 19 of the Corruption Law states:

1. The court's decision regarding the confiscation of goods not belonging to the defendant is not handed down, if the rights of third parties in good faith will be impaired.
2. In the event that a court decision as referred to in paragraph (1) also includes goods of a third party in good faith, then the third party may submit an objection letter to the relevant court, within the latest 2 (two) months after the court's decision is pronounced in the trial is open to the public
3. Submission of objection letters as referred to in paragraph (2) does not suspend or stop the implementation of court decisions.
4. In the circumstances referred to in paragraph (2), the judge requests statements from the public prosecutor and interested parties.
5. The determination of the judge of the objection letter as referred to in paragraph (2) may be requested to appeal to the Supreme Court by the applicant or the public prosecutor.

From the provisions above it can be seen that in this case, the Anti-Corruption Law protects the interests of third parties in good faith and also provides an opportunity for third parties to submit objections to the court within two months after the court's verdict is pronounced in relation to confiscation.

Decision of the Supreme Court Number related to confiscation 1731K / Pdt / 2011 confirms that credit collateral objects that have been encumbered with mortgage rights that have been issued Mortgage Rights Certificates, have inherent rights and interests and must obtain legal protection, as stated in the legal proceedings as follows:

1. An object of dispute in the a quo case that has been put into the Underwriting Certificate, becomes the main right for the holders of the mortgage rights to pay off debtor's legal obligations, because the debtor's rights on the object of the mortgage right are deemed legally transferred to the holders of the mortgage rights (the creditor);
2. Therefore the creditor has the privilege of selling the object of the mortgage right to pay off the debtor's legal obligations is to be protected by law.

When seen in terms of confiscated goods in the Constitutional Court's Decision, the confiscated goods as an object with guaranteed mortgage rights, then the objects attached to the position to take precedence and privileges which even if the object was confiscated did not make the creditor lose his rights because the mortgage continues attached to the object unless the removal of dependents is held as regulated in Article 18 of the HT Law. In the case of confiscated objects which are then confiscated for the state, referring to the above jurisprudence, it can be concluded that confiscation of the object in which there is a mortgage right, does not necessarily eliminate the position of the mortgage right holder as the party who has the rights to the mortgage right which also answers the question that the guarantee still exists and is not lost and the responsibility to repay the mortgage is still on the debtor, if the debtor is unable to repay the debt, the recipient of the mortgage right has the right to sell the object of the mortgage right and get paid in advance.

In the case of confiscation ends in criminal confiscation.

1. Confiscation can end before a judge's decision, if

a. the interests of investigation and prosecution no longer need it;

b. the case was not prosecuted because there was not enough evidence or it did not appear to be a criminal offense;

c. the case is set aside in the public interest or the case is closed by law, except if the object was obtained from a criminal offense or used to commit a criminal offense. For objects subject to confiscation, returned to people or to them and to whom the objects were confiscated, or to the person or to those most entitled

2. Confiscation ends after the judge's decision, then the object subject to confiscation is returned to the person or to those referred to in the decision except if according to the judge's decision the object is seized for the state, to be destroyed or to be damaged until it cannot be used anymore or if the object is still in use required as evidence in other cases.[1]

Speaking of confiscation, in a confiscation a confiscation is carried out in a judicial process so that it does not require a decision but in the case of a criminal decision against confiscated assets, an execution can be carried out. Definition of execution or execution of court decisions[14] none other than enforce the court decision with the help of public power if the losing party does not want to run it voluntarily. Therefore, in principle, an execution institution is not required if at the court's decision the party defeated and in law is willing to fulfill it in good faith and voluntarily.

Confiscation in criminal procedure law is a forced attempt by the investigator to:

1. Taking or seizing certain items from a suspect, holder, or custodian. But confiscation carried out is justified by law and carried out according to the rules of the law, not illegal seizure by way of law (*wederwachtelyk*);

2. After the goods are taken or seized by the investigator, the goods are placed or stored under his authority.[15]

General Confiscation of Bankruptcy Precedes Criminal Confiscation and Justice Theory

There are several views according to the experts in the matter of confiscation of criminal and general confiscation of bankruptcy which occurs in which bankruptcy assets should take precedence, namely:

1. Representative of the Police Division of the Police AKBP W. Marbun in his response to the case of the object being confiscated by the criminal because it was suspected to be property from the results of money laundering, he argued that the confiscation of criminal took precedence over general confiscation of bankruptcy. In fact, criminal confiscation can still be carried out even though the goods have been carried out by public curators by the curator. According to him, in principle, the interests of public law take precedence over civil law. Objects subject to confiscation due to civil or bankruptcy cases may also be confiscated for the purpose of investigating, prosecuting and prosecuting criminal cases insofar as they meet the provisions of Article 39 paragraph (1) of the Criminal Procedure Code;
2. The Directorate General of General Law Administration of the Ministry of Law and Human Rights, Freddy Harris, responded to the same case, arguing that if there had been a general confiscation of bankruptcy, criminal confiscation could not be carried out. The law prohibits confiscation of one confiscated object. If there are two or more requests for implementation being filed at the same time to the debtor, only one official report is made. The general purpose of confiscation is to safeguard the rights of the parties so that the debtor does not embezzle or bring his goods from the creditor. The same is true of criminal confiscation. There is nothing different from these two things. However, for bankruptcy, confiscation of debtor assets in bankruptcy cases aims to increase bankruptcy assets and protect other concurrent creditors. Whereas confiscation is carried out to expedite the judicial process and is used only for proof. Confiscation according to Article 39 paragraph (2) of the Criminal Procedure Code does not mean that confiscated goods are

Rechtsidee

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transferred to the investigator. However, investigators can register their interests with the curator. That is, investigators as saviors of state interests are placed as preferred creditors like taxation

3. Professor of Criminal Law, Faculty of Law, Gadjah Mada University Edward Omar Sharif Harief said that public law takes precedence over private law. Criminal law is public law. Public law has the characteristics of coercion by state officials. If the item the investigator intends to confiscate is an item which has been under the curator's authority, the item will still be confiscated considering the nature and character of the criminal law. However, the items to be seized are not automatically taken over by the investigator. There are two ways that can be done if there is a conflict of authority. First, the police can confiscate the goods to be confiscated, but the control remains with the party who has confiscated the first time, in this case the curator. Second, waiting for one of the cases to be over;
4. Instructors of Bankruptcy in the Law Faculty of Airlangga University M. Hadi Subhan argued that the position of general confiscation is higher than that of confiscation. The essence of the bankruptcy law is the general confiscation of the debtor's entire wealth. The verdict of bankruptcy results in all judgments regarding the implementation of the court of the debtor's assets that have started since the bankruptcy must be stopped immediately. The court's decision can only be overturned with a court decision. General confiscation of bankruptcy is a judge's decision while a criminal confiscation is a determination of a judge. Thus, the stipulation of a confiscation of criminal conduct cannot nullify the decision of the commercial court judges.

According to Prof. Sudikno Mertokusumo, in upholding the law, all law enforcement agencies must always pay attention to the three elements of law enforcement, namely:

1. Justice (*gerechtigheit*). Law enforcement must pay attention to justice.[16]

Rules must be made fair. There must be a balance between protected interests, each person getting as much as possible a part of it.[17]

Aristotle taught two kinds of justice, namely:

1. Distributive justice, namely justice that gives to each person according to his ration. Everyone doesn't get the same amount. Distributive justice is not using equality but comparability.
2. Commutational justice, which is justice that gives everyone as much as it does not remember the services of individuals. Commutational justice prioritizes equality.

Legal certainty (*rechtssicherheit*). *Fiat justitia et pereat mundus* (even though the sky is falling, the law must be enforced), how is the law that must apply, basically not to deviate.[18] Legal certainty is a legal protection against arbitrary actions. Someone can get something that is expected in certain circumstances. Public order will be achieved if legal certainty is created as it should. Expediency (*zweckmassigkeit*). Law enforcement must provide benefits to the community. Do not let law enforcement cause unrest in society.

The three elements above must always be considered and used equally in the legal practice. Justice, certainty and the benefit of the law must always be a reference and must always be used as they should, cannot be used one-sidedly with one another. By paying attention to this, the process of law enforcement can run well, so that the objectives of the law can be achieved and the community is able to feel safe and prosperous by the realization of these rights.

By first observing the three elements above, in fact the question of which precedence is generally confiscated by general confiscation and criminal confiscation can be answered properly. That is because in Justice, the enactment of general confiscation of justice for creditors can be carried out as soon as possible after some time the creditors do not get their rights properly because the debtor does not fulfill his obligations, but this will cause injustice to the community because of the purpose of criminal law to avenge someone who has done what someone has done. disturbing the community and interests and providing a deterrent effect will not be carried out. If a criminal confiscation is applied first, there will be a violation of the creditor's rights that should have been paid off. In this case we are not talking about one or two creditors, but we also need to think about the subordinates of the creditors who must also be affected by this. The rights of many people must be cared for, by which we must be fair by always paying attention to the civil rights of every person first.

In addition, the benefits to be gained if the general confiscation takes precedence is the interests of creditors for bankruptcy assets can be fulfilled. Bankruptcy assets can be immediately cleared and distributed to its creditors. The problem of debt and receivables can be resolved as quickly and fairly as possible so that the economy will not be insulted either in the small or large scale. Its benefits a it can be obtained if the prioritized seizure is the security of confiscated assets. The results of the confiscation will be used as evidence of a criminal act. This will also facilitate investigation. However, if a public seizure is determined in advance and the curator can guarantee that the state is placed as a creditor holding the privilege to always take precedence in fulfilling its obligations, a public seizure can be done first;

In terms of legal certainty, in order to find out the legal certainty of a confiscation of criminal law or general confiscation of bankruptcy which must take precedence in the acquisition of bankruptcy assets, we must first look

at the principles of the establishment and application of statutory regulations. The principles are:

1. the principle of legality that is the law does not apply retroactively. In this case, Article 39 paragraph (2) of the Criminal Procedure Code and Article 31 of the KPKPU Law are both regulations that have long been enacted so that both regulations must be implemented properly and every legal action must be subject to these rules;
2. The principle of *lex superior derogat legi inferiori* is higher regulation defeating lower regulation, or if there is a conflict or conflict between high and low statutory regulations, then the high should take precedence. In this case, Article 39 paragraph (2) of the Criminal Procedure Code and Article 31 of the KPKPU Law have the same high position in statutory regulations because both of these regulations are contained in regulations at the legal level;
3. The principle of *Lex posterior derogat legi priori* is that the newer rules outperform the older rules. This principle is usually used both in national and international law. In this case, Article 31 of the KPKPU Law is a new regulation if we compare it to Article 39 paragraph (2) of the Criminal Procedure Code;
4. The *Lex specialis derogat legi generali* principle is the interpretation of the law which states that a special law or *lex specialis* overrides general law or *lex generalis*. Article 31 of the KPKPU Law is a more specific regulation that is the regulation governing the confiscation of bankrupt assets.

Conclusion

General confiscation of bankruptcy precedes criminal confiscation because judging from the fairness of creditors' rights are fulfilled and will not lead to further violations of rights. If it is related to rights, there is an intersection between civil and criminal, then civil law takes precedence. Rights and interests always take precedence over civil law over other laws because it needs to be ensured before civil rights and interests are fulfilled.

The final stage of the series of civil proceedings not only results in a fair and legally binding decision, but until the verdict is carried out by the losing party voluntarily. In practice it often happens that the losing party does not carry out their obligations to fulfill the decision of the verdict, so that forced efforts are needed to fulfill it by using *aanmaning*

The problem that often arises in the process of execution is at the auction sale stage, where the auction object does not sell so the execution is delayed, First, the situation where the auction is not interested / bidding because of the high value of the auction object limit. The solution that can be taken is the execution applicant to make a letter of request to the Head of the local District Court to gradually reduce the value of the auction object until the highest buyer price is reached. The second problem that causes the auction object to not sell is due to the auction object still being occupied by the executing party who is resisting so that prospective auction buyers cannot examine see the auction object to be bought, so that they are not interested in buying the auction object.

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