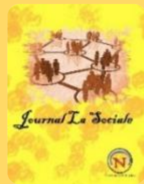

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The Concept of Resolving the Conflict of Norms Between Criminal Confiscation and General Bankruptcy Confiscation of Bankruptcy Assets Viewed from the Perspective of Justice

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Abstract

In the scope of business, business actors, both individuals and legal entities, often borrow money (debt) with the aim of obtaining capital intended for the continuity of their business activities. In practice, often a debtor fails to fulfil his obligations or achievements, not because it is caused by force majeure (overmatch). Such a situation is called default. In Bankruptcy Law, there is a type of confiscation, namely general confiscation. In connection with that, there is a conflict of norms between the provisions of general confiscation in Article 31 paragraph (2) of Law No. 37 of 2004 with the provisions of criminal confiscation / confiscation in Article 39 paragraph (2) of the Criminal Procedure Code. This research method uses normative juridical and empirical juridical approaches. The data used in legal research are primary data and secondary data. The results of this study, the Government as the Regulator is expected to immediately make a legal formulation policy in connection with the general confiscation of bankruptcy as regulated in Law No. 37 of 2004 and criminal confiscation as regulated in the Criminal Procedure Code and other related regulations, and in order to seek justice in law enforcement, especially related to confiscation of bankruptcy property, in essence the provisions of laws and regulations do not contradict each other, must be in harmony in order to ensure legal certainty and legal protection in its implementation. Therefore, it is necessary to revise the two confiscation provisions regulated in the two regulations, especially the general bankruptcy confiscation provisions regulated in Article 31 of Law No. 37 of 2004.

Introduction

A state that runs its government based on the rule of law (supremacy of law) with the aim of realising legal order is called a State of Law. This means that the State in which there is a government and other government institutions in taking any action must be based on legal certainty (Harahap, 2009). The Constitution of the Republic of Indonesia as the basis of State administration, namely the 1945 Constitution (hereinafter abbreviated as "1945 Constitution") in the provisions of Article 1 paragraph (3) of the 1945 Constitution explains that: "The State of Indonesia is a State of Law".

Indonesia as a State based on law provides recognition, guarantees, protection and legal certainty based on justice for everyone without discriminating against ethnicity, religion or status, as mandated in the provisions of Article 28D paragraph (1) of the 1945 Constitution. Based on these provisions, it is implicitly recognised that the State guarantees *access to* justice for every citizen (Sambas, 2016).

The concept of a welfare state requires the State to expand its responsibilities in relation to the socio-economic problems of society, by minimising the role of individuals or personalities in

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controlling the livelihood of the community. Therefore, the need for intervention from the State in various problems of socio-economic life of the community to ensure the welfare of the people so that social justice is realised (Assiddiqie, 1994).

Prosperity for the people of Indonesia can be realised through national economic development. However, good national economic development depends on the growth and development of economic actors, which requires several supporting factors, including a conducive business climate. However, the most important factor is the availability of funds and sources of funds, because funds are the key to economic activity. Every economic actor, be it an individual or legal entity on a small or large scale, always needs sufficient funds to ensure that their activities and development go according to plan (Fauzia, 2020). Fulfilment of these funding needs can sometimes be met on their own (internally) according to their abilities, but sometimes they cannot be met on their own. For this reason, the assistance of other parties (external) who are willing to help provide funds as needed by borrowing or owing to other parties is needed (Fauzia, 2020).

In the scope of business, business actors, both individuals and legal entities, often borrow money (debt) with the aim of obtaining capital intended for the continuity of their business activities. Business actors who can still pay back their debts are usually called "*solvable*" business actors, meaning business actors who are able to pay their debts. Conversely, business actors who cannot pay their debts are called "*insolvable*", meaning that they are unable to pay (Hartono, 1999).

The situation in which a business actor (debtor) is unable to make debt payments to creditors is usually caused by the *financial distress* of the debtor's business which has experienced a setback (Shubhan, 2019). Such a situation is known as bankruptcy as stated by Puwosutjipto "Bankruptcy is a state of ceasing to pay (debts)" (Purwosutjipto, 1999).

Debt problems can be resolved through several alternatives such as reconciliation (Black, 1992) and debt restructuring (Sumarni, 2017). Although there are alternatives offered in debt settlement, sometimes in practice there is no seriousness from the debtor to carry out its obligations to the creditor (Sumarni, 2017). In this case, the law must be a tool to create justice and legal certainty for creditors, which in turn can encourage economic recovery with the aim of creating stability, predictability and justice in state law (Sumarni, 2017).

In practice, it is often the case that a debtor fails to fulfil his obligations or achievements, not because of *overmacht*. This situation is called default (Adati, 2018). In the scope of business, if the debtor is unable or unwilling to pay his debts to creditors (due to a difficult economic situation or forced circumstances), the debtor can apply for a Debt Payment Obligation Delay to resolve the issue. It is also possible for a debtor or creditor to apply for a declaration of bankruptcy in the hope that the negligent debtor will be declared bankrupt by the judge through his decision (Subekti, 2001).

Based on Article 1 point (4) of Law No. 37 of 2004, it is explained that a bankrupt debtor is a debtor who has been declared bankrupt by a court decision. If a debtor has been officially declared bankrupt, juridically, it will have the legal effect of the debtor losing all his rights to control and manage his property (assets), whether selling, pledging, and so on, as well as everything that was obtained during bankruptcy from the date the bankruptcy declaration was pronounced (Saliman, 2005). Furthermore, those who will manage the assets or companies of the bankrupt debtor will be managed and organised by the Curator (Yanuarsi, 2020). Sita is a court legal action on movable or immovable objects belonging to the defendant at the request of the plaintiff to be monitored or taken as collateral so that the plaintiff's claim or authority

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does not become empty (Suyuthi, 2004). With the confiscation, the plaintiff feels more assured of the fulfilment of his rights if his lawsuit is granted by the judge.

In Bankruptcy Law, there is a type of confiscation, namely general confiscation. General confiscation is a confiscation carried out on all assets belonging to the debtor, both those that currently exist and those 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 the amount of receivables from each of them unless the creditors have reasons to take precedence (Isfardiyana, 2016). According to M. Hadi Shubhan, general confiscation has a difference from other civil confiscation, namely general confiscation does not require a special action or certain legal action as well as other confiscation in civil law (Suyuthi, 2004).

According to the provisions of Article 1 paragraph (16) of KUHAP, confiscation is a series of actions by investigators to take over and/or keep under their control movable or immovable, tangible or intangible objects for the purposes of evidence in investigation, prosecution, and trial. Furthermore, Article 39 paragraph (2) of KUHAP explains that: "Objects that are in confiscation due to civil cases or due to bankruptcy may also be confiscated for the purpose of investigation, prosecution and trial of criminal cases, as long as they fulfil the provisions of paragraph (1)".

In relation to that, there is a conflict of norms between the provision of general confiscation in Article 31 paragraph (2) of Law No. 37 Year 2004 with the provision of criminal confiscation/seizure in Article 39 paragraph (2) of KUHAP. The occurrence of norm conflicts in positive legal systems is often caused by complex and dynamic legal substances (Syarif et al., 2023). The broad scope of regulation that covers all aspects of state life makes the substance of law complex, then the existence of demands that must adjust the development and legal needs of the community makes the substance of law dynamic. Norm conflicts can occur between lower regulations and higher regulations called vertical norm conflicts, and between equal regulations called horizontal norm conflicts or even between norms in one regulation itself called internal norm conflicts (Irfani, 2020).

There are several previous studies that have relevance to this research which will be used as a reference and comparison to determine novelty or novelty in this research, one of which is research conducted by Soedeson Tandra with the title: "General Confiscation Above Criminal Confiscation", which was outlined in the form of a dissertation at the Doctor of Law Program, Gadjah Mada University, 2020. This study uses a normative research method that analyses the effect of criminal confiscation on general confiscation on the settlement of bankruptcy estate, analyses court decisions on cases related to general confiscation on which criminal confiscation is placed, explains what legal efforts can be made by the Curator to lift criminal confiscation on bankruptcy estate, and provides guidelines on how future arrangements related to general confiscation on which criminal confiscation is placed. There is relevance to the research that researchers will conduct, namely the study of criminal confiscation over general bankruptcy confiscation. This research can also be used as a reference to develop and deepen the discussion of the position of criminal confiscation and general bankruptcy confiscation that researchers will study, in order to obtain legal certainty in its implementation. The difference between previous research and the research that researchers will study is the study of legal uncertainty in the authority of criminal confiscation based on the provisions of Article 39 paragraph (2) of the Criminal Procedure Code, with the provisions of general bankruptcy confiscation as in Article 21 jo. Article 31 of Law No. 37 of 2004, and legal protection of creditors whose rights have been violated due to criminal confiscation of bankruptcy assets which will be associated with the theory of justice (Tandra, 2020).

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Based on the above problems, researchers are interested in conducting research related to legal certainty against criminal confiscation in the bankruptcy process in order to provide justice for aggrieved creditors, this research will be outlined in the form of a journal with the title "The Concept of Resolving Conflicts of Norms Between Criminal Confiscation and General Confiscation of Bankruptcy on Bankruptcy Assets Viewed from a Justice Perspective."

Methods

Researchers in this study will use normative juridical and empirical juridical approaches. A normative juridical approach that focuses on studies related to the implementation or application of rules or norms contained in positive law (Hamzah, 1986). In addition, this research also uses an empirical juridical approach, which is a type of sociological legal research and can be referred to as field research, which examines the applicable legal provisions and what has occurred in people's lives (Waluyo, 2002). As legal research that uses normative juridical and empirical juridical approach methods, the data used in legal research are primary data and secondary data. Primary data is data that has been obtained directly from the first source or source of origin from the field or data obtained directly through interviews with competent sources. In this research, data collection will be carried out by *library research* on secondary data (Soemitro, 1988).

Results and Discussion

In order to resolve the conflict of norms between general bankruptcy confiscation (regulated in Article 31 of Law No. 37 Year 2004) and criminal confiscation (regulated in Article 39 paragraph (2) of KUHAP), it is better to revisit the dichotomy of public law and private law ideally. Civil law, which falls within the realm of private law, has a scope that depends on the will of the parties, such as the principle of freedom of contract (as stipulated in Article 1338 of the Civil Code). In civil law, the parties to an agreement have the freedom to determine their rights, obligations, manner of fulfilment, time of execution, and other matters. Agreements in civil law can be initiated and terminated based on the will and agreement of the parties.

On the other hand, criminal law, as part of public law, has a scope determined by the criminalisation process. Each offence is formulated specifically and non-negotiable, with the aim that a person can be considered guilty if it can be proven and the elements of the criminal offence are fulfilled. In the context of fulfilling the elements of a criminal offence, a defendant cannot negotiate with the state regarding the formulation of the offence. It is clear that the relationship is subordinate, where Law Enforcement Officials have the authority to conduct investigations, choose the range of evidence, and determine charges.

From a relational perspective, a defendant is under the supervision and power of the state, so there is an evidentiary mechanism that allows the defendant to only need to refute what is charged against him. If one of the elements of the offence cannot be proven, then a person is considered innocent.

In this regard, the criminal procedure code in Indonesia is a standardised procedure that cannot be adjusted or negotiated based on the wishes of the defendant or law enforcement officials, but rather the right of the state to determine this. Even judges have limited authority to do so as regulated in the procedural law. Various countries recognise certain agreements in the Criminal Law system, such as the "pledge of guilty" in the United States. Such agreements result in several stages of the legal process being bypassed, and a form of agreement between the prosecution and the suspect. However, it is important to note that even such agreements are highly regulated, so the scope for parties to enter into such agreements is also very limited. Therefore, in relation to the agreement made by the parties, it can be explained that Civil Law is considered part of private law, while Criminal Law is considered part of public law.

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In the context of Civil Law, all good consequences and risks arising from an agreement will only affect the parties directly involved. Other parties who may be affected by the agreement may file a claim for damages through the established mechanism. However, in principle, third parties who are not involved in the agreement are not required to provide liability or fulfil certain obligations.

The situation regarding the priority of criminal confiscation in the Criminal Procedure Code (KUHAP) arises from differences in meaning and legislation from the past that has not been updated. The bankruptcy aspects of the Bankruptcy Law differ from the KUHAP. This situation creates a mismatch, which is unfavourable and wastes resources resolving cases that could have been handled easily and quickly.

Based on this, investigators and curators should work together. Collaboration between the two to achieve aligned goals. Criminal law enforcement should not contradict efforts to protect and recover creditor losses. Ideally, investigators can utilise their resources and capacity to investigate and locate all assets disguised by the perpetrator, with the aim of proving and disclosing the crime. The curator can also provide support in the investigation and evidence by using the minutes and giving testimony in court.

This ideal situation should be the norm, so that every party, both investigators and curators, have clear guidelines when dealing with this issue and so that there is no discrepancy between the general confiscation of bankruptcy and the criminalisation of bankruptcy property. Each party has a normative argument in favour of its own merits. General bankruptcy confiscation feels superior because it refers to Article 31 of Law No. 37 Year 2004, while criminal confiscation feels superior because it refers to Article 39 of KUHAP.

In principle, both curators acting as bankruptcy executors, as well as police investigators and prosecutors carrying out criminal proceedings, are confused and believe that they have priority to seize. As a result, there is competition for control of the object. However, in most cases, the investigators often win the competition because they have a range of state powers attached to their position.

Eddy Hiariej stated that criminal confiscation should be given priority over general confiscation, given its criminal nature as public law, which has a very high position compared to private law. The view of Police Brigadier General Rudy Herianto, Director of Special Economic Crimes at the National Police Criminal Investigation Unit, who referred to Article 39 of the Criminal Procedure Code, and stated that they often face the same obstacles as receivers in disputes over confiscation. However, Eddy Hiariej emphasised that criminal confiscation is only intended for evidentiary purposes.

In relation to these two views, the researcher is more supportive of the view expressed by Eddy Hiariej, although the researcher does not agree with his framework. According to the author, criminal confiscation should not be considered superior to general bankruptcy confiscation. Furthermore, Soedeson Tandra stated that in principle, the dichotomy between general bankruptcy confiscation and criminal confiscation is a normative and practical reality. Soedeson then outlines the juridical steps in resolving this fact either through criminal or civil proceedings. This method is considered by the author to be interesting because, quoting Soedeson's explanation, before there is a normative revision in strengthening the position of the curator, the settlement of bankruptcy property which is the object of criminal confiscation will face a test. On the other hand, bankruptcy has a side that includes private and public elements.

The legal basis for bankruptcy can be found in the provisions set out in Article 1311 of the Civil Code. As the Civil Code is private in nature, bankruptcy should be considered as part of

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the realm of private law. However, according to doctrine, Article 1311 of the Civil Code is found in the second book which is coercive or public in nature, which cannot be violated even by agreement between parties. Therefore, bankruptcy can be perceived as part of the realm of public law with these considerations.

Ideally, the regulation and resolution of norm conflicts between general bankruptcy confiscation and criminal confiscation of bankruptcy assets should take into account that creditors are the most disadvantaged. Using this approach, whether criminal or bankruptcy, victim protection is crucial. There are two problems that the author highlights. Firstly, the general confiscation of bankruptcy is considered as a private law domain, whereas, based on its characteristics, it is in the public law domain. Furthermore, if assessing the needs of creditors involving more than two parties, this can be considered as a collective interest because several groups of people have the same interest.

The creditor who suffers a loss in this case can be considered a victim with a significant loss, and this is the reason why the Criminal Law treats such cases seriously. Viewing the victim as an individual whose interests can be overridden by the public interest can be considered a simplification of the problem. Viewed from the perspective that the victim as a whole is the most harmed party. Therefore, the provision of compensation for losses suffered by creditors who are victims of criminal confiscation of bankruptcy assets.

The primacy of criminal confiscation as a guardian of the public interest should not compete with general bankruptcy confiscation, which is actually a manifestation of the fulfilment of individual rights that basically also reflects the core of the public interest. Therefore, both should be able to run together, because they all have the same direction, which is to safeguard the public interest. This approach is expected to provide better assistance than grammatical arguments about the supremacy of power in the formulation of legal regulations. However, if the public interest objective is to be prioritised, and individual harm is to be avoided as it is central to the public interest; then the imposition of criminal confiscation, even if it is to be prioritised, needs to ensure that it does not prejudice the rights of creditors, or potentially impede the process of administering the bankruptcy estate. The decision to prioritise one confiscation over another is based more on technical evidentiary considerations. Researchers see it as a technical issue that is not critical, but general bankruptcy confiscation must be prioritised in the context of protecting the implementation of the bankruptcy estate. In other words, if the implementation of criminal confiscation can disrupt the process of administering bankruptcy assets, then corrective measures must be applied to the implementation of criminal confiscation.

Analysing jurisprudence and legal philosophy, there is an in-depth exploration of the concepts of justice and expediency, and the relationship between law and morals. Jurists and jurists have always been interested in the question of the limits and scope of justice, including when an action is part of the moral realm and when it needs to be regulated in a legal framework, or whether it is sufficient to be a moral guide to right and wrong. Legal scholars are not really interested in discussing or contemplating such matters. When discussing moral and justice aspects, they tend to ask from which perspective, and in which jurisdiction. Their main focus is on the practical resolution of problems, not on philosophical exploration or resolution. When faced with differences such as in the case of criminal confiscation and general bankruptcy confiscation, the main effort is to determine priorities, based on the legal basis of their regulation, rather than on the essential purpose of each. The challenge arises when both legal bases claim to be superior to each other.

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In the case of general bankruptcy confiscation, it is important to see creditors as victims. Particularly in the context of the cases discussed above, if treated as crimes, the state's response to the Criminal Law involves arrest, punishment, and is considered to have achieved justice. However, the greatest harm is done to creditors as victims, not to the rest of society. Efforts to heal the impact of the crime committed by the perpetrator include offsetting losses and returning a portion of the funds to creditors.

In the context of expediency, the conflict of norms between general bankruptcy confiscation and criminal confiscation of bankruptcy assets in the case of PT FAKW and KSP PMG illustrates how the parties involved can benefit from the situation. Firstly, if assets and money are seized in a criminal context due to Criminal Law activities involved in the case, the state obtains the seized items, either as evidence or as potential state assets. Secondly, if the assets and money referred to as proceeds of crime are decided to be given to the state, then the state gets the wealth directly, not just as potential. Thirdly, in situations where assets and money are the object of general bankruptcy confiscation, creditors or all victims can obtain compensation or recovery for the crime. Thus, it is necessary to evaluate which can provide the most optimal benefits. It is rational to argue that greater benefits will be realised when the wealth of the state is increased, as opposed to being shared amongst creditors or victims. It is important not to forget that the concept of expediency is not only concerned with the greatest benefit, but also with the least harm.

This analysis of expediency can be seen from the perspective of utilitarianism, which was introduced by Bentham with the concept of "*greatest good for greatest number*". However, Bentham's utilitarianism associates "*good*" as opposed to "pain" or suffering. These two elements are opposites and pairs. "*Greatest good*" refers to the maximum enjoyment or benefit that should be obtained by as many people as possible. In this context, it seems that point 2 above works, i.e. by handing over the wealth of the state, it will provide the "*greatest good for greater number*". However, this concept has a counterpart, namely "*lesser pain*" suffering, or loss, which should be as small as possible and received by the same small number of people. Therefore, expediency will not be realised if there are losses that are accepted by others just to get a lot of benefits from these losses.

The perspective of the morality of expediency explained by the researcher clearly states that point 3 should be the main choice. As previously emphasised by the researcher, it is paradoxical to promote public interest while violating individual interest. Through this perspective, if normative revision occurs, this thinking can provide a reconstructive framework regarding private and public law, as well as regarding general bankruptcy and criminal confiscation, especially in the context of public interest and individual welfare.

The idea of an ideal solution to the conflict between general bankruptcy confiscation and criminal confiscation. The conflict is practical, while the ideal concept has the characteristics of a philosophical study that is conceptual and fundamental. Previously, the research has explained that the discrepancy problem arises due to the authority given by each confiscation rule. However, in the author's opinion, the problem does not have to be a conflict, because with consistency with the objectives of the public interest, the prioritisation of general bankruptcy confiscation should be done.

Legal uncertainty in the implementation of criminal confiscation and general bankruptcy confiscation occurs due to discrepancies in the rules. Each rule prioritises its own, so that officers and law enforcement officers from both rules try to apply it, resulting in discrepancies in its application. Another study attempted to answer similar issues raised by the researcher, but with a normative approach. The results of the normative study include the formal juridical

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methods that must be taken to protect confiscated property. Although this approach is not wrong, it does not address the root of the problem as a whole. As evidenced by the cases analysed by the author, there are differences in the decision and its implementation, where there are times when criminal confiscation takes precedence, and there are times when general bankruptcy confiscation is the choice, creating legal uncertainty.

A normative approach cannot fully resolve this issue. Using a philosophical approach, the author finds that the root of the problem lies in the difference of opinion on value. Criminal confiscation is seen as higher because of the belief and assumption that public law should be given priority over private law. Which means, Bankruptcy Law and general bankruptcy confiscation are considered part of civil law. Analysis using Bankruptcy theory found that Bankruptcy Law actually has a public and formal nature. Therefore, the value argument between public and private law should not undermine the primacy of Bankruptcy Law over Criminal Law. Both can be viewed as public laws that have an equal level of primacy. However, this did not satisfy the researcher. Therefore, the researcher conducts further exploration regarding the values that the legislator is trying to achieve.

The author searched for reasons why public law is considered more important than private law, and found that private law is actually the main foundation of the existence of law. The existence of law aims to protect private rights, preventing illegal acts such as plunder, theft, or other fraud. Private law aimed at protecting private rights became the centre of legal development in the beginning. Public law then emerged as the role of the state grew stronger. However, the main function of public law is to regulate and ensure the delivery of public services, ultimately still aiming to protect private rights. The concept of the primacy of public law developed along with the need to ensure the strengthening of state and government power.

In the context of criminal confiscation and general bankruptcy confiscation, it can be understood that conceptually, criminal confiscation provides the greatest benefit if the confiscated property is utilised by the state for the benefit of its people. However, outperforming general bankruptcy confiscation means taking away the rights of creditors, which will cause unnecessary suffering due to the loss of ownership rights over the confiscated property. This situation is not considered ideal.

On the other hand, in fact, the author realises that there is an accumulation of confiscated property, such as unmaintained vehicles so that their value continues to decline over time. In other words, the utilisation of confiscated property by the state, such as unmaintained vehicles, appears to be minimal or even not done to improve the welfare of its people.

In the realm of criminal law itself, the author found a development of thought that began to shift the focus from punishment to the rehabilitation of the perpetrator and the recovery of victims' losses. The purpose of punishment is no longer solely focused on retaliation or imprisonment, but also on peace and rehabilitation of losses suffered by victims. The author sees that this direction of thought can be used as a basis for resolving the norm conflict between general bankruptcy confiscation and criminal confiscation. In situations where creditors suffer losses due to criminal confiscation of bankruptcy assets, the researcher proposes that creditors should be considered as victims. With this perspective, the settlement of bankruptcy assets through general bankruptcy confiscation should be interpreted as an effort to realise justice for creditors who become victims. Thus, there is no need for conflict between general bankruptcy confiscation and criminal confiscation, because all of them should agree to protect and restore the losses of creditors as victims.

Based on the researcher's analysis, criminal confiscation includes forced actions carried out by Investigators for the purpose of proving a criminal offence, where the criminal offence is not

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necessarily proven. In essence, criminal confiscation is the result of the investigation process carried out by Investigators based on the authority granted by law, while general bankruptcy confiscation has a higher legal basis than regulated in law, but is also a product of a judge's decision at the commercial court that has permanent legal force (in kracht van gewijsde), therefore, if criminal confiscation is part of the due process of criminal procedural law, then general bankruptcy confiscation has passed the due process where general bankruptcy confiscation is a product of evidence and argumentation that leads to a judge's decision at the commercial court. In relation to this difference, the researcher refers to criminal confiscation as "bottom-up", in other words, a proposal, while general bankruptcy confiscation is "top-down", in other words, an order with sufficient authority.

Conclusion

The existence of norm conflicts between general bankruptcy confiscation and criminal confiscation of bankruptcy assets as in the provisions of Article 31 of Law No. 37 Year 2004 which authorises the curator to conduct general confiscation of the assets of the Bankrupt Debtor, while the provisions of Article 39 paragraph (2) of KUHAP also authorise the Investigator to confiscate objects related to criminal offences for evidentiary purposes, including bankruptcy assets in a state of general confiscation. This creates uncertainty in its implementation, especially for curators in carrying out their duties to administer bankruptcy assets. The provisions in Law No. 37 Year 2004 have provided optimal protection in the Bankruptcy and Suspension of Debt Payment Obligations (PKPU) process, but in practice there are still obstacles for curators in carrying out their duties to clean up the bankruptcy estate because all or some of the debtor's assets in the bankruptcy estate are placed under criminal confiscation. Ideally, the general bankruptcy confiscation rules should be given priority over criminal confiscation, aiming to provide legal certainty and legal protection needed to guarantee the rights of creditors to the payment of debts of bankrupt debtors. In addition, the resolution of conflicts over the authority to confiscate bankruptcy property can follow the principles of expediency and justice. The suggestions from the author are First, the Government as the Regulator is expected to immediately make a legal formulation policy in connection with the general confiscation of bankruptcy as regulated in Law No. 37 of 2004 and criminal confiscation as regulated in the Criminal Procedure Code and other related regulations. Second, the need for good cooperation and coordination between the Curator and Investigator in terms of confiscation of bankruptcy assets. Third, in order to strive for justice in law enforcement, especially related to confiscation of bankruptcy property, in essence the provisions of laws and regulations do not contradict each other, must be in harmony in order to ensure legal certainty and legal protection in its implementation. Therefore, it is necessary to revise the two confiscation provisions regulated in the two regulations, especially the general bankruptcy confiscation provisions regulated in Article 31 of Law No. 37 of 2004.

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