

Reformulation of Criminal Seizure Regulations Regarding General Seizure Related to Criminal Acts That Cause Financial Loss to The State

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ABSTRACT: This study aims to analyze the implementation of prosecution termination based on restorative justice in Domestic Violence (DV) cases, as regulated in the Indonesian Prosecutor's Regulation No. 15 of 2020. The research is grounded on the legal opportunity that allows prosecutors to discontinue DV cases when specific conditions are met, including a voluntary reconciliation agreement, the offender's acknowledgment of wrongdoing, and restitution or recovery for the victim. The urgency of this research lies in balancing formal law enforcement with a more humanistic and victim-centered approach. The study employs a normative juridical method using both statutory and conceptual approaches, supported by literature review. The findings reveal that implementing restorative justice in DV cases faces significant challenges, such as power imbalances, the risk of re-traumatization, and limited regulatory and institutional capacity. Nevertheless, when applied with caution, strict procedures, and adequate legal and psychological support, restorative justice can serve as an effective instrument for achieving true victim recovery, restoring human dignity, and fostering substantive accountability from the offender. This research concludes that restorative justice should not merely be seen as an alternative to prosecution but as a meaningful path toward a more humane and substantial form of justice.

KEYWORDS-domestic violence; offender accountability; prosecution; restorative justice; victim recovery.

I. INTRODUCTION

In legal studies, the concept of seizure or confiscation is a form of coercion used by the state to enforce the law. In general, confiscation can be understood as the forcible taking of a legal object from the control of a legal subject for the purposes of legal proceedings. In the context of this study, the author will specifically examine two forms of seizure originating from two different legal regimes, namely criminal seizure in criminal procedure law and general seizure in bankruptcy law. Where bankruptcy is a situation where the debtor no longer has the ability to make payments on debts to creditors, which is generally caused by the financial distress of the debtor's business, which has experienced a decline.¹ Simply put, based on the above definition, bankruptcy is a situation in which a person is unable to pay their debts, as determined by a judge or district court.²

The Bankruptcy Law was established to provide protection to creditors if debtors fail to pay their debts. Creditors are expected to have access to the assets of debtors who have been declared bankrupt, as these debtors are no longer able to pay their debts. This is stipulated in Article 2 paragraph (1) of Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations³ (hereinafter referred to as the Bankruptcy and PKPU Law) regarding the requirements for filing for bankruptcy by both debtors and creditors.

Then, Article 1 paragraph 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations defines bankruptcy as "general seizure of all assets of the bankrupt debtor, the management and settlement of which is carried out by a curator under the supervision of a supervisory judge as stipulated in this Law". Thus, in simple terms, bankruptcy can be defined as the seizure of all assets of the debtor included in the bankruptcy petition.

The concepts of general seizure in bankruptcy and criminal seizure in criminal procedure law share a similarity in that both involve the forcible takeover of control over a specific object. However, philosophically, the two have fundamental differences.

¹ Hadi M. Shubhan, *Hukum Kepailitan Prinsip, Norma dan Praktik di Pengadilan*, Jakarta: Kencana Prenada Media Group, 2012 hlm. 78

² M.Marwan dan Jimmy P., *Kamus Hukum Dictionary of Law Complete Edition*, Cetakan 1, Surabaya: Reality Publisher, 2009, hlm.475

³ Pasal 2 ayat (1) Undang-Undang RI No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang

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Criminal seizure aims to secure evidence in criminal investigations, prosecutions, and trials so that evidence is not lost, damaged, or destroyed. Conversely, general seizure in bankruptcy law aims to ensure the liquidation of bankrupt assets for the sake of legal certainty, justice, and benefit in the process of distributing assets to creditors.

These two forms of seizure follow different legal paths, but it is possible for them to be imposed on the same object, giving rise to conflicts of authority. The phenomenon of overlap between criminal seizure and general seizure is not a hypothetical issue, but has occurred in practice and given rise to complex legal issues. For example, when investigators seize the assets of a bankrupt debtor that have previously been included in the bankruptcy estate under the control of the curator. A conflict of interest arises because both the curator and the investigators have legal bases and legitimate objectives, but these clash in practice.

Seizure comes from Dutch terminology and is known as *beslag*, or in formal language, *sita* or *penyitaan*.⁴ Menurut M. Yahya Harahap states that there are several meanings contained in the word "seizure", namely⁵ :

1. The act of placing the debtor's property in custody during enforcement proceedings.
2. The custodial action is officially notified based on a court or judge's request;
3. The goods placed in custody are disputed goods, but may also be goods that will be used as payment for the settlement of debts owed by the debtor or debtors by way of auction (*executorial verkoop*);
4. The determination and safekeeping of seized items shall continue throughout the investigation process until there is a final and binding court decision declaring the seizure to be valid or invalid.

Seizure itself has the purpose of collecting evidence that will later be used in the trial process. Evidence refers to the process whereby the parties involved in a trial present valid evidence in accordance with the rules of law to the panel of judges. The purpose of this evidence is to reinforce the validity of arguments regarding the legal facts that form the core of the dispute. Thus, judges can have a definite basis for making decisions.⁶

The official definition of criminal seizure is easily found by referring to the regulations contained in the Law, namely in Article 1 point 16 of the Criminal Procedure Code (hereinafter referred to as KUHAP). seizure is a series of actions taken by investigators to take over and/or store under their control movable or immovable, tangible or intangible objects for the purposes of evidence in investigations, prosecutions, and trials.⁷

Seizure in criminal cases is an action that can be carried out by the investigating authority, prosecuting with the permission of the local District Court Chief. As the researcher explained at the beginning, criminal seizure is used to secure objects directly related to a criminal incident, and is a source of information that can prove a criminal case so that it is not lost, damaged or destroyed by the perpetrator. A seizure in a criminal case is a form of coercion, because seizure is a form of "coercion" that may conflict with human rights. Seizures carried out by investigators must be based on a letter of permission from the Head of the District Court as stipulated in Article 38 Paragraph (1) of the Criminal Procedure Code. Paragraph (2) states that in cases of extreme necessity and urgency where investigators must act and it is impossible to obtain a warrant in advance, the Criminal Procedure Code provides an exception.⁸

To understand the issue more deeply, it is important to look at the definitions and functions of each legal institution. In bankruptcy law, bankruptcy is a situation in which a debtor is no longer able to pay their debts, as regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law). Article 1 paragraph 1 states that bankruptcy is a general seizure of all assets of the bankrupt debtor, the management and settlement of which is carried out by a curator under the supervision of a supervisory judge.⁹

Thus, since the bankruptcy ruling was issued, all of the debtor's assets have been removed from his control and entered into the bankruptcy estate. The management of this bankruptcy estate is entirely in the hands of the curator, who is responsible for settling the assets in the interests of the creditors. The curator has the authority to take legal action, including the transfer of assets, as long as it is done under the supervision of the supervisory judge.

On the other hand, in the realm of criminal law, confiscation is carried out by investigators with the approval of the Head of the District Court (Article 38 paragraph (1) of the Criminal Procedure Code), or in urgent circumstances, it can be carried out without prior permission (Article 38 paragraph (2) of the Criminal Procedure Code). The purpose is for the sake of evidence in

⁴ M.Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan*, Cetakan Keempat, Jakarta: Sinar Grafika, 2006 hlm. 282

⁵ Padjadjaran, *Jurnal ilmu Hukum Volume 3 Nomor 3 tahun 2016*, hlm 632

⁶ Bahtiar Effendie, Masdari Tasmin, dan A.Chodari, 1999. *Surat Gugat Dan Hukum Pembuktian Dalam Perkara Perdata*. Bandung: Citra Aditya Bakti. Hlm. 50.

⁷ Undang-Undang Nomor 8 tahun 1981, *Tentang Kitab Undang-Undang Hukum Acara Pidana* (Lembaran Negara Republik Indonesia Nomor 76, Tambahan Lembaran Negara Republik Indonesia Nomor 3209) Pasal 1 butir 16 KUHAP

⁸ Ibid

⁹ Undang-Undang RI No. 37 Tahun 2004 *tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang*, Pasal 2 ayat (1)

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criminal proceedings, as stipulated in Article 1 point 16 of the Criminal Procedure Code. Criminal seizure is a form of coercive measure, which is strictly limited by law to protect human rights.¹⁰

Problems arise when the object to be seized by investigators turns out to be part of the bankruptcy estate. In this situation, the curator has a legal responsibility to safeguard the asset in the interests of the creditors. Meanwhile, investigators, with their authority, seek to seize assets relevant to the prosecution of a criminal offense. Both have their own legal basis: the trustee based on the Bankruptcy Law, and the investigator based on the Criminal Procedure Code. However, this is precisely what triggers normative and practical conflicts.

This research is important, given the absence of legal norms that explicitly regulate the procedures for resolving conflicts of authority between curators and investigators regarding seized objects. This is where an in-depth legal study is needed to examine how the law should regulate or provide a mechanism for resolution when there is a conflict between two forms of seizure that are lawful but originate from different legal regimes. This research also has high practical urgency, given its potential impact on justice and legal certainty for the parties involved, including the state, debtors, and creditors.

In Indonesia, there have been conflicts of authority between curators and investigators from the Indonesian National Police and the Indonesian Attorney General's Office. One clear example can be seen in the bankruptcy case between the Curator Team of PT Sinar Central Rejeki (in bankruptcy) and the Criminal Investigation Unit of the Indonesian National Police (Bareskrim Polri), as stated in the Review Decision of the Supreme Court of the Republic of Indonesia Number 202 PK/Pdt.Sus/2012, which was decided on May 20, 2013. In this decision, the Supreme Court stated that the Commercial Court had the authority to examine, adjudicate, and decide on the case in question and granted the curator's claim in part. The ruling states that the seizure and blocking of the Serpong Plaza Commercial Center Building, including the land and buildings, carried out by law enforcement officials has no legal force.

The ruling is based on several legal considerations, including:

1. That PT Sinar Central Rejeki has been declared bankrupt, so that all of its assets are legally considered bankruptcy assets and are under the control of the curator;
2. That pursuant to Article 31(2) of Law No. 37 of 2004, all seizure actions taken prior to the declaration of bankruptcy are null and void;
3. That the liability of commissioners is limited to the value of the shares they own, not to the entire assets of the company.

However, in another case, the Supreme Court handed down a different ruling. This can be seen in the bankruptcy case between the Curator Team of PT Sunprima Nusantara Pembiayaan (in bankruptcy) against Bareskrim Polri c.q. Directorate of Special Economic Crimes and the Attorney General's Office of the Republic of Indonesia, as stated in the decision of the Supreme Court of the Republic of Indonesia Number 46 K/Pdt.Sus-Pailit/2024. In this case, the Supreme Court rejected the cassation petition filed by the curators, Irfan Aghasar, S.H., M.H. and Rio Harika, S.H., M.H., thereby declaring the seizure carried out by law enforcement officials to be legally valid.

This study will examine decisions with similar backgrounds and issues, namely when general bankruptcy seizures in the context of bankruptcy asset liquidation are hampered by criminal seizures, and even when criminal seizures take precedence over general bankruptcy seizures. Referring to the background described above, the core issue raised by the author is how to reformulate the regulation of criminal seizure against general seizure as a result of a bankruptcy ruling in order to provide legal certainty to creditors. The purpose of this study is that differences in the regulation of the same object in criminal seizure and bankruptcy seizure result in losses for creditors. Creditors in the concept of criminal seizure can also be seen as victims. On the one hand, criminal law in general places more importance on punishing the perpetrator than on considering the losses suffered by the victim. For this reason, the researcher intends to elaborate on the concept of restorative justice in resolving the issue of supremacy between the two types of seizure so as to benefit creditors as well as victims.

II. RESEARCH METHOD

The type of research conducted in this study is normative legal research. Legal research is essentially scientific research, because law is essentially a normative phenomenon, and therefore this research is more closely related to the world of values. Thus, it is clear that law consists of rules that govern human behavior in social life and interactions. Therefore, the research used in writing this thesis is normative legal research. Normative legal research is a process of discovering legal rules, legal principles, and legal doctrines in order to answer the legal issues at hand.¹¹ This type of normative research is used to examine the harmonization of criminal seizure regulations with general seizure as a result of a bankruptcy ruling.

¹⁰ Undang-undang (UU) Nomor 8 Tahun 1981 *tentang Hukum Acara Pidana*, Pasal 1 angka 16

¹¹ Piter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana Prenada Media Group, 2005), hlm. 35.

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The term normative legal research comes from English, while in Dutch it is *normatieve juridisch onderzoek*, and in German it is *normative juristische recherche*. The normative legal research method is a scientific research procedure to discover the truth based on legal scientific logic from a normative perspective.¹² According to Soerjono Soekanto and Sri Mamudji,

“The normative legal research method or legal literature research method is a method or approach used in legal research conducted by examining existing literature.”¹³

This paper uses research on laws and regulations that protect curators as holders of regulatory rights over bankruptcy objects. This paper also uses research on rules governing seizure in criminal and civil law regimes and the payment of state losses in the public interest.

The research used by the author is doctrinal research, which is generally known as normative research. This research basically often conceptualizes law as written rules in the form of legislation (law written in books) or law is also conceptualized as guidelines or parameters for assessing the appropriateness of certain behaviors in society.¹⁴

Based on its nature, this research is normative legal research. This normative legal research uses several approaches, namely the statute approach, the conceptual approach, and the comparative approach. According to Peter Mahmud Marzuki, the statute approach is carried out by examining all laws and regulations related to the important issues being addressed. For research on practical activities, this statutory approach will provide researchers with the opportunity to study the consistency and compatibility between one law and another, or between laws and the Constitution, or between regulations and laws. The results of this analysis provide arguments for resolving the issues at hand.¹⁵

III. DISCUSSION

Reformulation of Criminal Seizure Regulations Against General Seizure as a Result of Bankruptcy Decisions to Provide Legal Certainty to Creditors.

In the context of national life and statehood, the Indonesian Constitution mandates that every citizen has equal standing before the law.¹⁶ This constitutional mandate essentially reflects the founding fathers' desire to create a democratic country and promote justice and humanity for all. To realize this noble national ideal, Law No. 39 of 1999 on Human Rights (hereinafter referred to as the Human Rights Law) was enacted, affirming that every person has the right to protection, recognition, guarantees, and fair legal treatment, as well as legal certainty.¹⁷

In the doctrine of legal certainty, there are several reliable instruments, namely regulations and principles. Regulations are narrowly defined as all legal products created by authorized institutions in an agreed manner. Legal certainty is said to mean following these regulations. Regulations are *das sollen* or rules that must be obeyed, while their implementation is called *das sein* or the actual reality. Ideally, *das sollen* and *das sein* are in harmony. For the doctrine of legal certainty, as long as this is in harmony, then everything is fine. Legal certainty only focuses on this. This is different from justice or benefit, which researchers will also use to answer this problem. For the doctrine of legal certainty, bankruptcy law is *lex specialis* and the Commercial Court is an extra-ordinary judicial institution as referred to in the Considerations of the UUK-PKPU, which explicitly states: “Bankruptcy is for the benefit of the business world in resolving debt problems fairly, quickly, openly and effectively, as well as to support national economic growth and development”. Criminal seizure of seized assets is contrary to Article 1 paragraph 1 of the UUK-PKPU “Bankruptcy is a general seizure of all the assets of the bankrupt debtor, the management and settlement of which is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this law”.

As explained in the previous chapter, the objectives of establishing laws include justice, certainty, and legality. If the decision is reviewed using these three elements, then all three elements have been fulfilled. If the decision is reviewed using the theory of legal certainty, then the element of certainty has also been fulfilled. The Panel of Judges in its ruling used the provisions as stipulated in the UUK-PKPU. Considering that this is a bankruptcy dispute, the Panel of Judges' decision based on the UUK-PKPU, which is *lex specialis* and *lex posterior* compared to the Civil Code, is appropriate. The provisions stipulated in the UUK-PKPU also take into account other aspects such as fairness, benefits, and other related aspects, so that the application of the provisions stipulated in the UUK-PKPU does not harm the community. Thus, the provisions stipulated in the UUK-PKPU are not a manifestation of legal dogmatism. With the use of the provisions in the UUK-PKPU, there is no legal vacuum, so that the fulfillment of the principles of creditors can be upheld.

¹² Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif*, (Malang: Bayumedia, 2007), hlm. 57.

¹³ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2009), hlm. 13–14.

¹⁴ Jonaedi Effendi dan Johnny Ibrahim, 2021, *Metode Penelitian Hukum Normatif dan Empiris*, Jakarta: Kencana, hlm. 124.

¹⁵ Soerjono Soekanto, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, (Jakarta: Rajagrafindo, 1985), hlm. 133

¹⁶ Indonesia, *Undang-Undang Dasar Negara Republik Indonesia 1945*, Pasal 27 Ayat (1)

¹⁷ Undang-Undang Nomor 39 Tahun 1999 tentang *Hak Asasi Manusia*, Pasal 3 Ayat (2)

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In some cases, researchers have pointed out inconsistencies in the application of the law. One clear example can be seen in the bankruptcy case between the Curator Team of PT Sinar Central Rejeki (in bankruptcy) and the Criminal Investigation Agency of the Indonesian National Police (Bareskrim Polri), as stated in the Review Decision of the Supreme Court of the Republic of Indonesia Number 202 PK/Pdt.Sus/2012, which was decided on May 20, 2013. In this decision, the Supreme Court stated that the Commercial Court had the authority to examine, adjudicate, and decide on the case in question and to grant the curator's claim in part. The verdict stated that the seizure and blocking of the Serpong Plaza Commercial Center Building, including the land and buildings, carried out by law enforcement officials had no legal force.

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Both have similarities in that they are the subject of civil disputes in this case of bankruptcy, as well as being the subject of criminal offenses. As a result, assets that should be subject to general bankruptcy seizure also become subject to criminal seizure. This results in a kind of dispute over the right to seize between the curator and the investigator. According to the regulations, both the investigator and the curator have a legal basis for claiming the right to seize. Investigators have legal grounds under Article 39 paragraph (2) of the Criminal Procedure Code, and curators have legal grounds under Article 31 paragraph (2) of the Bankruptcy Law. Both articles are valid and must be obeyed. Obstacles may also arise when attempting to use tools such as the *lex specialis derogate legi generale* principle. This principle is very clear: when there is a conflict between regulations, use the more specific regulation because it is more relevant and overrides the more general regulation. However, both the criminal and bankruptcy processes consider themselves to be the most appropriate compared to the other. In reality, the existing situation is a matter that touches on both areas of law. This is a difficulty and challenge in legal certainty.

In 2024, the Supreme Court of the Republic of Indonesia issued Circular Letter Number 2 of 2024 concerning the Enforcement of the Results of the 2024 Plenary Meeting of the Supreme Court Chambers as Guidelines for the Implementation of Duties for Courts (hereinafter referred to as SEMA 2/2024), which produced formulations in the form of legal rules in technical chambers, particularly criminal chambers, including:

Determination of Assets Seized in Corruption Cases and Money Laundering Cases that have been Combined. In determining the status of evidence/assets that have been seized in combined cases of Corruption (Tipikor) and Money Laundering (TPPU), judges need to carefully consider the evidence/assets that have been seized.

- a. In the event that the evidence/assets originate from corruption and can cover the state's financial losses, the evidence/assets that have been confiscated will be prioritized to cover the state's financial losses as compensation.
- b. In the event that there is an excess from the confiscated proceeds, after the compensation has been fulfilled, the assets can be confiscated by the state as part of the money laundering punishment.

This also applies to general bankruptcy seizures, which also include criminal seizures related to Corruption Crimes (Tipikor) and Money Laundering Crimes (TPPU). If there is financial loss to the state, the evidence/assets seized will be prioritized to cover the financial loss to the state as compensation, even if the seizure is included in the bankruptcy estate.

The researcher argues that in order to achieve legal certainty, a regulatory mechanism in the form of technical rules that explicitly regulate the intersection of general seizure and criminal seizure in practice is needed.

The researcher sees that SEMA 2/2024, which is a guideline and guidance in the administration of justice of an administrative nature, can actually be used to answer questions related to the intersection of general seizure and criminal seizure. SEMA 2/2024 as a policy regulation (*beleidsregel*, *pseudowetgeving*, policy rules) is a regulation that is made, both in terms of authority and content, not based on legislation, delegation or mandate, but based on the authority arising from *freies ermesen* attached to the state administration to achieve a specific legally justified objective.¹⁸

According to Bagir Manan, policy regulations are not directly legally binding, but they do have legal relevance. Policy regulations are intended for the state administration itself, so the first to implement these provisions are state administrative bodies or officials.¹⁹

Because it is not included in legislation, a *beleidsregel* cannot automatically be tested legally (*wermatigheid*). However, even so, a *beleidsregel* does not mean that it is completely free. According to Van Kreveld, a *beleidsregel* cannot conflict with the basic regulations that contain the discretionary authority it describes and cannot conflict with common sense, meaning that it still has certain limitations.

¹⁸ Ridwan, *Diskresi & Tanggung Jawab Pemerintah*. Yogyakarta: FH UII Press, 2014, hlm. 145

¹⁹ Ridwan HR. *Hukum Administrasi Negara*. Edisi Revisi. Jakarta: Rajawali Press, 2011, hlm. 175

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The formulation of technical regulations related to the implementation of general seizure and criminal seizure can be explicitly and clearly outlined and regulated in policy regulations (beleidsregel) within the Supreme Court, which researchers assess as a formulation in the form of policy regulations (beleidsregel)/ (SEMA) can implement the legal principles that are enforced as guidelines for the execution of duties in handling cases at all levels of the Supreme Court, particularly in the Criminal and Civil Chambers of the Supreme Court of the Republic of Indonesia.

CONCLUSIONS

The harmonization of criminal seizure regulations with general seizure as a result of a bankruptcy ruling can be done by prioritizing seizures carried out by investigators on objects or proceeds obtained from a criminal act (Article 39 paragraph 2 of the Criminal Procedure Code) until the criminal case ruling has permanent legal force, so that the provisions of Article 31 paragraph (1) and (2) of the Bankruptcy and PKPU Law, which states that “all court decisions regarding any part of the debtor's assets that have been initiated prior to bankruptcy must be stopped immediately...” and “all seizures that have been carried out are void...” cannot be applied if the bankrupt property or assets become evidence in a criminal case, so that the Curator must first wait for the criminal case to be completed and have legal force. This is done so that there is no conflict of authority in the enforcement of each of these rules and so that no new cases arise as a result of the sale of bankrupt assets by the Curator in the course of his duties and authority to settle the bankrupt assets. If it turns out that all or part of the bankrupt assets are assets derived from crime, the Curator must fully surrender the bankrupt assets to the rightful owner, if the criminal case decision states that the objects confiscated as evidence are returned to the rightful owner, so that in this case the Curator cannot place the rightful owner here as one of the creditors in the bankruptcy. Furthermore, if in the criminal case decision it is found that all or part of the bankruptcy estate is property suspected of being derived from crime that has been confiscated by the State or destroyed, then the State cannot be considered a privileged creditor. whereas, according to researchers, it is not appropriate to equate bankruptcy assets originating from a criminal act with creditors who have claims against the bankrupt debtor, in the sense that creditors in this case have the right to collect based on the ranking or priority of their rights to collect claims from the bankrupt debtor. Furthermore, if in the criminal case decision it is found that all or part of the bankrupt assets are suspected of originating from Corruption Crimes and resulting in state financial losses, then in accordance with SEMA 2/2024, the seized assets can cover the state financial losses, so the evidence/assets that have been seized will be prioritized to cover the state financial losses as compensation.

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- 19) Undang-Undang RI No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang, Pasal 2 ayat (1)



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