

The Responsibility of the Curator for Settlement of Bankruptcy Boedel if Enforced by Criminal Confiscation



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ABSTRACT: General confiscation applies at the time the bankruptcy decision is passed, this matter also causes the entire confiscation of the assets of the bankrupt debtor to be written off. However, in practice in Indonesia there are still various kinds of seizures that can still be imposed on debtor's assets other than general confiscation, such as civil confiscation, criminal confiscation, or tax confiscation. The problem is how to regulate and implement the bankruptcy seizure in "Law No. 37 of 2004 concerning Bankruptcy and PKPU" and what is the responsibility of the curator in resolving the bankruptcy boedel when charged with criminal seizure. This research aims to examine these problems using normative juridical research methods. The data used is secondary data obtained through library research. Based on the research results, it is known that the position of general confiscation is greater than that of other confiscations. Then, the authority and responsibility of the curator in criminal confiscation of bankruptcy assets can still be exercised, even though the verdict is filed for cassation and review. Due to the legal consequences of the bankruptcy bill which was confiscated by the investigator, until the criminal confiscation took precedence after that after the end of the verification, the bankruptcy bill was returned to the curator.

KEYWORDS: Responsibilities of the Curator, Boedel Pailit, criminal confiscation

A. INTRODUCTION

Humans or living people need funds or money to finance their daily needs, as is the case with a legal entity which in running a company requires funds that can be said to be large enough to carry out activities and develop the company. In the life of both individuals and legal entities, sometimes they do not have the funds to finance and meet their needs. To cover the lack of funds in the form of money, people or companies can borrow the money they need from other parties. The loan of funds in the form of money is known as debt. If a person or legal entity gets a loan from another party (another person or legal entity), the party receiving the loan is called the debtor, while the party providing the loan is called the creditor.¹

Debt is an obligation that must be fulfilled, in other words, with debt, there are rights and obligations for creditors to ask for what they are entitled to and for debtors to carry out their obligations, namely in the form of paying the debt. In "Article 1131 and Article 1332 of the Civil Code" it says:

Article 1131

"All objects of the debtor, both movable and immovable, whether existing or new in the future, are borne by all individual engagements".

While Article 1132 which states that

"the object is a mutual guarantee for all those who owe it; The income from the sale of the objects is divided according to the balance, that is, according to the size of the receivables of each, unless there are valid reasons for the debtors to take precedence.

There are two ways to settle disputes over these debts, namely through an out-of-court route in the form of peace or through a court, namely through a lawsuit for default or bankruptcy.² Indonesian bankruptcy law was formed as an implementation of Articles 1131 and 1132 of the Civil Code.³ Bankruptcy is a general confiscation of all assets of a bankrupt debtor whose management and settlement is carried out by the curator under the supervision of the Supervisory Judge as regulated in article 1 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

¹ Sutan Remy Sjahdeni, *sejarah, asas, dan teori hukum kepailitan*, (Jakarta: Prenadamedia Group, cetakan ke 2, 2018), hal. 12

² Tata Wijaya. "Asas Kepastian Hukum, Keadilan dan Kemanfaatan dalam Kaitannya dengan Putusan Kepailitan Pengadilan Niaga." *Jurnal Dinamika Hukum*, Vol. 14, No.2, Tahun 2014, Hal. 221.

³ *Ibid*, Hal. 4

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Universally confiscation is "a court action against movable or immovable property belonging to the defendant at the request of the plaintiff to be monitored or taken as a guarantee so that the claim or the authority of the plaintiff will not be empty".⁴ General confiscation is a confiscation that takes precedence over all assets belonging to the bankrupt debtor that currently exist or the debtor's assets that will exist in the future with the aim that the proceeds from the sale of the confiscated assets can be distributed fairly and proportionally among fellow creditors in accordance with with the amount of receivables from each except if the creditors have a reason to take precedence.⁵

When the debtor has been sentenced to bankruptcy by the commercial court, the legal status of the debtor is changed to that of a bankrupt debtor, "Article 24 paragraph (1) of Law no. 37 of 2004 concerning Bankruptcy and PKPU stipulates that a bankrupt debtor by law loses the right to manage and control assets including bankruptcy assets from the day the bankruptcy decision is pronounced.⁶ At that time, the debtor was considered legally incompetent to manage his assets so that the management and management of the assets of the bankrupt debtor fell in the hands of the curator. The curator has the duty to carry out the management and settlement of the assets of the bankrupt debtor in which the curator is authorized to confiscate part or all of the debtor's assets to be used as collateral for creditors as debt payments. The assets of the bankrupt debtor are subject to general confiscation, so that the debtor is no longer authorized to administer and take legal actions against his assets.⁷

Thus, it can be concluded that by law the debtor's assets are under general confiscation, therefore the debtor's assets can no longer be subject to special confiscation of collateral or execution confiscation.⁸ The purpose of general confiscation is to prevent creditor losses due to the actions of the debtor on the bankrupt property,⁹ With the general confiscation, the collection of bankrupt assets can be maximally collected in order to make payments to creditors. The authority to manage the assets or assets of the bankrupt debtor is legally transferred to the curator.

Regulations in civil procedural law recognize four types of confiscation, namely:

First, the confiscation of guarantees or conservatory beslag is a confiscation carried out on the property being disputed or the property of the defendant, both property in the form of movable objects and assets in the form of immovable objects related to a claim for compensation for a debt agreement.

"Second, namely confiscation of property rights or revindicoir beslag, is the confiscation of movable objects on the basis of the plaintiff's property rights which are in the hands of the defendant. Third, namely confiscation of joint property or marital beslag, namely confiscation carried out on joint property of husband and wife in the event of a divorce dispute. Fourth, confiscation of execution or executoir beslag is confiscation carried out on goods listed in the inkracht van gewijsde decision. In addition to the civil procedural law, this confiscation is also regulated in criminal procedural law and tax law.

"Article 1 point 16 of the Criminal Procedure Code explains that confiscation is a series of actions by an investigator to take over and or keep under his control, whether movable or immovable objects, tangible or intangible, for the purposes of proof, prosecution and trial. Confiscation in criminal procedural law is carried out in the investigation stage, in accordance with the above understanding it can be concluded that the purpose of confiscation is to prove.

"Law No. 19 of 2000 concerning amendments to Law no. 19 of 1997 concerning tax collection by force letter explains that confiscation is an act of a tax bailiff to control the goods of the tax bearer to be used as collateral to pay off tax debts. From this understanding, it can be seen that the purpose of confiscation in taxes is to pay off tax debts from the tax underwriters that have not been paid.

"Article 31 paragraph (1) and paragraph (2) of Law no. 37 of 2004 concerning Bankruptcy and PKPU" stipulates that all confiscations that have been determined on the assets of a bankrupt debtor are nullified since the bankruptcy decision was rendered and since then the general confiscation has become the only applicable confiscation. However, in practice in Indonesia, there are still various types of confiscations that can still be imposed on the debtor's assets outside the general confiscation, such as civil confiscation, criminal confiscation, and tax confiscation.

The legal relationship between the debtor and creditor is based on a debt agreement, and is also supported by the existence of collateral which is a certainty for creditors that in the future the debtor will repay the debt, otherwise the creditor has the right to execute the collateral object.¹⁰ In the practice of bankruptcy cases in Indonesia, collateral objects can cause serious problems if they are subject to criminal confiscation. This article will review the Curator's Responsibilities for Settlement of Bankruptcy Boedel If Encumbered By Criminal Seizure.

⁴ Wildan Suyuthi, *Sita dan Eksekusi Praktek Kejurusitaan Pengadilan*, (Jakarta: PT Tatanusa 2004), hal. 20.

⁵ Siti Hapsah Isfardiyana, "Sita Umum Kepailitan Mendahului Sita Pidana Dalam Pemberesan Harta Pailit", *Padjajaran Jurnal Ilmu Hukum*, Vol. 3, No. 3, Tahun 2016, hal. 635

⁶ Sutan Remy Sjahdeni, *sejarah, asas, dan teori hukum kepailitan*, (Jakarta: Prenadamedia Group), cetakan ke 2, 2018, hal 293

⁷ *Loc. Cit.* hal 283

⁸ *Loc. Cit.* hal 97

⁹ M. Hadi Shubhan, "Fenomena Hukum Pengajuan Kepailitan Terhadap Pengusaha Oleh Pekerja Karena Hak Pekerja Yang Tidak Dibayar Pengusaha", *Jurnal Hukum dan Pembangunan*, Vol. 50, No. 2, Tahun 2020, Hal. 532.

¹⁰ Riky Rustam. *Hukum Jaminan*. (Yogyakarta: UII Press. 2017). Hal. 47

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"The issue of placing a criminal confiscation on an object that is part of the bankruptcy code and bound as collateral for Mortgage has often led to disputes and multiple interpretations. Article 31 paragraph (1) and paragraph (2) of the Bankruptcy Law and PKPU state that all confiscations prior to bankruptcy must be immediately terminated and abolished even if necessary, the Supervisory Judge orders them to be removed."¹¹ Meanwhile, in contrast to "Article 39 paragraph (2) of the Criminal Procedure Code, it states that objects can be confiscated by investigators for the purposes of criminal proceedings even if the assets of the debtor are bankrupt".

Based on the background that has been described above, there are several problems that will be discussed in this paper as follows: How is the regulation and implementation of the confiscation of bankruptcy in Law Number 37 of 2004 concerning Bankruptcy and PKPU? How is the implementation and settlement of the bankruptcy case if it is burdened by criminal confiscation?

B. RESEARCH METHODE

The approach method used by the author in this research is "the normative juridical method because it is a normative legal research, or it is called library law research or secondary data research. This study uses a descriptive analytical approach, the data used is secondary data consisting of primary legal materials in the form of laws and regulations and secondary legal materials in the form of books, journals, articles which are analyzed by qualitative methods."¹²

C. RESULTS AND DISCUSSION

1. Arrangement and Implementation of Bankruptcy Confiscation in Indonesia

The essence of confiscation is to protect the creditor's interests from the actions of the debtor with bad intentions, so the lawsuit is not empty at the time of the *inkracht van gewijsde* decision and provides certainty to the creditor that the debtor has given his assets if he is unable to pay his debts, if that happens then the creditor can execute the object of guarantee that has legal force. The purpose of the confiscation is to protect the debtor's property during the dispute resolution process, if the debtor is proven legally and convincingly guilty, the property must be handed over to the creditor. "The confiscated property is handed over to the creditor if the disputed property is the confiscated property, but if the disputed is in the form of payment of a sum of money, then the property is used as payment by way of auction". Confiscation can be divided into several types, namely¹³:

- a. Confiscation of revindication or *revindicatoir*, this confiscation "is a confiscation requested by the owner of movable property in the hands of another person, either orally or in writing to the court of the country where the person holding the goods resides. The seizure of revindication is regulated in article 226 of the HIR, this confiscation is only limited to property in the form of movable objects that are in the hands of others without rights. A request for confiscation is submitted by the owner so that the object is returned to him.
- b. Confiscation of joint property or marital property, marital confiscation is "confiscation carried out to ensure that the confiscated goods are not sold and to protect the rights of the applicant during the examination of the divorce dispute in court as long as it is still ongoing so that it does not fall to third parties. This confiscation only applies to joint property and cannot reach innate property. The sale of confiscated joint property must first obtain the judge's permission based on the decision to avoid the possibility of transferring ownership of the joint property during the divorce process being examined in court so as not to harm either party".
- c. Seizure of collateral or *consevatoir beslag*, this confiscation is "seizure of collateral against the debtor's property to guarantee the implementation of a civil decision by selling the debtor's confiscated goods in order to meet the plaintiff's demands. Conservatoir confiscation is regulated in article 227 HIR, the object of this security confiscation can be in the form of movable or immovable goods, whether the object is tangible or intangible.
- d. Seizure of execution or *executorial beslag*, is a confiscation carried out on the assets of the losing party in a civil case. The confiscation of execution is carried out on movable and immovable objects to carry out the decision that has been *inkracht van gewijsde*. The procedure and conditions for the seizure of execution are regulated in Article 197 of the HIR. Execution confiscation consists of 2 (two) types, namely "first confiscation which is directly placed on movable property and immovable property belonging to the debtor or the losing party. The second is indirect execution confiscation originating from collateral confiscation which has been declared valid and in the context of automatic execution it turns into execution confiscation".

¹¹ Bernadetha Aurelia Oktavira & Yudho Taruno Muryanto, "Perlindungan Hukum Bagi Kreditor Pemegang Hak Tanggungan Dalam Eksekusi Harta (Boedel) Pailit Terhadap Sita Perkara Pidana". *Jurnal Privat Law* Vol. VIII No. 1 Tahun 2020 Hal. 65

¹² Kornelius Benuf, Muhamad Azhar, "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer", *Gema Keadilan*, Vol. 7, No. 1, Tahun 2020, Hal. 25.

¹³ Josua Fernando, dan Susanti Adi Nugroho, "Kedudukan Sita Pidana Terhadap Sita Umum Kepailitan", *Jurnal Hukum Adigama*, Vol 1, No 1, 2018, hal. 8

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- e. General confiscation in bankruptcy is "confiscation carried out on all debtor's assets both currently and in the future with the aim that the proceeds from the sale of these assets can be distributed fairly and proportionally to creditors in accordance with the amount of the receivables from each except between the parties. creditors have reasons to take precedence.
- f. "Criminal confiscation which can also be called confiscation is a series of actions by an investigator to take over or keep under his control over movable or immovable objects, tangible or intangible for the purpose of proof in investigation, prosecution and trial."¹⁴.

In civil procedural law, where bankruptcy law is the *lex specialis*, bankruptcy is included in the category of application form, meaning "a bankruptcy application filed by a debtor or creditor with the aim of obtaining a declaration of bankruptcy by the court which is constitutive for both the debtor and creditor, namely a decision which declares a person or business entity in a state of bankruptcy".¹⁵

Basically, the regulation regarding bankruptcy is an embodiment of "Articles 1131 and 1132 of the Civil Code". The principles contained in the two articles are "If the debtor does not pay his debt voluntarily or does not pay it, even though there has been a court decision punishing him to pay off his debt, then all property is confiscated for sale, and the proceeds of the sale are distributed to all creditors. in a fair and balanced manner; All creditors have the same rights; There is no serial number from creditors based on when their receivables arise.

a. General confiscation arrangements in Indonesia

"Article 1 paragraph (1) of the bankruptcy law and PKPU explain that bankruptcy is a general confiscation of all bankrupt assets whose management and settlement is carried out by a curator under a supervisory judge". Based on this understanding, it is known that the court's decision which states that a debtor is bankrupt by law will lose his right of control and management of assets that have become bankrupt assets and all debtor's assets will automatically be placed in general confiscation. "Law No. 32 of 2004 concerning bankruptcy does not explicitly explain what is meant by general confiscation. General confiscation is a form of confiscation that is known in civil law, especially bankruptcy law which regulates private relationships between individuals.¹⁶ General confiscation is carried out by controlling all assets of the bankrupt debtor by appointing a curator. The curator is authorized to carry out the task of managing and settling the debtor's obligations on the bankruptcy estate from the date the bankruptcy was declared.

General confiscation is carried out to prevent debtors from taking actions that can harm the interests of their creditors and to stop the traffic of transactions against bankrupt parties that may harm creditors so that the assets can later be used again for the benefit of creditors. When creditors execute their respective assets, this will harm the debtor and other creditors, therefore control over the bankruptcy estate must be under the control of the court. The explanation above is the application of the principle of debt collection, in which the debtor's debt must be repaid immediately with the assets owned by the debtor as soon as possible so that creditors do not claim their respective assets and to avoid bad intentions from the debtor himself who wants to hide his real property as collateral. to its creditors.

b. General confiscation Pelaksanaan

The bankruptcy examination is preceded by the existence of a bankruptcy application submitted by the competent parties to the competent Head of the Commercial Court. "Article 7 of the Bankruptcy Law and PKPU explains that written applications are submitted by advocates except for applicants submitted by the Prosecutor's Office, Bank Indonesia, the Capital Market Supervisory Agency and the Minister of Finance. After the court receives the bankruptcy application, the clerk or the official representing it must summon the debtor if the application is submitted by a creditor. If the application is submitted by the debtor, the court is not obliged to summon the creditor as described in Article 8 of the Bankruptcy Law and PKPU. Summons are made by the bailiff by express mail no later than 7 working days before the first hearing begins. The summons will be considered valid and accepted by the debtor if made by the bailiff. "Article 2 of the Bankruptcy Law and PKPU explains that a debtor who has two or more creditors and does not pay off at least one debt that has matured is declared bankrupt by a court decision, either at his own request or at the request of one or more creditors". "So that the petition for a declaration of bankruptcy must be granted if there are facts or circumstances that prove that the requirements to be declared bankrupt as referred to in Article 2 paragraph (1) of the Bankruptcy Law and PKPU have been fulfilled. During the examination of the bankruptcy petition, the judge or court may order the clerk to seal the assets (boedel) of the debtor at the request of his creditor to avoid things that might harm his creditors.

The court's decision on the petition for a declaration of bankruptcy will be rendered no later than 60 days after the date on which the petition for a declaration of bankruptcy is registered. "The court's decision contains articles that form the legal basis, unwritten sources of law, legal considerations and differences of opinion from judges if any. The decision is pronounced in a trial

¹⁴ Muhammad Nasir, *Hukum Acara Perdata*, Djambatan, (Jakarta: Djambatan, 2005), Hal. 89.

¹⁵ Faisal Santiago, *Pengantar Hukum Bisnis*, (Jakarta: Mitra Wacana Media, 2012) Hal 90

¹⁶ Siti Hapsah, "sita umum kepailitan mendahului sita pidana dalam pemberesan harta pailit", *Padjajaran Jurnal ilmu Hukum*, vol 3, No. 3, 2016, Hal. 630

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open to the public and can be implemented beforehand even though the decision will be submitted by another legal remedy. A copy of the court's decision will be delivered by the bailiff to the debtor, the party applying for the bankruptcy statement, the curator, and the supervisory judge no later than 3 days after the decision is issued. If the decision has not been pronounced, the creditor, the prosecutor's office, Bank Indonesia, the Capital Market Supervisory Agency, or the Minister of Finance may apply to the court to place a confiscation of collateral on part or all of the debtor's assets or appoint a temporary curator to supervise the debtor's business management and payments to creditors, transfer, the assets of the debtor who are in bankruptcy are the authority of the curator".¹⁷ "According to Article 10 of the Bankruptcy Law and PKPU, collateral confiscation is a confiscation carried out on part or all of the debtor's assets in order to protect the interests of creditors. The purpose of confiscation of collateral in bankruptcy is as a preventive measure to prevent debtors from committing dishonest or fraudulent acts by deliberately diverting their assets which can harm creditors in the context of paying off their debts.

Security confiscations in bankruptcy proceedings are rarely filed and almost non-existent. As for the reason for the confiscation of collateral, it is rare to apply for a request because it is constrained by the lack of clarity about the procedure for confiscation of guarantees in the Bankruptcy Law and PKPU. "The guarantee confiscation will end automatically once the judge decides on bankruptcy or the permanent PKPU, once the judge has decided on bankruptcy, a general confiscation applies to all assets belonging to the debtor". The purpose of general confiscation is almost the same as the purpose of civil confiscation in general, namely "to prevent debtors from doing actions that harm creditors such as hiding or selling assets, there is only one specific purpose of bankruptcy, namely preventing the seizure of the assets of bankrupt debtors by creditors. Regarding the purpose of the bankruptcy itself, after the bankruptcy decision is made, the debtor's assets will be managed by the curator.

In practice, there are many other confiscations imposed on bankrupt boedel, one of which is criminal confiscation. "Confiscation (beslagname) is a series of actions by investigators to take over and or keep under their control movable or immovable objects, tangible or intangible for the purpose of proof in investigation, prosecution and trial".¹⁸ Confiscation is an act of "forced effort" carried out by investigators to take or confiscate other people's property rights, because confiscation is a form of "forced effort" that is contrary to human rights, the confiscation carried out by investigators must be based on permission from the Head of the State Court as stipulated regulated in article 38 paragraph (1) of the Criminal Procedure Code. Confiscation in the Criminal Procedure Code is a forced effort by investigators to:

- a. "Taking or seizing certain items from the suspect, holder, or custodian. The confiscation carried out is justified by law and carried out according to the rules of the law.
- b. After the goods have been confiscated by the investigator, the goods will be kept under his control.

If viewed from its position, the Bankruptcy Law explicitly regulates the position of general confiscation when dealing with other confiscations based on "Article 31 paragraph (1) and 31 paragraph (2) which reads:

"Article 31 paragraph (1) of the Bankruptcy Law The decision on the declaration of bankruptcy results that all court decisions on any part of the debtor's assets that have been initiated prior to bankruptcy must be terminated immediately and since then no decision has been enforceable, including or holding the debtor hostage."

Article 31 paragraph (2) of the Bankruptcy Law

"All types of confiscations that have been carried out will be abolished and if necessary, the Supervisory Judge must order them to be removed."

"The article confirms that the position of general confiscation is higher than other confiscations because with the general confiscation all confiscations are nullified and even if the supervisory judge is forced to do so, the confiscation can be removed outside the general confiscation". However, problems arise related to several other rules other than civil which regulate confiscation and its application if bankruptcy occurs, namely in "Article 39 paragraph (2) of the Criminal Procedure Code" which states that: "Objects that are in confiscation due to a civil case or bankruptcy can also be confiscated for the purposes of investigation, prosecution and trial of criminal cases."

There are several aspects debated by experts regarding the position of general confiscations compared to these other confiscations. "The first is the aspect of public law, where criminal law experts are guided by the public interest represented by criminal law. Meanwhile, civil and bankruptcy experts also consider that bankruptcy cases are public cases involving the public interest because it involves many creditors such as in the case of Abu Tour (1,822 creditors), first travel (63.00 creditors) and Pandawa (39,068 creditors)".¹⁹ "The second aspect is the aspect of justice. Civil law experts view that general confiscation needs to be prioritized because from a fair perspective, creditor rights will be fulfilled. The aspect of justice in criminal law means that the

¹⁷ Niru Anita dan Nunuk Sulisrudatin, "Hukum Kepailitan dan Permasalahannya di Indonesia", *jurnal ilmiah Hukum Dirgantara*, Vol. 7, No. 1, 2016, Hal. 167

¹⁸ Suryono Sutarto, *Hukum Acara Pidana*, (Semarang: Badan Penerbit Undiversitas Diponegoro Semarang, 2005) Hal. 70

¹⁹ Luthvi Febryka Nola, *Op.Cit*, hal 227

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guilty must be punished, to make it happen, of course it must be supported by evidence, one of which is in the form of confiscated goods.²⁰

“The next aspect that is the subject of debate is related to expediency. According to civil law experts, if general confiscation takes precedence, the problem of debt and credit will be resolved quickly and fairly so that it does not interfere with the economy, both on a small and large scale. Meanwhile, if other confiscations take precedence such as criminal confiscation, the security of the property will be guaranteed and the results of the confiscation will be used as evidence. The fourth aspect that is being debated is regarding legal certainty. Civil law experts are of the opinion that general confiscation takes precedence because based on the principle of *lex parterior derogate legi priori*, where newer regulations beat older regulations, the provisions of Article 31 of the Bankruptcy Law are newer than the criminal confiscation arrangements in the Criminal Procedure Code.²¹

If seen from the explanation above, one way to reduce this conflict is "by using legal principles. Legal principles are basic thoughts that are general and abstract, or are the background of concrete regulations contained in and behind every legal system that is embodied in laws and regulations.²²

"The principle of law is the reason for the birth of the rule of law, or is the ratio legis of the rule of law".²³ Furthermore, Satjipto Rahardjo said "legal principles are the heart of legal regulations, because from their understanding it appears that legal principles are the broadest basis for the birth of a legal regulation, so that if there is a problem in the legal regulations, it can ultimately be returned to these principles".²⁴

2. Implementation and Settlement of Bankruptcy Seizures if Encumbered by Criminal Seizures

“It is necessary to know in advance about the role and position of the curator in managing and settling bankrupt assets. In this case, the curator as a neutral party appointed by the Commercial Court has the right to decide a bankruptcy case and then replace the position of the debtor who has been declared bankrupt in managing and settling bankrupt assets in an effort to fulfill the obligations of a bankrupt debtor to his creditors.²⁵

In the Bankruptcy Law it is explained that "Payments to creditors, transfers, or guarantees of debtor assets which are in bankruptcy are the authority of the curator, so it is very important that the presence of a curator in solving problems must be considered. The dominant role played by the curator is to act as a resolution to the bankruptcy problem experienced by the debtor, where the curator does not act for the interest of the applicant but for the benefit of the bankrupt fund. bankruptcy". Between the Curator and the debtor, who has a higher position, namely the Curator, this gives the Curator the authority to settle the bankruptcy estate in accordance with a court decision that has permanent legal force.

a. Responsibilities of the curator in the settlement of bankrupt bills

In accordance with the provisions of the Bankruptcy Law and PKPU, all objects must be sold in public or auctioned in accordance with the procedures specified in the legislation. If the sale in public cannot be carried out, then in accordance with the provisions contained in Article 185 paragraph (2) of the Bankruptcy Law and PKPU, underhand sales can be carried out with the permission of the supervisory judge. Because certain objects are difficult to get a decent price or difficult to get a buyer if the sale is not done under the hands. Article 185 paragraph (2) of the Bankruptcy Law and PKPU also explains that all objects that are not immediately or not disposed of at all in the sense that they cannot be auctioned or sold under the hands of the Curator decide what action should be taken with the object with the permission of the Supervisory Judge.

Goods that have retention rights by creditors must be returned by the curator to the bankrupt bank by paying the relevant bill as long as it uses the bankrupt bank, taking into account the provisions of "Article 6, Article 57 and Article 58 of the UUKPKPU, creditors holding liens, fiduciary guarantees, mortgage rights, mortgages or collateral rights on other objects, can exercise their rights as if there was no bankruptcy (Article 51 paragraph (1) UUK-PKPU). The creditor who has the right to hold the debtor's goods until the creditor's bill is paid (retention rights), does not lose the right to hold the goods even though there is a bankruptcy decision (Article 61 UUKPKPU)".

Article 185 paragraph (4) of the Bankruptcy Law and PKPU gives the view that the curator does not have to return the goods if the return will actually harm the bankrupt bank because in practice almost all bankruptcy cases of the bankrupt bank are not sufficient to pay off the debts of the creditors. According to Article 186 of the Bankruptcy Law and PKPU for the purposes of settling bankruptcy cases, according to the curator, the curator may use the services of a bankrupt debtor, namely business services carried out prior to bankruptcy by paying wages, the amount of which is determined by the supervisory judge. After the Bankrupt

²⁰ *ibid*

²¹ Badan Pembinaan Hukum Nasional, *Lembaga Peyitaan dan Pengelolaan Barang Hasil Kejahatan*, (Jakarta: BPHN, 2013) hal 21

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

²³ Dian Latifiani, "Permasalahan Pelaksanaan Putusan Hakim", *Jurnal Hukum Acara Perdata Adhaper*, Vol. 1, No. 1, 2015, Hal. 5

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

²⁵ Luthvi Febryka Nola, *Op.Cit*, hal 229

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Asset is in a state of insolvency, the Supervisory Judge may convene a Creditors meeting on the day, hour, and place determined to discuss the method of settling the bankruptcy estate. If there are receivables that have not been registered at the time after the expiration of the grace period set by the supervisory judge and the receivables have not been matched, the Supervisory Judge can conduct a verification of the receivables against the unregistered receivables

Article 187 paragraph (2) of the Bankruptcy Law and PKPU stipulates that with respect to the receivables as referred to in Article 187 paragraph (1) of the Bankruptcy Law and PKPU in the form of receivables entered after the expiration of the grace period, the Curator is obliged to act as referred to in Article 116, Article 117, article 118, article 119, and article 120 of the Bankruptcy Law and PKPU which explain that the curator is obliged to calculate the receivables submitted by the creditor with the notes that have been made previously and the statement of the bankrupt debtor or negotiate with the creditor if there are objections to the collection received. The Curator also has the right to request the Creditor to submit a letter that has not been submitted, including showing the original notes and proof. The curator is obligated to enter the approved receivables into a list of receivables that are temporarily recognized, while the disputed receivables including the reasons are included in a separate list.

The list made by the curator also contains notes on each creditor's receivables in the opinion of the curator the receivables concerned are privileged or guaranteed with a lien, fiduciary guarantee, mortgage, mortgage, collateral rights on other objects, or the right to hold objects for the claim in question can be implemented. . If the curator only denies the existence of the right to take precedence or the right to withhold the object, then the receivable in question must be included in the list of temporarily recognized receivables along with the curator's notes on the objection and the reasons.

The main duty of a curator is "must make every effort to secure the bankruptcy estate and keep all letters, documents, money, jewellery, securities and other securities . For this reason, the curator is authorized to request that the supervisory judge be sealed, which is carried out by the bailiff and witnessed by two witnesses. The Bankruptcy Law also requires the curator to be able to continue the business of the bankrupt debtor, but it must be with the approval of the creditor committee, if the creditor committee is not available, then the curator may request permission to continue the business of the bankrupt debtor to the supervisory judge (Article 104 of the Bankruptcy Law)". In addition, another task of the curator is to "completely record all bankrupt assets and place them in the court clerk's office to be seen by everyone free of charge. This registration starts at

b. The responsibility of the curator if the bankrupt bank is burdened by criminal confiscation

Legal problems that often occur are when bankrupt assets include assets that are confiscated in criminal cases. This in practice occurs when the general confiscation of bankruptcy is faced with criminal confiscation as referred to in "Article 39 paragraph (2) of the Criminal Procedure Code (KUHAP) which states that objects that are in confiscation due to civil cases or because of bankruptcy can also be confiscated for the interests of investigating, prosecuting and adjudicating criminal cases. The problem is, when bankruptcy confiscation is faced with criminal confiscation, which provisions can take precedence?

In order to protect existing interests, either in the context of investigations or in the context of general confiscation of bankruptcy, it is necessary to have coordination by authorized officials. When the bankruptcy estate has been confiscated in another civil case, it can be crossed out. In the Criminal Code, investigators can still confiscate for investigation purposes. However, coordination is needed so that the Supervisory Judge can make an assessment of priorities. The crime is "a violation of the public interest, and when a criminal decision is made, the assets are confiscated by the state, while bankruptcy is a private matter. So it would be necessary to coordinate, if the bankruptcy is confiscated first, then you must ask permission from the Supervisory Judge".²⁶

In this regard, M Hadi Shubhan was of the opinion in the scientific meeting of the Business and Bankruptcy Law Forum regarding this matter, namely:

"If the confiscation is first and then he is bankrupt, the Curator to lift the criminal confiscation, the Curator should not submit it to a commercial judge, it would be pre-trial. However, if it is bankrupt and then the prosecutor wants to confiscate, the prosecutor must ask permission from the Supervisory Judge or the judge who decides to trade, do not confiscate. Report it to the supervisor first, if you can't, then do it in other lawsuits to ensure that the bankruptcy estate is the result of a criminal act, and this needs to be proven first so that there is no mixing of assets. (Article 31 and Article 39 of the Criminal Procedure Code) presumably the judge must first obtain permission."

"Article 31 paragraph (2) of the KPKPU Law states that all confiscations are stopped when the bankruptcy decision has been pronounced, if necessary, the Supervisory Judge must order them to be removed. Since the bankruptcy decision is pronounced, all confiscations on an object expire and are replaced with general bankruptcy seizures. This is intended to protect the assets of the bankrupt debtor from the possibility of fraud committed by creditors and debtors.

"Article 39 paragraph (2) of the Criminal Procedure Code states that objects in a bankruptcy case can be confiscated by investigators for the purposes of investigating, prosecuting, and adjudicating criminal cases. For the purposes of investigation, prosecution and trial, the assets of a bankrupt debtor that have been confiscated by the public may be confiscated again by

²⁶ Nani Indrawati, diskusi publik Penyusunan Naskah Akademik RUU KPKPU, Makasar 3 Mei 2018.

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investigators to ensure their safety. The assets will be used as evidence in the investigation, prosecution and trial so that their security must be guaranteed”.

In this case, there has been an overlap between the bankruptcy law regarding general confiscation of bankruptcy as regulated in “Article 31 paragraph (2) of the KPKPU Law and the criminal procedure law regarding confiscation as regulated in Article 39 paragraph (2) of the Criminal Procedure Code. Bankruptcy law stipulates that since the bankruptcy decision is pronounced by the judge, all confiscations of the bankruptcy estate are no longer valid. Meanwhile, the criminal procedure law stipulates that the bankruptcy estate can be criminally confiscated. If assets that are in the process of bankruptcy and general confiscation is carried out by investigators, then the assets cannot be cleared and distributed to creditors. This will be detrimental to creditors. However, if investigators do not confiscate them, investigators will find it difficult to carry out investigations, prosecutions, and submit cases to court because the assets are evidence.

The result of this bankruptcy decision is also a logical consequence of the general confiscation above. With the general confiscation, everything related to assets/bankrupt assets must be terminated either tentatively or definitively. Because this is the main essence of a bankruptcy where the debtor's assets must be temporarily suspended for the sake of law from all existing transactions. If before the bankruptcy decision there is a court order to confiscate a part of the assets entered as bankruptcy estate, then by law the decision can be revoked until there is a bankruptcy decision

However, even though the presence of criminal confiscation of objects that have been confiscated by the general public does not result in the loss or elimination of general confiscations, general confiscations will always be attached to objects that are generally confiscated even though there are confiscations other than general confiscations. “General confiscation will be deleted when the general confiscated objects have been sold to fulfill creditors' bills. The basis why the position of criminal confiscation has a higher position than general confiscation cannot be separated from criminal confiscation which is part of public law while general confiscation is part of the realm of civil law (private law), public law must take precedence over private law, that's why the position of criminal confiscation has a higher level than general confiscation.²⁷ Based on legal theory, the position of general confiscation as part of the scope of the perdaa, then general confiscation is higher than other confiscations on the basis of *lex Specialis*, while the position of general confiscation is compared to criminal confiscation based on the principle of *lex specialis derogate legi generalis* and the theory of harmonization between legal systems, so general confiscation cannot be cancel the criminal confiscation.²⁸

“The curator's authority and responsibility in criminal confiscation of bankrupt assets can still be exercised, even though an appeal or judicial review is filed against the decision. The legal consequences of the bankruptcy certificate confiscated by investigators are related to bankruptcy confiscation as the authority and responsibility of the curator. Although in practice it is possible that it will take quite a long time for the bankrupt certificate to be returned to the curator, then criminal confiscation takes precedence then after completion of the proof, the bankrupt certificate is returned to the curator”. The concept of a suitable settlement, namely with a legal harmonization between "Article 39 paragraph (2) of the Criminal Procedure Code, it is determined that objects that are in confiscation due to a civil case or due to bankruptcy can also be confiscated for the purposes of investigation, prosecution and trial of criminal cases, as long as they meet the provisions of "paragraph (1) with Article 31 paragraph (2) of Law no. 37 of 2004 concerning Bankruptcy and PKPU which stipulates that all confiscations that have been carried out will be annulled and if necessary the Supervisory Judge must order them to be removed. For this reason, there must be a revision of the two articles, both in the Draft Criminal Procedure Code and the UUK-PKPU later.

D. CONCLUSION

Based on the discussion of the research problem, it can be concluded that when a general confiscation is carried out on the basis of a court decision that has permanent legal force, the other confiscations are deleted. Implementation of general confiscation in bankruptcy law must be carried out before criminal confiscation in order to fulfill a sense of justice for creditors' rights and to avoid violations of creditors' rights. When viewed in terms of benefits, the problem of debt and credit can be resolved quickly and fairly so that aspects of the national economy are not disturbed. As for the state, the state can be used as a creditor holding privileges who get priority in the settlement of bankrupt assets. In terms of legal certainty, "Article 31 of the KPKPU Law which states that all confiscations are appointed since the bankruptcy of a debtor is a new regulation and a special regulation compared to the criminal confiscation regulations contained in Article 39 paragraph (2) of the Criminal Procedure Code".

The authority and responsibility of the curator in criminal confiscation of bankrupt assets can still be carried out, even though an appeal or review is filed against the decision. The legal consequences of bankruptcy confiscations which are confiscated by investigators, related to bankruptcy confiscation as the authority and responsibility of the curator, criminal confiscation takes

²⁷ Wawancara dengan Kuorator Wenang Notobuwono, S.H., M.H. tanggal 5 Maret 2020 pukul 09.30 pada kantor Law Firm Yosep Parera

²⁸ Luthvi Febryka Nola, “Kedudukan Sita Umum terhadap sita lainnya dalam Proses Kepailitan The Position of General Seizure Towards Others in The Proses of Bankruptcy,” *Negara hukum*, Volume 9, Nomor 2, (2018), Hal.234

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precedence then after completion of proof, the bankrupt boedel is returned to the curator. "The concept of a suitable settlement, namely with a synchronization and harmonization of law between Article 39 paragraph (2) of the Criminal Procedure Code and Article 31 paragraph (2) of Law no. 37 of 2004 concerning Bankruptcy and PKPU".

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