



# Legal Standing of Criminal Confiscation Against General Confiscation Based on Indonesian Bankruptcy Procedural Law

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**Abstract.** Formulation of the problem in this study is what is the legal standing of the Criminal Confiscation against the General Confiscation in bankruptcy? And what is the Criminal Confiscation mechanism in the aspect of evidentiary based on the Indonesian Bankruptcy Procedural Law? As well as and what is the position of the Creditors, whether Separatist, Preferential, or Concurrent, in relation to the fulfillment of their respective rights to bankruptcy, if a Criminal Confiscation occurs on the same debtor? While the aim of the research is to find out whether General Confiscation or Criminal Confiscation will ideally take precedence, if a legal subject is currently in bankruptcy or status, but is also experiencing Confiscation in the context of Criminal Procedural Law, and to describe how the Criminal Confiscation mechanism is in the aspect of evidence based on bankruptcy procedural law, as well as to understand how the position of the Creditors, whether Separatist, Preferential, or Concurrent, relates to the fulfillment of their respective rights to bankrupt boedel, if a Criminal Confiscation occurs on the same debtor. The benefit of this research is to add to the body of knowledge in the field of Bankruptcy and Procedural Law and provide input for lecture material related to Bankruptcy Procedural Law. The research method used is doctrinal with the approach taken in this research is the Statute Approach and the Conceptual Approach. The statutory approach is aimed at examining statutory rules that establish norms that are considered included in the category of open-character laws that have been subject to constitutional review. The conceptual approach departs from the views and doctrines that have developed in the science of law. Researchers will discover theories that give rise to legal notions, legal concepts, and legal principles pertinent to the subject at hand by examining the viewpoints and doctrines in the science of law. Researcher's ability to construct a legal argument to address the current difficulties depends on their understanding of these ideas and theories. So, this study falls under the category of normative research, which is described as scientific activity based on techniques, systematics, and particular ideas that aims to examine one or more legal symptoms by examining them. Additionally, a thorough analysis of these legal facts was conducted, and then efforts were made to address the issues that these symptoms indicated.

**Keywords:** Bankruptcy, General Confiscation, Criminal Confiscation.

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## 1 Introduction

The goal of the development of Indonesia's national law is to build a just and successful society based on Pancasila and the Republic of Indonesia's 1945 Constitution. The development of law is focused on creating statutory rules that can stimulate the realization of a national legal system that supports the national economy in order to achieve the objective of establishing national law. It is hoped that the formation of laws and regulations can guarantee legal certainty, law enforcement and legal protection. Global economic developments have encouraged a competitive investment climate by providing ease of doing business. To encourage a competitive investment climate for the development of the Indonesian economy, laws and regulations are needed that can provide access to business institutions or individuals to capital and other sources of funding to develop a business. The high need for funding in the business sector is often faced with problems, especially regarding the ability to pay debts and their settlement. Problems in multi-effect funding can affect the business activities of both debtors and creditors in terms of fund liquidity. In order to overcome the problem of funding the business world, civil law recognizes the existence of debt settlement institutions through bankruptcy and postponement of debt payment obligations.

A debtor who is unable to pay his bills might settle his debts through bankruptcy by having all of his assets taken, with a bankruptcy receiver managing the process under the watchful eye of a supervising court. Indonesian Bankruptcy Law Number 37 of 2004 about Bankruptcy and Suspension of Debt Payment (Indonesian Bankruptcy Law) regulates the legal procedures for bankruptcy settlement and debt payment suspension. The Indonesian Bankruptcy Law was born due to the need for the business world to have legal instruments in solving debt and credit problems in a fair, fast, open and effective manner. However, since it was entry into forced on November 18th 2004, settlement through bankruptcy and suspension of debt payment (PKPU) is still experiencing problems in its implementation. Some people think that the regulation is still far from the expectation of its formation, to help economic recovery and strengthen legal institutions in the field of procedural law or debt settlement in Indonesia. In addition, bankruptcy also needs to adjust to the development of society both nationally and internationally. Formulation of the problem in this study is what is the legal standing of the Criminal Confiscation against the General Confiscation in bankruptcy? And what is the Criminal Confiscation mechanism in the aspect of evidentiary based on the Indonesian Bankruptcy Procedural Law?

## 2 Method

The research approach utilized is the normative legal research method, which is based on the formulation of the problem that the author has put up in the preceding section and relates to the objectives to be reached. Legal research that is conducted solely by reading secondary sources of information without consulting primary sources is known as normative legal research or library research. The writers of this paper attempted to

evaluate Indonesian procedural law concepts in connection to bankruptcy law principles. This research is descriptive in nature, namely research that aims to describe something in a certain area at a certain time, which in general researchers have obtained an overview, namely in the form of initial data about the problem and have often used theories and hypotheses. Descriptive research is intended to provide detailed data about humans, circumstances, situations and conditions, or other social phenomena.

The data used in this research is secondary data. Secondary data, namely data obtained from reference materials that researchers access through library research as well as data and materials obtained from literature, research results and laws and regulations related to Bankruptcy Law and PKPU and its developments, court decisions and also jurisprudence regarding this matter. The secondary data used includes but is not limited to the following legal instruments:

- a. Primary legal material, namely binding legal material. In this study, Auhtor used primary legal materials in the form of laws such as Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment, as well as court decisions.
- b. Secondary legal materials, namely legal materials that provide an explanation of primary legal materials. In this study, researchers used secondary legal materials in the form of relevant literature, such as books, research reports, and legal journals related to the object of research.
- c. Tertiary legal materials, namely legal materials that provide guidance on primary legal materials and secondary legal materials. In this study, researchers used tertiary law materials such as Black's Law Dictionary.

Data analysis in this study was carried out qualitatively. Qualitative analysis is data analysis that provides descriptions in words of findings, and because it prioritizes the quality of data and not quantity. Drawing conclusions in this study was carried out using the deductive method, namely trying to draw conclusions from general mindsets into specific statements. The achievement indicators of this research are finding weaknesses in the bankruptcy dispute settlement mechanism and creating a modified model to reduce the weaknesses of the bankruptcy dispute resolution mechanism.

### **3 Result and Discussion**

The Indonesian Bankruptcy Law states that all confiscations that have been made will be deleted and if necessary, the Supervisory Judge will order their removal. Confiscation referred to in the Indonesian Bankruptcy Law are general confiscations known in civil law as joint guarantees for all Creditors for payment of the Debtor's civil obligations to other parties. However, apart from general confiscation as referred to in the Bankruptcy Law, it is also known as criminal confiscation. Criminal confiscation in the Indonesian Criminal Procedure Code (KUHAP) is called "Foreclosure". KUHAP defines Foreclosure as a series of investigative actions to take over and/or keep under their control movable or immovable, tangible or intangible objects for the purposes of evidence in investigations, prosecutions and trials. (Article 1 point 16 of the KUHAP). Legal issues frequently arise when insolvent assets contain items that have been seized

in criminal prosecutions. This happens in practice when a general bankruptcy confiscation is combined with a criminal confiscation, as stated in Article 39 paragraph (2) of the KUHAP, which states that items that are seized as a result of civil cases or bankruptcy can also be seized as a result of criminal investigation, prosecution, and trial. Which provision can take precedence when a criminal confiscation and a bankruptcy confiscation are present is the issue.

This condition raises which confiscation will take precedence in confiscation, this is because both bankruptcy and criminal confiscation are in the context of providing protection for the public or other interested parties. Therefore, communication with the authorized official is required in order to preserve existing interests both during an inquiry and during the general seizure of bankruptcy. It is possible to cross out bankruptcy estates (bankruptcy assets) that have already been seized in another civil proceeding. Investigators are still allowed to seize anything under the Criminal Code in order to conduct an investigation. Nevertheless, communication is required in order for the Supervisory Judge to determine priorities. While bankruptcy is a private concern, the crime is a breach of the public interest, and after the criminal conviction is rendered, the state seizes the offender's assets. So presumably coordination is needed, if a bankruptcy confiscation is first then you have to ask permission from the Supervisory Judge. For the sake of harmonization of the implementation of confiscations both under general confiscation of bankruptcy and criminal confiscation, it is necessary to pay attention to aspects of the public interest in general and the benefits of carrying out confiscations both criminal and general bankruptcy confiscations. The effort offered in amending the Bankruptcy Law is to prioritize the coordination process in bankruptcy settlement. In contrast, under the Bankruptcy Law, declaring bankruptcy automatically results in the general seizure of all of the assets of the bankrupt debtor, whose settlement is handled by a curator under the watchful eye of a supervising judge.

Therefore, the provisions referred to in Article 31 paragraph (2) of the Bankruptcy Law must be revised, and all confiscations that have been carried out must be erased, with the exception of confiscations that are part of criminal proceedings, and the Supervisory Judge must order their removal if required. If bankruptcy is carried out before the existence of a criminal confiscation, the implementation of a criminal confiscation must first obtain permission from the Supervisory Judge or the Judge who examines the bankruptcy case. Furthermore, with the provision of prior permission from the Examining Judge/Supervisory Judge for the confiscation, as well as the obligation to submit it to the Bankruptcy Receiver in the event that the criminal justice process has been completed, it will have implications for legal certainty for Creditors regarding the return of their receivables. In addition, this will also provide legal certainty for the Curator in carrying out the management/settlement of bankruptcy assets. Therefore, in order for the bankruptcy process and criminal investigation to run smoothly, cooperation/coordination between institutions is required. The KUHAP's Article 39 paragraph (2) makes a connection between criminal confiscation and bankruptcy confiscation by stating that, as long as it complies with the rules in the preceding paragraph, items that have been seized in civil cases or due to bankruptcy may also be seized for use in criminal investigation, prosecution, and trial.

## 4 Conclusion

If the assets enter the bankruptcy estate (based on the Bankruptcy Procedural Law) obtained by the Debtor from the proceeds of the Crime of Money Laundering, and then the same assets are also confiscated (in the context of Forced Effort as one of the stages of the Law Criminal Procedure as stipulated in the Criminal Procedure Code/KUHAP), then from the intersection between this two "Procedural Laws", the property will eventually be confiscated by the State. Which means, in a case model like this the Criminal Procedure Law will take precedence, and Criminal Confiscation will take precedence.

And vice versa, if the assets that have entered into a bankrupt bank / general confiscation has been carried out on them (based on the Bankruptcy Procedural Law), and the assets have been proven (based on the evidence in the Criminal Procedure Law) not as the result of a Money Laundering Crime, and also the acquisition of these assets does not harm the State (State Revenue and Expenditure Budget / APBN), then the bankruptcy procedure law takes priority over these assets, and the priority is given to General Confiscation treatment rather than Criminal Confiscation.

In the legal system in Indonesia, it is recommended to make a new legal product which is equivalent to the Law (Undang-Undang), which ensures a certain standardization, and based on this standard it is also determined, which "procedural law" must take precedence, if there is an intersection or collision between one "Procedural Law" with another "Procedural Law", each of which originates from a different Material Law. (In the case of this research if there is an intersection between the Bankruptcy Procedural Law and the Criminal Procedural Law).

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