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Implementation of the Restorative Justice Concept Based on Police Regulation No. 8 of 2021 in Criminal Offenses

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ABSTRACT

Bankruptcy occurs when a debtor is unable to fulfill debt obligations to creditors, often due to financial mismanagement or market miscalculations that lead to business failure. In bankruptcy proceedings, public seizure aims to protect the debtor's assets to prevent their transfer or misuse. Conversely, asset seizure in criminal cases serves as a means to secure evidence or proceeds of crime, ensuring such assets remain intact for the investigation and trial process. These dual legal interests can create procedural conflicts, particularly when the same asset is subject to both bankruptcy proceedings and criminal seizure. This research examines the normative contradictions between Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations and the Indonesian Criminal Procedure Code regarding the priority of seizures. Article 31(2) of the Bankruptcy Law declares that all previous seizures are null and void upon bankruptcy declaration, while Article 39(2) of the Criminal Procedure Code permits the seizure of property even if it is involved in civil or bankruptcy proceedings. This legal overlap raises critical questions about asset management and legal certainty when bankruptcy and criminal processes intersect. The study aims to analyze this conflict and propose a solution to balance the rights of creditors with the needs of criminal law enforcement.

Keywords: Assets of Bankruptcy, Criminal Seizure, General Seizure

INTRODUCTION

Criminal law and civil law, two branches of law that often intersect, are familiar with the concept of seizure or confiscation.¹ This coercive measure, taken by an authorised official against a legal object belonging to a legal subject, serves to enforce the law and, importantly, protect the ownership and/or control of property, ensuring the security of property rights.

Seizure, therefore, is not merely a technical legal action but represents the state's intervention to uphold justice and ensure legal order.² In both civil and criminal contexts, the act of confiscation is a form of preventive control to protect public interests or private rights before a final court ruling is made.³ However, when the same object becomes the subject of both civil and criminal seizures, a conflict of interest can arise between safeguarding property rights and preserving evidence for the sake of justice. This raises questions about how to reconcile the objectives of different legal regimes in practice.

Bankruptcy is a situation where a debtor, who owes money to a creditor, is unable to pay their debt, generally due to economic difficulties or errors in calculating and predicting the market while running their business, resulting in a decline.⁴⁵ Bankruptcy law provides a legal mechanism to address such financial failure by centralizing the management of the debtor's assets through a curator. This mechanism prevents individual creditors from taking unilateral actions to satisfy their claims, ensuring instead that all creditors are treated equally according to the principles of proportional distribution. However, complications arise when assets under bankruptcy control are also involved in criminal investigations, creating a dilemma over which process should take precedence: the protection of creditors' rights or the enforcement of criminal law.⁶

In the event of bankruptcy proceedings, a general seizure aims to protect the bankrupt estate from being transferred by the bankrupt debtor. Meanwhile, seizure

¹ Hudjolly Hudjolly et al., "Establishment Of The Asset Confiscation Law To Minimize Corruption In Indonesia," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 6, no. 2 (May 7, 2024): 1724–30, <https://doi.org/10.47467/as.v6i2.6569>.

² Jingwei Xu, Zhengmin Li, and Siyu Li, "Legal Ethics and Professional Responsibility in the Legal Profession," ed. N. Mohamad Nasri, S. Amat, and Y. Chen, *SHS Web of Conferences* 190 (April 18, 2024): 02006, <https://doi.org/10.1051/shsconf/202419002006>.

³ Skirmantas Bikelis, "Label V. Content: The Problem of Non-Recognition of Civil Confiscation Orders in Europe," *Baltic Journal of Law & Politics* 15, no. 1 (October 1, 2022): 54–70, <https://doi.org/10.2478/bjlp-2022-0003>.

⁴ Kateryna Vereshchahina, "Problems of Legal Regulation of Bankruptcy during Armed Conflict," *Social Legal Studios* 6, no. 3 (August 24, 2023): 201–8, <https://doi.org/10.32518/sals3.2023.201>.

⁵ Warmiyana Zairi Absi and Marsudi Utoyo, "Legal Analysis of Corporate Insolvency: A Case Study of the Insolvency Resolution Process," *International Journal of Social Service and Research* 3, no. 12 (December 25, 2023): 3316–23, <https://doi.org/10.46799/ijssr.v3i12.651>.

⁶ Desri Novian and Kelly Manthovani, "Legal Implications of Corruption Crime Legal Process on the Arbitration Dispute Resolution Proceedings," *Jurisprudentie : Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum* 11, no. 2 (December 13, 2024): 97–111, <https://doi.org/10.24252/jurisprudentie.v11i2.51814>.

in criminal cases plays a crucial role in the trial process to prove a crime.⁷ This is because the item is suspected of being the proceeds of a criminal act or an item used in the commission of a crime. In such cases, the item must be seized by the competent authorities, such as the police or the prosecutor's office. Their role is to ensure that the item is not lost or damaged, as it serves as vital evidence to prove the criminal act committed by an individual or legal entity.⁸ The provisions of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations in conjunction with the Criminal Procedure Code are contradictory regarding the priority of general bankruptcy seizures and criminal seizures in their application. This is a crucial legal issue that needs to be addressed. This is because Article 31(2) of the Bankruptcy and Debt Payment Moratorium Law states that "All seizures that have been carried out shall be nullified, and if necessary, the Supervising Judge must order their cancellation." Furthermore, Article 299 of this Law explains that "Unless otherwise specified in this Law, the applicable procedural law is the Civil Procedure Law." Meanwhile, Article 39(2) of the Criminal Code (KUHP) states that "Property subject to seizure due to a civil case or bankruptcy may also be seized for the purposes of investigation, prosecution, and adjudication of criminal cases."

Both seizures have different reasons and purposes, but can be carried out on the same object. The conflict of norms referred to by the author in this study arises when there is an attempt to request a criminal seizure. At the same time, the criminal seizure requested is an object that is included in the bankruptcy estate and has been subject to general seizure, under the control of a curator appointed and designated by the court. This curator, a pivotal figure in the process, is responsible for administering the procedures outlined in Law No. 37 of 2004 concerning Bankruptcy and the Postponement of Debt Payment Obligations.

LITERATURE REVIEW

General Theory of Bankruptcy

According to M. Hadi Subhan, the court's decision resulted in the seizure of all of the bankrupt debtor's assets, both existing and future. The management and settlement of the bankrupt estate were carried out by a curator under the crucial supervision of a supervisory judge, with the primary objective of using the proceeds from the sale to pay all of the debtor's debts proportionally, according to the creditor structure.⁹ Bankruptcy law, in this context, is based on the principle of *pari passu pro rata parte*, which means that creditors are entitled to receive payment

⁷ A.V. Gavritsky et al., "Information Technologies in Criminal Proceedings of Russia: Controversial Issues of Proof," *International Journal of Economics and Business Administration* VIII, no. Issue 4 (October 1, 2020): 598–612, <https://doi.org/10.35808/ijeba/611>.

⁸ Jakub Matis, "Certain Aspects of Criminal Evidence and Digital Evidence," *Analytical and Comparative Jurisprudence*, no. 2 (May 11, 2024): 699–704, <https://doi.org/10.24144/2788-6018.2024.02.116>.

⁹ Hadi Subhan, *Hukum Kepailitan : Prinsip, Norma, Dan Praktik Di Peradilan*, 2nd Editio (Jakarta: Sinar Grafika, 2009).

proportionally according to their claims without prioritizing one over another, except for privileged creditors. The process is intended to prevent individual creditors from pursuing separate legal actions that might deplete the debtor's estate unfairly. Therefore, bankruptcy is not merely about debt settlement but is also a collective legal process aimed at achieving fairness and equality among creditors.

Theory of Civil Law Seizure

According to M. Yahya Harahap, seizure originates from the Dutch term *beslag* and the Indonesian term *beslah*, the standard term for which is *sita* or *penyitaan*.¹⁰ This refers to the act of forcibly placing assets under official custody based on a legal order for the sake of justice. The assets in question are those subject to dispute, and the act of seizure serves as a crucial step in the pursuit of justice. Such assets are seized during the process until a final and binding court decision is rendered, determining the validity or invalidity of the seizure.

In civil law, seizure acts as a preventive legal action to secure the rights of the parties involved in a dispute. The purpose is to maintain the status quo and ensure that the subject matter of the dispute remains intact until the court resolves the case. This protects creditors from potential bad faith actions by debtors who might otherwise transfer, hide, or destroy assets. Civil seizure thus functions as a protective legal mechanism for the judicial process and the enforcement of civil claims.

Criminal Seizure Theory

In the event of suspected criminal activity, the police have the right to seize items in the possession of the suspected perpetrator. To carry out such a seizure, the police must fulfil several methods or conditions.¹¹ Criminal seizure serves a fundamentally different purpose from civil seizure. It is designed to secure evidence and prevent its destruction, alteration, or concealment. Additionally, it ensures that proceeds of crime or instrumentalities used in the commission of a crime are kept under state control for the duration of the legal process. According to the Indonesian Criminal Procedure Code, this seizure must be based on reasonable suspicion, and it must be authorized by the appropriate judicial authority to ensure legal oversight and protect the suspect's rights.

Theory of Authority

Philipus M Hadjon explains that decision-making authority can be acquired through two methods: attribution or delegation. A mandate, which is a transfer of

¹⁰ Yahya Harahap, *Hukum Acara Perdata : Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan*, 7th ed. (Jakarta: Sinar Grafika, 2007).

¹¹ Eko Pandiangan, "Begini Tata Cara Penyitaan Oleh Kepolisian!," EAP Lawyer, April 21, 2021, <https://eap-lawyer.com/begini-tata-cara-penyitaan-oleh-kepolisian/>.

authority to subordinates, falls under the latter.¹² This transfer allows subordinates to make decisions on behalf of the State Administrative Officer (TUN) who issued the mandate. However, the ultimate decision-making authority still rests with the State Administrative Officer (TUN), who is also responsible and liable for the decisions made. It's important to note that a mandate doesn't necessarily need a legal basis in regulations, as it's a routine matter in the close hierarchical relationship of government organizations.¹³

In the context of bankruptcy and criminal seizure, understanding the source of authority is crucial because both the curator and law enforcement officials act under different legal mandates. The curator's authority is based on attribution directly from the Bankruptcy Law, while police or prosecutors exercise authority through delegated procedural powers under criminal law. This distinction affects the scope of their actions and the limits of their responsibility in managing seized assets.

Proof Theory

According to Prof. Dr. Eddy O.S. Hiariej (quoting Ian Denis), the word "evidence" is closer to the meaning of evidence under positive law, while the word "proof" can be interpreted as evidence that leads to a process. Evidence, as Max. M. Houck explains that the provision of information in a lawful investigation plays a crucial role in legal proceedings regarding facts that are presented as they are.¹⁴

Evidence serves as the backbone of both civil and criminal proceedings. In criminal cases, seizure is often the first step to secure potential evidence before trial. In bankruptcy, the existence of assets is also a form of proof, as it reflects the debtor's estate that needs to be legally processed. Thus, the theory of proof is central to understanding why seizures occur and how the management of seized assets must maintain their evidentiary value in both legal domains.

Legal Protection Theory

Legal protection itself is an effort made by the government to guarantee certainty for both the government and its people, utilising the power it has through several existing regulations. Satjipto Rahardjo explains that legal protection embodies the core function of law, namely to protect human interests by balancing order and justice.¹⁵ In the case of overlapping seizures, legal protection becomes critical for both creditors in bankruptcy and victims or the public interest in criminal cases. A fair legal system must offer protection to all parties by ensuring that procedural conflicts do not result in injustice or legal uncertainty.

¹² Philipus M Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia*, 1st ed. (Surabaya: Bina Ilmu, 1987), <https://balaianpus.jogjaprovo.go.id/opac/detail-opac?id=12369>.

¹³ Damang Damang, "Teori Kewenangan," 2011, <http://www.damang.web.id/2012/11/teori-kewenangan.html>.

¹⁴ Eddy O.S Hiariej, *Teori Dan Hukum Pembuktian*, 1st ed. (Jakarta: Erlangga, 2012).

¹⁵ Satjipto Rahardjo, *Ilmu Hukum*, 8th ed. (Bandung: PT Citra Aditya Bakti, 2014).

Despite the extensive theoretical foundation in the fields of bankruptcy law, civil seizure, criminal procedure, and the theories of authority and evidence, there remains a gap in scholarly discussion regarding the intersection of bankruptcy asset management and criminal seizure. Existing literature tends to treat bankruptcy law and criminal law in isolation, without addressing the procedural conflicts that arise when the same object becomes the target of both mechanisms.

This research aims to examine the normative conflict between Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations and the Indonesian Criminal Procedure Code, specifically focusing on the issue of seizure priority. The objective is to analyze the legal implications when criminal and bankruptcy seizures overlap, and to formulate a solution that balances the protection of creditors' rights with the needs of criminal law enforcement.

The findings of this study are expected to contribute to the development of legal certainty and provide practical guidance for judges, curators, law enforcement officials, and policymakers in handling cases where bankruptcy law and criminal law intersect. By addressing this legal conflict, the research offers significant implications for harmonizing civil and criminal procedures in Indonesia's legal system.

RESEARCH METHODOLOGY

This study employs a doctrinal legal research approach with comparative legal analysis to examine the normative conflicts between criminal seizure and general bankruptcy seizure provisions in Indonesian law.¹⁶ The research utilizes a normative juridical research design that examines the intersection and conflicts between two distinct legal domains: criminal law (public law) and bankruptcy law (private law). The research is primarily qualitative in nature, focusing on legal interpretation and analysis of statutory provisions to address two primary research questions through systematic legal analysis.¹⁷

The data collection encompasses both primary and secondary legal sources. Primary sources include Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, the Criminal Procedure Code (KUHP) specifically Article 39(2), relevant court decisions, and Commercial Court rulings related to bankruptcy proceedings.¹⁸ Secondary sources comprise academic legal literature and scholarly articles, legal commentaries by recognized experts including M. Hadi Subhan (Bankruptcy Law), M. Yahya Harahap (Civil Law Seizure), Prof. Dr. Eddy O.S. Hiariej (Evidence Law), and Philipus M. Hadjon

¹⁶ Nasir Majeed, Amjad Hilal, and Arshad Nawaz Khan, "Doctrinal Research in Law: Meaning, Scope and Methodology," *Bulletin of Business and Economics (BBE)* 12, no. 4 (December 25, 2023): 559–63, <https://doi.org/10.61506/01.00167>.

¹⁷ Dr. S.R Myneni, *Legal Research Methodology*, 7th Edition Reprint (Binding: Paperback, 2022).

¹⁸ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Rajawali, 2003), <https://lib.ui.ac.id>.

(Administrative Law Theory), along with legal journals and comparative legal studies.¹⁹ The research applies multiple legal theories as analytical tools, including General Theory of Bankruptcy, Civil Law Seizure Theory, Criminal Seizure Theory, Theory of Authority, Proof Theory, and Legal Protection Theory.

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The analytical framework employs systematic legal conflict analysis to identify and examine contradictions between Article 31(2) of the Bankruptcy Law (nullification of seizures), Article 299 of the Bankruptcy Law (procedural law application), and Article 39(2) of the Criminal Code (criminal seizure priority). The study utilizes statute interpretation analysis through grammatical, systematic, and teleological interpretation of relevant legal provisions, examining the relationship between different laws and considering the purpose and objectives of each legal framework. Case study analysis examines hypothetical and real scenarios where criminal seizure is requested on property already subject to bankruptcy seizure, assets are under curator control but required for criminal proceedings, and conflicts arise between public interest (criminal law) and private interest (bankruptcy law).

The research employs legal validity testing through cross-referencing multiple authoritative legal sources, consultation with established legal theories and principles, analysis of practical implementation challenges, and examination of potential legal remedies and solutions. The study's limitations include its primary focus on the Indonesian legal framework without extensive international comparative analysis, analysis based on current legal provisions without historical development examination, and primarily theoretical analysis without extensive empirical data collection from practitioners. As doctrinal legal research, this study adheres to proper citation and attribution of all legal sources, objective analysis without bias toward either legal domain, and academic integrity in legal interpretation and analysis.

RESULT AND DISCUSSION

The Regulation of Asset Seizure in Bankruptcy for Criminal Law Purposes

Criminal seizure is indeed given priority over general bankruptcy seizure because criminal seizure falls under private law concerning the public interest, whereas criminal seizure itself is based on private law. While different legal frameworks govern both types of seizure, it is crucial to note that, in criminal

¹⁹ J.B.M. Vranken, "Methodology of Legal Doctrinal Research," in *Methodologies of Legal Research. Which Kind of Method for What Kind of Discipline*, ed. M.A.A Hoecke (Hart Publishing, 2010), 111–21, <https://research.tilburguniversity.edu/en/publications/methodology-of-legal-doctrinal-research>.

²⁰ Soetandyo Wignjosoebroto, *Pergeseran Paradigma: Dalam Kajian-Kajian Sosial Dan Hukum / Soetandyo Wignjosoebroto | Perpustakaan Mahkamah Konstitusi*, 3rd edition (Malang: Setara Press, 2017).

proceedings, the court plays a pivotal role in determining whether the property subject to criminal seizure is related to the criminal acts committed by the convicted individual.

From the perspective of the General Seizure Theory, a principle designed to ensure fairness in bankruptcy proceedings, all of the debtor's assets, both existing and future, are subject to General Bankruptcy Seizure due to the Bankruptcy Ruling that has been imposed on the debtor.²¹ The debtor loses the right to manage their assets as of the issuance of the ruling, which are then transferred to the curator appointed under the ruling. Additionally, all attachments existing prior to the bankruptcy ruling are nullified as a result of the bankruptcy ruling. In cases where criminal attachments coexist with bankruptcy, we must respect the criminal attachments as they serve the public interest.

Suppose the property that has been subject to criminal seizure is not proven to be derived from criminal acts committed by the convicted person at the time the judgment is rendered and has become final and binding.²² In that case, it must be returned to the trustee. This is due to the ongoing bankruptcy proceedings and the bankruptcy order issued against the bankrupt debtor or convicted defendant. The trustee then includes the property in the general bankruptcy seizure for the administration and distribution of the property, as required by law.

In practical terms, this legal overlap often creates a dilemma for law enforcement and bankruptcy officials. When an asset is seized under criminal procedure but also listed in the bankruptcy estate, it becomes necessary to evaluate the temporal and causal connection between the asset and the alleged crime.²³ If the asset predates the criminal act, the principle of fairness mandates that the asset should revert to the bankruptcy estate. Conversely, if the asset is proven to be proceeds of crime, the criminal seizure should prevail in order to serve the public interest of justice.

This situation is further complicated by the procedural mandates in Article 31(2) of the Bankruptcy Law, which stipulates that all pre-existing attachments must be nullified post-bankruptcy declaration. However, the Criminal Procedure Code (KUHP), through Article 39(2), asserts that criminal seizures can still be

²¹ Zairi Absi and Utoyo, "Legal Analysis of Corporate Insolvency: A Case Study of the Insolvency Resolution Process."

²² Oleksandr Zhytnyi, Vadim Kharchenko, and Ihor Ralchenko, "SOME APPLIED TEMPORAL ASPECTS OF NATIONAL CRIMINAL LAW JURISDICTION (ON THE EXAMPLE OF LIABILITY FOR FRAUD, LEGALIZATION OF THE PROCEEDS OF CRIME, TAX EVASION, DUTIES, AND MANDATORY PAYMENTS)," *The Journal of V. N. Karazin Kharkiv National University, Series "Law,"* no. 38 (December 24, 2024): 152–60, <https://doi.org/10.26565/2075-1834-2024-38-17>.

²³ Salwa Zolkafli, Sharifah Nazatul Faiza Syed Mustapha Nazri, and Normah Omar, "Asset Recovery Practices in Combating Money Laundering: Evidence from FATF Mutual Evaluation Report of FATF Member Countries of Asia Pacific Region," *Journal of Money Laundering Control* 26, no. 1 (January 2, 2023): 24–34, <https://doi.org/10.1108/JMLC-11-2021-0127>.

executed even on assets that are already under civil seizure. This contradiction creates legal uncertainty that requires judicial interpretation and harmonization.

The normative conflict also raises concerns about the effectiveness of the curator's role in asset management. Since the curator acts as the legal manager of all the debtor's assets after the bankruptcy ruling, any overlap with criminal seizure can disrupt the liquidation process and delay creditor payment. Therefore, a mechanism of coordination between commercial courts and criminal courts is needed to ensure that the administration of justice does not hinder economic recovery or vice versa.²⁴

Furthermore, comparative legal analysis shows that other jurisdictions, such as the United States and several European Union countries, regulate such conflicts through priority rules or coordination between courts.²⁵ In Indonesia, however, the absence of clear legal hierarchy between criminal and bankruptcy seizures leads to practical implementation challenges. This research highlights the need for procedural guidelines or an integrated judicial review mechanism to resolve these normative collisions.

Ultimately, the resolution of this conflict must consider both the protection of creditor rights and the enforcement of criminal justice. Balancing these interests is essential to prevent abuse of law, avoid legal uncertainty, and ensure that neither creditors nor the state suffers undue loss due to overlapping asset claims. This balance requires not only legislative clarification but also consistent judicial practice and policy reform.

The Protection of Curators from Criminal Seizure of Bankrupt Debtors' Assets as Regulated by Law

If, after a court decision has been issued, criminal seizure has been imposed on assets that are also subject to general bankruptcy seizure, and if this is not proven, the assets must be returned to the Curator for management and settlement, which is within his authority. Suppose the trustee has not yet returned the property. In that case, the trustee, acting within the legal framework, may also take legal action before the Commercial Court in the form of other lawsuits to cancel the criminal seizure.²⁶ This includes cancelling the criminal seizure that is deemed inappropriate because the acquisition of the bankrupt property occurred long before the debtor committed the crime. Additionally, regarding the debtor's

²⁴ Vita Mahardhika, "An Electronic Court in the Perspective Criminal Law Reform," 2021, <https://doi.org/10.2991/assehr.k.211223.154>.

²⁵ Fanni Farago et al., "Medication-Assisted Treatment in Problem-Solving Courts: A National Survey of State and Local Court Coordinators," *Journal of Drug Issues* 53, no. 2 (April 2, 2023): 296–320, <https://doi.org/10.1177/00220426221109948>.

²⁶ R. Kychko, "The Problematic Aspects of Excessive Interference in Property Rights as a Result of Temporary Seizure of Property in Criminal Proceedings," *Uzhhorod National University Herald. Series: Law* 4, no. 84 (September 28, 2024): 54–60, <https://doi.org/10.24144/2307-3322.2024.84.4.8>.

actions that unnecessarily disrupt the bankruptcy process, the Curator may also file a legal action for *Actio Pauliana* against the bankrupt debtor.

From the perspective of the *Theory of Proof*, proof is the act of proving. Proving means providing or showing evidence, establishing the truth, carrying out, indicating, witnessing, and convincing.²⁷ In the context of criminal law, proof is the core of criminal proceedings, as the focus is on establishing the material truth, a task of utmost importance. The process of proof begins during the investigative stage to determine whether an investigation can be conducted to clarify a criminal act and identify the suspect.²⁸

As they carry out their weighty responsibilities, curators may encounter obstacles in managing liquidation, one of which is the potential for the criminal seizure of objects or assets that are part of the bankruptcy estate. This can impede the bankruptcy process. In cases where bankruptcy assets subject to criminal seizure were acquired long before the criminal act or after the criminal judgment, but have not yet been returned to the Curator for administration and liquidation, it is essential to protect the Curator's rights in such cases.²⁹ The entire bankruptcy process is governed by the comprehensive framework of Law No. 37 of 2004 on Bankruptcy and the Suspension of Debt Payment Obligations, which provides the necessary legal guidance and regulations.

The curator's role, as defined by law, is to safeguard the interests of creditors by ensuring orderly asset management and liquidation. However, when assets under the curator's control are simultaneously claimed by criminal law enforcement for evidence or forfeiture, the curator's authority becomes vulnerable. This situation creates a legal vacuum concerning the curator's procedural defenses against criminal seizures that may not align with bankruptcy objectives.

From the perspective of the Theory of Authority, the curator's authority stems from the court's bankruptcy declaration, which mandates the transfer of asset management from the debtor to the curator. In contrast, the prosecutor or police investigator executes criminal seizure under procedural criminal law. The lack of coordination between these authorities can lead to conflicting executions, undermining the curator's function and exposing them to liability risks.

Legal protection theory emphasizes the need for the state to provide both preventive and repressive protection to individuals performing state-appointed

²⁷ Yusuke Shinno and Taro Fujita, "Characterizing How and When a Way of Proving Develops in a Primary Mathematics Classroom: A Commognitive Approach," *International Journal of Mathematical Education in Science and Technology* 53, no. 12 (November 1, 2022): 3326–51, <https://doi.org/10.1080/0020739X.2021.1941365>.

²⁸ H S Brahmana, "Teori Dan Hukum Pembuktian," n.d.

²⁹ Yulianti Wiyono, Slamet Suhartono, and Endang Prasetyawati, "Bankruptcy According to the Bankruptcy Law and Postponement of Payment Perspective of Creditor Legal Protection," *Technium Social Sciences Journal* 56 (April 9, 2024): 115–20, <https://doi.org/10.47577/tssj.v56i1.10871>.

roles, such as curators.³⁰ Therefore, the law must not only regulate asset management but also provide mechanisms for curators to contest or resist criminal seizure actions when such seizures interfere with the bankruptcy process. Filing objections in court should be recognized as part of this protective mechanism.

The conflict is exacerbated when the criminal seizure affects assets critical to the distribution of creditor payments. In such cases, curators face pressure from both creditors, who demand expedient liquidation, and law enforcement, who require the same assets as part of the criminal justice process.³¹ This dual pressure underscores the need for judicial guidelines on the prioritization of asset control.

An additional complication arises when bankruptcy and criminal proceedings overlap temporally. If the criminal act occurs after the bankruptcy declaration, the presumption should favor the protection of the bankruptcy estate. Conversely, if the crime predates bankruptcy and involves asset concealment or fraud, then criminal seizure may justifiably override civil claims. These nuances must be explicitly addressed in judicial practice to avoid arbitrary decisions that could harm the interests of either creditors or the state.³²

The findings of this study highlight a significant normative conflict between the Bankruptcy Law and the Criminal Procedure Code regarding the seizure of bankrupt debtors' assets. The dual claims over the same assets—one by curators acting under bankruptcy proceedings and the other by law enforcement authorities in criminal cases—create a procedural and legal dilemma. On one hand, bankruptcy aims to ensure the equitable distribution of the debtor's remaining assets among creditors, as mandated by Law No. 37 of 2004. On the other hand, criminal seizure serves a public interest by preserving evidence or recovering assets obtained through illicit means. The absence of a clear hierarchical relationship between these two legal processes leads to practical confusion and risks undermining both the creditor's rights and the state's interest in criminal justice enforcement.

This legal overlap illustrates the pressing need for regulatory harmonization between the public and private law domains. Current Indonesian legal provisions do not sufficiently clarify how the intersection of criminal seizure and bankruptcy seizure should be resolved when the same assets are involved. Comparative analysis indicates that other jurisdictions resolve such conflicts by introducing

³⁰ Nur Paikah, "Problems of Inclusive Legal Services for Persons with Disabilities," *Journal of Indonesian Scholars for Social Research* 4, no. 1 (January 29, 2024): 43–49, <https://doi.org/10.59065/jissr.v4i1.133>.

³¹ Doris Rahmat and Santoso Budi Nursal Umar, "Law Enforcement in Criminal Cases Based on Restorative Justice by the Prosecutor's Office," *East Asian Journal of Multidisciplinary Research* 2, no. 8 (August 30, 2023): 3399–3408, <https://doi.org/10.55927/eajmr.v2i8.5761>.

³² Rouholamin Keikhayfarzaneh, Afshin Ghafghazi, and Farhad Rohany, "The Legal Consequences of Failing to Observe the Principal's Interests by the Agent in Iranian Law, with Emphasis on Supreme Court's Unified Ruling No. 847," *Legal Studies in Digital Age* 3, no. 4 (2024): 1–13, <https://doi.org/10.61838/kman.lsd.3.4.1>.

priority rules, coordinating between civil and criminal courts, or establishing specific procedures for contestation and review.³³ In Indonesia, however, the curator often faces procedural uncertainties, particularly when assets crucial to the bankruptcy estate are subject to simultaneous criminal seizure. Without proper legal protection mechanisms for curators, the liquidation process may be delayed, affecting the rights of creditors and potentially leading to prolonged legal disputes.

Given these challenges, legal reform is essential to provide clear guidelines on the seizure hierarchy and asset control in cases of overlapping claims. The legislator should consider revising the Bankruptcy Law or the Criminal Procedure Code to incorporate explicit provisions on conflict resolution between civil and criminal asset seizures.³⁴ Additionally, the judiciary must adopt a consistent approach in handling such cases, ensuring that both the interests of justice in criminal law and the principles of fairness in bankruptcy are respected. Establishing a coordination mechanism between the Commercial Court and criminal law enforcement agencies could also minimize the potential for legal uncertainty and procedural abuse. This integrated approach will safeguard both public and private interests, promote legal certainty, and support the integrity of Indonesia's legal system.

CONCLUSION

In this case, the researcher argues that criminal law and bankruptcy law are two distinct types of law, with criminal law falling under public law and bankruptcy law under private law. This distinction leads to an overlap between Criminal Seizure and General Bankruptcy Seizure, both of which can be executed on the same object. Despite this overlap, the two seizures serve different purposes. Criminal Seizure is for criminal proceedings, while General Bankruptcy Seizure is to safeguard the public interest in the private law domain, to be subsequently managed and settled by the curator. However, the trustee is obligated to respect the criminal Seizure until a final and binding court decision is issued, underscoring the gravity and importance of court decisions in the legal process.

In this case, the researcher argues that the legal certainty resulting from the criminal seizure of the debtor's assets, which at the same time has been declared bankrupt, causing the assets to be included in the general bankruptcy seizure, hinders the bankruptcy process if the assets have been used for criminal court

³³ Larysa LIUBOKHYNETS, "STAFF MOTIVATION AS A WAY OF PREVENTING AND RESOLVING LABOR CONFLICTS AT THE ENTERPRISE," *Herald of Khmelnytskyi National University. Economic Sciences* 304, no. 2(2) (March 18, 2022): 286–91, [https://doi.org/10.31891/2307-5740-2022-304-2\(2\)-45](https://doi.org/10.31891/2307-5740-2022-304-2(2)-45).

³⁴ Moch. Fauzan Zarkasi, Nur Azisa, and Haeranah Haeranah, "Implications of Renewal System of Criminal Justice Based on the Principles of Restorative Justice on The Role of Probation and Parole Officer," *Khazanah Hukum* 4, no. 1 (March 15, 2022): 29–44, <https://doi.org/10.15575/kh.v4i1.17354>.

proceedings or if the seizure of assets obtained long before the criminal act caused losses to various parties. Therefore, in this case, the Trustee must actively protect their rights, which are protected by the Bankruptcy and Debt Payment Moratorium Act. In the event of a criminal case that results in state losses, but the assets seized in the case are not proven to have originated from criminal acts or offences, the assets must be returned to the Trustee. Due to state losses, the state must receive compensation for such losses. The state may then register itself with the bankruptcy proceedings, which are managed and administered by the Curator. The Curator will include the state as a preferred creditor with priority in the return of assets. This highlights the importance of a harmonious relationship between criminal law and civil law, particularly in the context of bankruptcy law, to ensure legal coherence and fairness.

Considering these findings, this study concludes that Indonesia urgently needs procedural reforms to clarify the hierarchy and coordination between criminal and bankruptcy seizures. Without clear regulations, curators face legal uncertainty that could delay creditor settlements and undermine the bankruptcy process. To address this, curators should be empowered to file objections against criminal seizures that obstruct their role in managing the bankrupt estate, ensuring that asset control remains consistent with the objectives of bankruptcy law. Additionally, an integrated judicial framework is necessary to balance the enforcement of criminal justice with the equitable distribution of assets to creditors, preventing legal conflicts that could harm both public and private interests. By establishing clear coordination between commercial courts and criminal courts, Indonesia can safeguard legal certainty, economic stability, and the protection of creditor and state rights within a unified legal system.

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