

Legal Certainty of Case Settlement Criminal Acts After Bankruptcy Decision

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Abstract

The issue of legal certainty in the settlement of criminal cases after a bankruptcy decision is a complex and important issue in the Indonesian legal system. In this case, the settlement of criminal cases after a bankruptcy decision poses a challenge, due to the differences between the principles of bankruptcy and criminal law. A bankruptcy decision that results in the settlement of debt obligations through the process of asset liquidation can conflict with the settlement of criminal acts involving criminal sanctions for perpetrators of the crime. This study aims to examine the legal certainty related to the settlement of criminal cases that occur after a bankruptcy decision, as well as to analyze the role and limitations of existing laws in efforts to resolve such criminal cases. By using a normative approach and analysis of applicable laws and regulations, the results of this study are expected to provide a clear picture of the relationship between bankruptcy law and criminal law in order to ensure legal certainty for the parties involved. Legal certainty is needed so that the process of resolving criminal cases is not disrupted by bankruptcy status, and to maintain justice for both creditors and parties involved in criminal acts. In conclusion, this study suggests that there should be harmonization between bankruptcy provisions and criminal acts so that there is no legal uncertainty in resolving criminal cases after a bankruptcy decision.

PENDAHULUAN

Settlement of criminal cases after a bankruptcy decision is a complex legal issue, considering the interaction between two different legal systems, namely criminal law and bankruptcy law. Bankruptcy is basically a legal status that regulates

the situation in which a debtor cannot fulfill his debt payment obligations. This bankruptcy process aims to provide solutions for creditors and debtors through debt restructuring and managing the assets of debtors who can no longer pay their financial obligations (Sidabutar, 2019). In practice, *boedel* (bankrupt assets) that have been placed in public confiscation and are being processed by the curator can be taken over by investigators to be confiscated as criminal property. Investigators carry out confiscation because there is evidence that the property is related to Criminal Acts and Money Laundering (TPPU). People who are confiscated due to civil cases or because of bankruptcy can also be confiscated for investigation, prosecution, and criminal trials. Because the *boedel*, or bankrupt assets, have been seized by the previous investigator, the curator cannot pay the bankrupt assets. Ultimately, the curator cannot provide protection or guarantee for payment of bills or receivables to creditors (Nilma Lubis, Marlina, 2021). Bankruptcy is a condition in which a debtor is unable to pay debts to his creditors is called bankruptcy. The state of being unable to pay is usually caused by financial distress from the debtor's business which has experienced a decline. However, bankruptcy is a court decision that confiscates all assets of the bankrupt debtor, both now and in the future. The curator, under the supervision of the supervising judge, manages and expands the bankruptcy with the aim of paying all debts of the bankrupt debtor proportionally (mostly) and in accordance with the creditor structure (Evie Christy, Wilsen, 2020). The terminology of bankruptcy is often misunderstood by the general public. Some of the general public consider bankruptcy as a verdict that smells of criminal action and is a legal defect for legal subjects, therefore bankruptcy must be kept away and avoided as much as possible. Bankruptcy is a priori considered as a failure caused by the debtor's mistake in running his business so that the debt cannot be paid. As a result, bankruptcy is usually defined as debt default or embezzlement of the right to pay creditors. Kartono said that bankruptcy does not degrade human dignity, but when someone tries to get credit, it is only then felt what it means to be bankrupt. Therefore, bankruptcy affects a person's creditworthiness, which means they lose money or have difficulty getting credit.

Bankruptcy is a commercial way out of the debt problem that is pressing a debtor, where the debtor no longer has the ability to pay the debts to his creditors. Thus, if the debtor is aware of the inability to pay the obligations that have matured, then the step to file a petition for determination of bankruptcy status against the debtor (voluntary petition for selfbankruptcy) becomes a possible step, or the determination of bankruptcy status by the court against the debtor if later evidence is found that the debtor is indeed unable to pay his debts that have matured and can be collected (involuntary petition for bankruptcy) (Aprita & Qosim, 2022). Bankruptcy decisions have legal consequences for the debtor's assets and for the debtor. First, bankruptcy decisions can be executed first (immediately). In principle, bankruptcy

decisions are immediate and can be executed first even though further legal efforts are still being made against the decision. The consequences of a bankruptcy decision apply *mutatis mutandis* even though further legal efforts are being taken (Aprita & Qosim, 2022). The curator who is accompanied by a supervising judge can immediately carry out his function to manage and settle the bankruptcy. Meanwhile, if the bankruptcy decision is canceled as a result of the legal efforts, all actions that have been carried out by the curator before or on the date the curator receives notification of the cancellation decision remain valid and binding on the debtor.

Second, public confiscation. Together with the assets obtained during bankruptcy, the debtor's assets are included in the bankruptcy estate, including in the public confiscation. This is as defined in the law on the meaning of bankruptcy. Article 21 of the Bankruptcy and PKPU Law states that all of the debtor's assets at the time the bankruptcy statement decision is pronounced and everything obtained during the bankruptcy process is included in the bankruptcy. With the existence of a general seizure of assets, the bankrupt assets are considered uncontested by their creditors and cannot be transacted by the debtor which could potentially harm their creditors (Lumbanraja et al., 2021). As a result, bankrupt assets in this status are prohibited from all kinds of transactions and other legal actions until the bankrupt assets are managed by the authorities. General seizure of bankrupt assets does not require a special action to carry out the seizure, unlike other seizures in civil law which are specifically carried out with a certain legal action..

METHODS

The type of research used in this writing is the normative legal research method. The normative legal method is an approach that uses library data, namely legal research conducted by researching or studying problems in terms of their legal regulations, as well as researching library materials or secondary data (Marzuki, 2017). In other words, the writing of this scientific paper uses a normative legal approach method by researching library materials which are secondary data, which is also referred to as library legal research. Based on the background of the problem presented, the author is interested in discussing it further through a written form entitled "Legal Certainty of Case Settlement Criminal Acts After Bankruptcy Decision"

DISCUSSION

Legal Certainty in the Regulation of Criminal Seizure of General Seizure of Bankrupt

Settlement of bankruptcy and criminal cases often meet in a complex legal context, especially when there is a seizure of goods or assets involved in both processes. One of the issues that arises is criminal confiscation of general confiscation

related to the bankruptcy estate. The bankruptcy estate is a collection of assets owned by a debtor who is declared bankrupt, which is used to pay the debtor's debts to creditors. Meanwhile, criminal confiscation is an act of confiscating evidence suspected of being related to a crime. Based on the criteria of legal function, it is divided into material law and formal law. Material law consists of regulations that grant rights and impose obligations (Syarif et al., 2023). Every individual in their daily activities can be said to interact with material law. In their daily activities, people often implement the law. In that condition, each individual implements their respective laws and fulfills their obligations so that there is no conflict, everything happens regularly (Lumbanraja et al., 2021). If there is a violation of the law or a dispute, the material law that has been violated must be enforced or maintained. To enforce material law, legal regulations are needed whose function is to implement or enforce material law, namely formal law. Formal law determines how to realize rights and obligations in the event of a violation or dispute or how to demand payment of debts or how to demand the delivery of goods and so on. In terms of material law, it is divided into 2 (two), namely *lex generalis* and *lex specialis*. *Lex generalis* is a general law that applies generally and is the basis, while *lex specialis* is a special law that overrides *lex generalis*. So *lex generalis* is the basis for *lex specialis*. For example, the laws and regulations concerning Limited Liability Companies (PT), which are contained in the Commercial Code, are special legal regulations (*lex specialis*). The general regulations are regulated in the *Burgerlijk wetboek* (BW) as *lex generalis*. The relationship between *lex generalis* and *lex specialis* is stated in Article 1 of the Commercial Code (YUDI KOSASIH, 2021). General Seizure is a legal action taken by the state to seize the debtor's assets as part of the bankruptcy process. The seized assets are used to pay debts to the bankrupt debtor's creditors. This seizure is carried out by a curator appointed to manage the bankrupt debtor's assets (Nola, 2019). Criminal Seizure, on the other hand, relates to goods or assets seized by law enforcement officers because they are suspected of being related to a crime. This criminal seizure can be carried out by the prosecutor's office or the police and is used as evidence in criminal law proceedings. When there is an overlap between general seizure in bankruptcy and criminal seizure in the context of a crime, the question of legal certainty arises as to which should take precedence (Syarif et al., 2023). In practice, there is often an overlap between the debtor's assets seized in bankruptcy and the assets seized in criminal proceedings. If an item or asset seized by law enforcement officers in connection with a criminal act is also part of the bankruptcy estate, this can cause confusion in resolving the issue of the assets. Several approaches that can be taken to ensure legal certainty in this case are in the context of bankruptcy, the curator has the authority to manage the bankruptcy estate, including confiscating assets owned by the debtor (YUDI KOSASIH, 2021). However, if there are items or assets seized by law enforcement officers in connection with a criminal case, the curator is

required to coordinate with the party handling the criminal case to clarify the status of the assets. Determining the priority between criminal confiscation and general confiscation in some cases, criminal confiscation can be prioritized if there is a strong indication that the goods or assets are used in a criminal act. However, in other cases, especially if the bankruptcy estate has debts that must be settled immediately, then the general confiscation carried out by the curator for the payment of creditors must be given priority. The decision regarding this priority will depend on the legal policy applied by the court handling the case. Collaboration Between Curators and Law Enforcement Officials One way to achieve legal certainty is through coordination between curators and law enforcement officials who handle criminal cases. If there is an overlap in confiscation, both parties must find a way out by prioritizing the principles of justice and legal certainty, and ensuring that creditors' rights are not violated in the process of resolving criminal cases (Nola, 2019).

The court plays an important role in deciding disputes involving assets seized in criminal cases and bankruptcy estates. If there is a legal conflict regarding assets seized in criminal cases and bankruptcy estates, the commercial court and the criminal court must have a clear basis for deciding who is entitled to the assets (Andrian, 2023). Therefore, in this case, legal certainty can be achieved if the court makes a clear decision regarding the priority of confiscation, whether to prioritize the settlement of creditor debts or criminal charges for confiscated evidence. In resolving this case, it is important to ensure that there is certainty regarding the rights and obligations of all parties involved. This requires stricter regulations in laws or policies that regulate the interaction between criminal confiscation and general confiscation in the context of bankruptcy. The existence of clear guidelines regarding the priority of confiscation and the role of each party (curator, law enforcement officers, and courts) will be very important to provide legal certainty. In terms of the regulation of Article 31 paragraph (1) and paragraph (2) of the Bankruptcy and PKPU Law with Article 39 paragraph (2) of the Criminal Procedure Code, it can be seen that there is a conflict of norms or disharmony in the regulations regarding confiscation, which actually seem to overlap, one wants to be prioritized because it is given space to stop the determination of the implementation of the court including criminal confiscation, on the other hand that the confiscation carried out by investigators is part of law enforcement that must be enforced and is coercive (Lumbanraja et al., 2021). Both of these laws and regulations are hierarchically parallel in the form of laws, as referred to in Article 7 paragraph (1) of the Republic of Indonesia Law Number 12 of 2011 concerning the Formation of Laws and Regulations, the difference is the legal classification, Criminal Procedure Law is included in the public domain, while bankruptcy law is included in the private domain. In the principles of the formation and application of laws and regulations, there are several principles, including:

1) The principle of *lex specialis derogate legi generali*, namely a legal regulation stating that special law or *lex specialis* overrides general law or *lex generalis*. In this case, the Bankruptcy Law which is private is not a *lex specialis* of the criminal procedure law which is public, so the application of this principle is not relevant in this study.

2) The principle of *lex posterior derogate legi priori*, namely a newer regulation defeats an older regulation. Where this principle is also not relevant to use in the problem in this study, considering that once again the classification of law and its nature are very different, one is used to uphold the public interest, on the other hand it is used for the interests of

Legal certainty in the regulation of criminal confiscation of general confiscation against the settlement of bankrupt boedel is very important to maintain justice and order in the legal process involving two different legal systems. Therefore, to achieve optimal legal certainty, clearer regulations are needed regarding the priority of confiscation and the role of each party involved, both in the context of resolving criminal cases and in the bankruptcy framework. Coordination between the curator and law enforcement officers, as well as wise decisions from the court, are the main keys to ensuring that the resolution of this case can take place fairly and in accordance with applicable legal principles.

Implementation of the Principle of *Lex Specialis Derogat Legi Generali* in the Matter of Settlement of Boedel (Bankrupt Assets) in Bankruptcy Processes

Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (KPKPU) regulates the position of general seizure when faced with other seizures based on the provisions of Article 31 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (KPKPU). Article 31 paragraph (2) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (KPKPU) regulates more firmly that, "All seizures that have been carried out are deleted and if necessary the Supervisory Judge must order their deletion".¹⁸³ Article 31 paragraph (1) and paragraph (2) of the Bankruptcy Law emphasizes that the position of general seizures is higher than other seizures because with the existence of a general seizure all seizures are deleted and if forced the supervisory judge can delete seizures outside of general seizures (Lubis et al., 2021). However, in practice, not all seizures can be removed if a general bankruptcy seizure has been attached to the same object, even though if we return to the principle of legal benefit, this does not need to happen considering that there is no state loss in the case. This condition indicates that there is a problem internally with law enforcement. In the Indonesian legal system, there are a number of principles used to ensure the achievement of justice in the application of the law. One important principle is the

principle of *lex specialis derogat legi generali*. This principle states that special legal provisions (*lex specialis*) override general legal provisions (*lex generalis*). The application of this principle is very relevant in the bankruptcy process, especially in the settlement of *boedel* (bankruptcy assets), which involves interaction between bankruptcy law and other laws, such as civil and criminal law (Andrian, 2023). In the context of settling a bankrupt estate, the principle of *lex specialis derogat legi generali* serves to resolve legal issues that arise due to conflicts between more general regulations (such as civil law) and more specific regulations governing bankruptcy. The principle of *lex specialis derogat legi generali* is one of the basic principles in law which states that more specific regulations (*lex specialis*) override more general regulations (*lex generalis*). In the context of bankruptcy law, this principle regulates the relationship between more general laws, such as civil law, and laws that specifically regulate bankruptcy, which aims to resolve the debt problems of a debtor who is unable to pay his financial obligations..

The bankruptcy process is regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (before being amended by Law Number 4 of 2021), which provides specific procedures and rules regarding how debtors' debts declared bankrupt are settled. In this process, the curator is given the authority to manage the bankruptcy estate and distribute assets to creditors. However, beyond that, there is often interaction between other legal rules, such as civil law (which regulates property rights, agreements, and so on) or even criminal law (related to criminal acts that occur during the bankruptcy process) (Aprita & Qosim, 2022). The principle of *lex specialis derogat legi generali* ensures that the rules in bankruptcy law take precedence if there is a conflict between general rules and special rules. Settlement of the bankruptcy estate is one of the main stages in the bankruptcy process. Bankruptcy estate is all of the debtor's assets that can be used to pay debts to creditors. However, in some cases, these assets may be involved in other legal issues, such as civil or criminal cases. In this case, the principle of *lex specialis derogat legi generali* plays a role in determining that the legal rules governing bankruptcy (as special rules) prioritize the settlement of debts in the bankruptcy estate over other more general rules, such as civil law governing property rights or civil lawsuits against the assets. Implementation of the Principle of *Lex Specialis Derogat Legi Generali* in the Settlement of Estates (Andrian, 2023). Several points of application of this principle in the settlement of bankruptcy estates are as follows:

- a. Priority of Debt Payment to Creditors: If there is a legal dispute regarding an asset included in the bankruptcy estate, then the bankruptcy law which is a special rule will be given priority. For example, if there is a claim on an asset seized by the debtor before bankruptcy (such as a debt guarantee or disputed

object in civil law), then the claim must be resolved within the bankruptcy framework and prioritized to pay creditors.

- b. Coordination with Criminal Law: In some cases, assets included in the bankruptcy estate can also be the object of seizure in criminal cases (for example, assets seized in embezzlement cases). Although criminal law has more general rules, the more specific bankruptcy law must be used as a reference in settling the estate. If there is a conflict between the two, bankruptcy law will be given priority, as long as there are no prominent criminal acts that affect the distribution of the assets.
- c. Handling of Sued Assets: When there is a lawsuit or dispute involving assets in the bankruptcy estate, such as in the case of an agreement that has been made by the debtor before being declared bankrupt, then the resolution of the lawsuit must refer to bankruptcy law which regulates the distribution of assets to creditors, while still paying attention to the rights of the parties involved in the lawsuit.

Although the principle of *lex specialis derogat legi generali* provides clear direction in the application of the law, several challenges can still arise in practice, for example, if the assets included in the bankruptcy estate are also involved in a criminal case, how is the ownership of the assets decided? The principle of *lex specialis* will emphasize that the division of the bankruptcy estate continues to run in accordance with bankruptcy provisions, but there must still be room to comply with the applicable criminal law process. The role of the curator in the settlement of the bankruptcy estate is very large, but in some cases, the court or related parties must ensure that the decisions taken by the curator do not violate the rights of other parties related to the assets (Nola, 2019). For example, in the case of creditors or parties who have mortgage rights to disputed assets, the curator must prioritize obligations to creditors, but must still avoid violating the rights of other parties. The application of the principle of *lex specialis derogat legi generali* in the settlement of bankrupt estates provides legal certainty in resolving conflicts between general laws (such as civil law or criminal law) and laws that more specifically regulate the bankruptcy process. This principle ensures that bankruptcy law remains the main reference in the management and distribution of assets of debtors declared bankrupt, and provides clear guidelines in resolving disputes related to bankrupt estates. However, challenges still exist in its application, especially in terms of overlap between criminal law and bankruptcy law, which requires careful coordination between all parties involved, including curators, creditors, law enforcement officers, and the courts. The principle of *Lex Specialis Derogat Legi Generalis* is a general legal principle which means that special legal rules override general legal rules.¹⁹² The principle of *Lex Specialis Derogat Legi Generali* can be a reference to be a solution to the debate regarding the overlapping of general confiscation and criminal confiscation, indeed there is an opinion that says that the

principle of *Lex Specialis Derogat Legi Generali* only applies to one legal regime, but in the implementation of bankruptcy law it is excluded considering that the provisions of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (KPKPU) also regulate the procedures for the distribution of bankrupt assets which place tax bills as preferred creditors which are in fact included in the realm of public law and remain subject to and comply with bankruptcy procedural law (YUDI KOSASIH, 2021).

CONCLUSION

Settlement of criminal cases after a bankruptcy decision is a complex issue that involves the interaction between two different legal systems: bankruptcy law and criminal law. In this case, legal certainty is very important to ensure that the rights of related parties can be protected fairly, and the case resolution process can run efficiently and in accordance with applicable legal principles. In the process of resolving criminal cases after a bankruptcy decision, there is often an overlap between the debtor's obligation to settle debts to creditors and legal claims arising from criminal acts committed by the debtor. In this case, bankruptcy law governing the settlement of the bankruptcy estate must be given priority, unless the criminal act committed is directly related to the losses suffered by the creditor, in which case the criminal aspect can be prioritized to recover the losses.

The principle of *lex specialis derogat legi generali* applies, where the law governing bankruptcy is prioritized over the more general criminal law. This is important to ensure that the settlement of creditors' debts continues to run smoothly, even though there are criminal charges against assets included in the bankruptcy estate. This also avoids confusion in handling debtor assets that may be involved in two different legal processes. Legal certainty can only be guaranteed if there is good coordination between the curator, the court, and law enforcement officers handling criminal cases. The curator plays an important role in managing the bankruptcy estate and ensuring the distribution of assets to creditors, while law enforcement officers must ensure that the criminal process can proceed without hindering the resolution of the bankruptcy. Therefore, communication and coordination between the two parties are very important to avoid disputes that can hinder the legal process. In the event of a dispute over assets involved in the criminal and bankruptcy process, the court must have the authority to decide which priority is more important. The principles of justice and legal certainty must be the basis for decisions, taking into account the rights of creditors and the legal consequences of criminal acts committed by the debtor. To increase legal certainty in resolving criminal cases after a bankruptcy decision, there needs to be clearer regulations regarding the regulation of interactions between criminal law and bankruptcy law. The Bankruptcy Law and regulations governing criminal acts need to be harmonized to avoid legal uncertainty that can

harm related parties, be it creditors, debtors, or other parties involved. Overall, legal certainty in resolving criminal cases after a bankruptcy decision depends on the application of clear legal principles, good coordination between the parties involved, and the existence of regulations that clearly regulate the rights and obligations in this overlapping situation. Thus, a fair and efficient legal process can be achieved, so that all parties involved can obtain their rights in accordance with applicable legal provisions..

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