

LEGAL PROTECTION AGAINST CREDITORS AS A RESULT OF BANKRUPTCY PROPERTY (BOEDEL) CRIMINAL SEIZED BY POLICE INVESTIGATORS

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ABSTRACT

Article 31 paragraph (2) of the Bankruptcy Law and PKPU states that all confiscations are terminated when the bankruptcy decision has been pronounced, if necessary the Supervisory Judge must order the termination. The purpose of this study is to analyze the form of legal protection for creditors due to criminal confiscation of bankrupt assets (boedel) by investigators. This research is a normative juridical research with a statutory, case, conceptual and analytical approach. The results of the study indicate that legal protection for creditors due to criminal confiscation of bankruptcy assets by investigators, namely the curator who represents the interests of creditors has the right to file a lawsuit in order to carry out the task of managing and settling bankrupt assets. This is because if in the decision of the criminal case it turns out that the bankruptcy property is confiscated or destroyed by the State, then the State cannot be positioned as a privileged creditor. Therefore, the curator is authorized to carry out the task of managing and settling the bankruptcy estate from the date the bankruptcy decision is pronounced even though legal action is filed against the decision.

Keywords : Legal Protection, Creditors, Bankrupt Assets, Criminal Confiscation

INTRODUCTION

As stated in Article 24 of Law no. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (hereinafter referred to as the Bankruptcy Law and PKPU) it is stated that since the bankruptcy decision is pronounced, the debtor by law loses his right to control and manage the assets included in the bankruptcy code. General confiscation aims to protect the interests of the creditor against the actions of the debtor that can harm the assets of the bankrupt and stop the execution of the debtor's assets by the creditors to fulfill their respective rights. This can also maximize the collection of bankrupt assets for payment to all creditors. Thus, the debt can be paid maximally and protect the rights of the parties, keep the debtor from embezzling or taking his goods from the creditor, and protect other concurrent creditors. The debtor's assets which are generally confiscated will be managed by the curator and supervised by the supervisory judge. The authority to manage bankrupt assets changes hands to the curator because the debtor is considered legally incompetent. The curator will distribute the debtor's assets to his creditors evenly according to the amount of each debt. All foreclosures made are deleted and then turned into general bankruptcy seizures. When the curator has finished clearing the assets of the bankrupt debtor, the bankruptcy process ends.

With regard to the duties of curators who manage general confiscation of assets in bankruptcy, there is the potential for disputes between general confiscation and state confiscation, often general confiscation in bankruptcy intersects with criminal confiscation. General confiscation referred to in bankruptcy is a series of confiscations that include all assets of the bankrupt debtor since the bankruptcy declaration decision was made as well as everything obtained during the bankruptcy, (Marwan 2009).

The curator is fully responsible for the bankruptcy estate after the bankruptcy decision is pronounced. The curator takes over the authority from the debtor to manage the bankruptcy estate. When the bankruptcy estate has been confiscated by the public and the curator has cleared it by the curator, it turns out that there is an indication that the assets are related to a criminal act, whether it is corruption, money laundering or other criminal acts. Investigators took over the property for criminal confiscation. Finally, the settlement of the assets cannot be carried out or is delayed which results in the absence of protection or guarantees for payment of receivables to creditors.

This is the case with the Pandawa Mandiri Group Cooperative. Pandawa Mandiri Group Cooperative based on Decision No. 37/Pdt-Sus-PKPU/2017/PN Niaga Jkt.Pst was declared bankrupt along with its founder who is also the administrator, namely Salman Nuryanto. The legal consequence of the bankruptcy declaration as mentioned earlier is that all assets belonging to the bankrupt debtor will be subject to general confiscation. After being placed in general confiscation, Salman Nuryanto was suspected of having committed a criminal act in violation of Article 46 Paragraph (1) of Law (UU) Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, in conjunction with Article 69 of Law Number 21 of 2011 concerning OJK, in conjunction with Article 55 paragraph (1) 1 in conjunction with Article 64 paragraph (1) of the Criminal Code and Article 378 of the

Criminal Code concerning Fraud, in conjunction with Article 55 paragraph (1) in conjunction with Article 64 paragraph (1) of the Criminal Code. With the alleged crime committed by Salman Nuryanto who is the founder and also the administrator of the KSP Pandawa Mandiri Group, investigators confiscated objects that had been put under general confiscation.

The description of the case above shows that the issue of placing a criminal confiscation on an object that is part of the bankruptcy code has often led to disputes and multiple interpretations. So this shows that there is no legal protection for creditors due to the criminal confiscation of bankrupt assets (boedel) by police investigators. Whereas as stipulated in the provisions of Article 31 paragraph (2) of the Bankruptcy Law and PKPU it states that all confiscations are stopped when the bankruptcy decision has been pronounced, if necessary the Supervisory Judge must order the cancellation. Since the bankruptcy decision is pronounced, all confiscations on an object expire and are replaced with general bankruptcy seizures. This is intended to protect the assets of the bankrupt debtor from the possibility of fraud by creditors and debtors. Based on this description, the writer formulates the problem in this study, namely what is the form of legal protection for creditors due to the criminal confiscation of bankrupt assets (boedel) by investigators?

RESEARCH METHODS

The type of research used in this research is normative juridical research. According to Ronny Hantijo Soemitro (1988), normative juridical research is carried out by researching library materials which are secondary data and this research is also called library law research.

In relation to normative research, the research approach that the author uses is the statutory approach, case approach, conceptual approach, and analytical approach. Types and sources of data in this study only collect secondary data. To obtain objective data, the data collection method is used with a library study aimed at obtaining a theoretical basis in the form of opinions or writings of experts and also obtaining information by reading literature books, print media and related scientific papers. with this thesis.

The technique of collecting legal materials used in this research is literature study. Meanwhile, the analysis of legal materials used in this research is grammatical interpretation, systematic interpretation of historical interpretation and teleological interpretation, (Soekanto 2006)

RESEARCH RESULT

As stated in Article 24 of Law no. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (hereinafter referred to as the Bankruptcy Law and PKPU) it is stated that since the bankruptcy decision is pronounced, the debtor by law loses his right to control and manage the assets included in the bankruptcy code. General confiscation aims to protect the interests of the creditor against the actions of the debtor that can harm the assets of the bankrupt and stop the execution of the debtor's assets by the creditors to fulfill their respective rights. This can also maximize the collection of bankrupt assets for payment to all creditors. Thus, the debt can be paid maximally and protect the rights of the parties, keep the debtor from embezzling or taking his goods from the creditor, and protect other concurrent creditors.

The curator is fully responsible for the bankruptcy estate after the bankruptcy decision is pronounced. The curator takes over the authority from the debtor to manage the bankruptcy estate. When the bankruptcy estate has been confiscated by the public and the curator has cleared it by the curator, it turns out that there is an indication that the assets are related to a criminal act, whether it is corruption, money laundering or other criminal acts. Investigators took over the property for criminal confiscation. Finally, the settlement of the assets cannot be carried out or is delayed which results in the absence of protection or guarantees for payment of receivables to creditors.

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The same thing happened when PT Aliga International Pratama was declared bankrupt on January 10, 2013 through the Decision of the Commercial Court at the Central Jakarta District Court

Number 67/Pailit/2012/PN.Niaga.Jkt.Pst in conjunction with the Supreme Court's Decision Number 40 PK/Pdt.Sus - Bankruptcy/2013 dated May 30, 2013. When the Curator cleared the bankrupt debtor boedel, Investigators of the Criminal Investigation Department of the Police Directorate II for Economic and Special Crimes confiscated 2 (two) buildings, namely The Aliga Hotel on December 18, 2012 and the factory/office in Jababeka II, Cikarang, Bekasi on December 20, 2012 due to allegations of banking crimes and money laundering crimes committed by Umar Ali as the owner and main commissioner of PT Aliga International Pratama. The confiscation has been used as collateral with a mortgage certificate to PT Bank. Subsequently, the Central Jakarta Commercial Court through its decision Number 11/Pdt.Sus-Pailit/Lawsuit Others/2014/PN.Niaga.Jkt.Pst dated December 15, 2014 rejected the Plaintiff's application and stated that the Central Jakarta Commercial Court was not authorized to hear the case. Not satisfied with the decision, the Curator Team of PT Aliga International Pratama filed a cassation request and through the Supreme Court's decision Number 156 K/Pdt.Sus-Pailit/2015, rejected the appeal because it should have been examined in pretrial.

Likewise, what happened to Allova Herling Mengko, S.H., and Dudi Pramedi, S.H., as curators of PT Meranti Maritime and Henry Djuhari, had their lawsuit partially granted through the decision of the Commercial Court at the Central Jakarta District Court Number 16/Pdt.Sus-GGL/2017/PN. Commerce. Jkt. Pst juncto Number 88/Pdt.Sus-PKPU/2015/PN. Niaga.Jkt.Pst dated October 9, 2017. This decision was later reaffirmed at the Cassation level through the Supreme Court's decision Number 1533 K/Pdt.Sus-Pailit/2017. In this case, the position of PT Pann Financing Maritim as the holder of Mortgage Rights is not protected because the Commercial Court has determined that the criminal confiscation of the object is valid in relation to the criminal act of corruption committed by Henry Djuhari in accordance with the provisions of Article 39 paragraph (1) and paragraph (2) of the Law. - Law of Criminal Procedure (hereinafter referred to as KUHAP). This case illustrates that the general seizure of bankruptcy occurred earlier on August 22, 2016 than the seizure of criminal cases on March 27, 2017 and April 6, 2017.

Based on the description of the case above, the matter regarding the placement of criminal confiscation on objects that are part of the bankruptcy code has often led to disputes and multiple interpretations. So this shows that there is no legal protection for creditors due to the criminal confiscation of bankrupt assets (boedel) by police investigators. Whereas as stipulated in the provisions of Article 31 paragraph (2) of the Bankruptcy Law and PKPU it states that all confiscations are stopped when the bankruptcy decision has been pronounced, if necessary the Supervisory Judge must order the cancellation. Since the bankruptcy decision is pronounced, all confiscations on an object expire and are replaced with general bankruptcy seizures. This is intended to protect the assets of the bankrupt debtor from the possibility of fraud by creditors and debtors.

If the author relates the Theory of Legal Protection according to Satjipto Raharjo which suggests that legal protection is to provide protection for human rights (HAM) that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. At the same time, according to him, the purpose of law is to provide protection (protection) to the community, which must be realized in the form of legal certainty.

In addition, legal protection can also be explained as protection given to the law so that it is not interpreted differently and is not injured by law enforcement officials and can also mean protection provided by law against something.

Legal protection when explained literally can lead to many perceptions. Before describing legal protection in its true meaning in legal science, it is also interesting to elaborate a little on the notions that can arise from the use of the term legal protection, namely legal protection can mean the protection given to the law so that it is not interpreted differently and is not injured by law enforcement officials. law and can also mean the protection provided by law against something.

The principle of legal protection in Indonesia is the principle of recognition and protection of human dignity based on Pancasila. Legal protection is the protection of the dignity and worth, as well as the recognition of human rights owned by legal subjects based on the force of law from arbitrariness or as a collection of rules or rules that will be able to protect one thing from another.

Before examining the form of legal protection for creditors due to criminal confiscation of bankrupt assets (boedel) by investigators, it is necessary to review civil confiscation and criminal confiscation first. Confiscation comes from the terminology *beslag* (Dutch), and the Indonesian term *beslah* but the standard term is confiscation or confiscation. The economic law dictionary gives the definition of confiscation is the safekeeping of disputed goods to a third party, appointed by the disputing parties or by the court. The third party is obliged to hand over the disputed goods to the party who is declared entitled after a court decision is made.

Wirjono Projodikoro, argues that the Criminal Procedure Code is closely related to criminal law, therefore criminal procedural law is a series of regulations that regulate the way in which the ruling government bodies, namely the Police, Prosecutors and Courts, must act to achieve the goals of the State by enacting criminal law.

Moeljatno, stated that the Criminal Procedure Code is part of the overall law that is enforced in a country, which provides the basics and rules that determine in what ways and procedures the criminal threat that exists in a criminal act can be carried out if there is an allegation that a person has committed a crime. commit certain offenses or provide limits on the understanding of formal criminal law (procedural law) is the law that regulates how to implement or maintain material law (criminal law).

R. Soesilo stated the definition of criminal procedural law or formal criminal law, namely "A collection of legal regulations that contain and regulate provisions regarding the following issues:

- a. How actions must be taken if there is an allegation that a criminal act has occurred, and how to find out the truth regarding what crime has been committed;
- b. If it turns out that a criminal act has been committed, who and how must seek, investigate and investigate people who are suspected of being guilty of a crime, how to arrest, detain and examine that person;
- c. How to collect evidence, examine, search the body and other places, confiscate the items, in order to prove the suspect's guilt.
- d. What is the procedure for examination in a trial of a defendant by a judge so that a criminal verdict can be imposed and;
- e. By whom and in what manner the decision to impose a criminal sentence must be carried out and so on, or it can be said: which regulates how to maintain or implement material criminal law, so that the judge's decision is obtained and how the contents of the decision must be implemented.

The functions of the Criminal Procedure Code are as a means to implement the provisions of criminal law, as a means for law enforcement and justice in realizing an orderly and peaceful life in society; as a repressive and preventive function.

The purpose of the Criminal Procedure Code is to seek and find "material truth". Material truth is the most complete truth of a criminal case by applying the provisions of the criminal procedure honestly and precisely in accordance with the aim of finding out who the perpetrators can be charged with committing a violation of the law and then submitting an examination and decision from the court to find out whether it is proven. that a crime has been committed and whether the accused person can be blamed.

Before officially the name of the criminal procedural law was called the "Book of the Criminal Procedure Code (Article 285 of the Criminal Procedure Code), it had used the term "Wetboek Van Strafvoordering" (The Netherlands) and if it was translated literally into the Criminal Code, then It is different when the term "Wetboek van Strafprocesrecht" (Netherlands) or "Procedure of Criminal" (English) is used which is translated into Indonesian as "The Book of the Criminal Procedure Code". However, according to the Dutch Minister of Justice, the term "strafvoordering" includes all criminal procedures.

Another term that is translated as "criminal prosecution" is "straf-vervolging", and this term according to the Dutch Minister of Justice does not include the entire meaning of "Strafprocesrecht" (Criminal Procedure Law), so the term "strafvoordering" is broader in meaning than the term "strafvervolging". " France has named its Criminal Procedure Code "Code d'Instruction Criminelle", in Germany it is "Deutsche Strafpro-zessodnung", while in the United States the term "Criminal Procedure Rules" is often found.

Another term for criminal procedural law can also be referred to as "formal criminal law", meaning to distinguish it from "material criminal law". What is meant by "material criminal law" or the rules of criminal law as set out in the Criminal Code (KUHPidana) is to contain instructions and descriptions of offenses/criminal acts/criminal acts/criminal events, namely regulations on requirements or elements elements of whether or not a person can be sentenced to a criminal (punishment) and the rules regarding punishment are to regulate to whom and how the crime can be imposed, while the "formal criminal law" or the Criminal Procedure Code regulates how the state based on its tools implements its rights to convict and impose a criminal, so it contains criminal event.

So in this case the Criminal Procedure Code is a legal umbrella for state apparatus or state apparatus as law enforcers to carry out their functions, including investigators in conducting investigations related to criminal cases. The actions of investigators as referred to in Article 7 paragraph (1) letter d of the Criminal Procedure Code are to make arrests, detentions, searches and confiscations, therefore the actions of investigators are actions mandated by the Criminal Procedure Code (KUHAP).

Likewise, the actions of investigators who carry out confiscation of objects related to civil cases or because of bankruptcy cases (Article 39 paragraph 2 of the Criminal Procedure Code) are also the mandate and duties and powers of investigators in accordance with Article 7 paragraph (1) letter d of the above-mentioned KUHAP. The investigator's action is to fulfill the principle of legal certainty so that objects suspected of being used as crimes, or as tools/means of crime and the proceeds of crime are not transferred/sold and sold or removed to be used as evidence of a criminal case until the criminal decision has permanent legal force.

Criminal Procedure Code (formal criminal) according to legal classification is a public law that aims to uphold the law in the public interest, the authorities are obliged to implement and enforce the law, even though it is possible that the injured person does not want prosecution of the person who harms him, so that the investigator's action is an act that coercive.

Meanwhile, Bankruptcy law is *lex specialis* of the Civil Code (which is *lex generalis*), as previously regulated in Article 1131 of the Civil Code to 1138 of the Civil Code, which is included in the Nineteenth Chapter on special receivables. Bankruptcy Law in Indonesia was born since the enactment of Government Regulation in Lieu of Law no. 1 of 1998 became Law no. 4 of 1998 concerning Bankruptcy, the purpose of which is stated in the preamble, so that the establishment of the regulation is a means of settling debts between debtors and creditors which is common in the business world.

Furthermore, because it was felt that the Law on Bankruptcy (Faillissements-Verordening, Staatsblad 1905 Number 217 juncto Staatsblad 1906 Number 3481) and also Law no. 4 of 1998 concerning Bankruptcy has not been able to meet the development and legal needs of the community, so the Law of the Republic of Indonesia No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations to amend the two regulations above and at the same time state that the Law of the Republic of Indonesia no. 4 of 1998 concerning Bankruptcy is declared no longer valid.

Whereas, Bankruptcy is an institution for settling debts between individuals or legal entities (private) which is included in the classification of private (civil) law. Civil law is basically a law that regulates interests between individuals with one another. The main thing in civil law is to regulate individuals in relation to their families, property rights, assets, engagements, and others. The interest of debt and receivables is an individual matter that has nothing to do with the authorities or the government through state or state apparatus to implement these rules, moreover in private law it is only used as a complement.

In the settlement of bankrupt assets, the duties and authorities are given to the Curator whose main task is to manage and settle the assets of the bankrupt debtor which will then be sold in order to fulfill the repayment of the creditors' receivables in accordance with their claim rights. Since the bankruptcy declaration decision is pronounced, all debtor's assets are in general confiscation, by law it applies without being preceded by a written permission from the Head of the local Commercial Court.

Article 31 paragraphs (1) and (2) of the Bankruptcy Law and PKPU provide space for the Curator to stop all court implementation decisions that have arisen since before the commencement of bankruptcy until the bankruptcy declaration decision is pronounced so that it triggers a conflict of confiscation on the assets of the bankrupt debtor, which is the object of confiscation in a criminal case. However, the general confiscation provides legal certainty as a joint guarantee for the creditors to get the payment of the debtor's bankrupt debt.

In the case of the regulation of Article 31 paragraphs (1) and (2) of the Bankruptcy Law and PKPU with the provisions of Article 39 paragraph (2) of the Criminal Procedure Code, it is clear that there is disharmony or disharmony in the arrangements regarding confiscation, it seems that they overlap each other, one wants to take precedence because it is given space to stop the implementation of court decisions 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.

In the principle of formation and application of laws and regulations, there are several principles, including:

1. The principle of *lex specialis derogat legi generali*, namely legal regulations which state that the law is special or *lex specialis* overrides the general law or *lex generalis*. In this case, the private bankruptcy law is not a *lex specialis* of the public criminal procedure law, so the application of this principle is irrelevant in examining this research.
2. The principle of *lex posterior derogat legi priori*, i.e. the newer regulation beats the older rule. Where this principle is not relevant to be used in this study, given that once again the legal classification and its nature are very different, one is used for the enforcement of the public interest, on the other hand it is used for individual (private) interests. This principle can be used if the two regulations are in the same legal classification.

The author is of the opinion that in order to create legal certainty for the two confiscation arrangements to run well, there is a need for harmonization or harmonization. Harmonization is needed so that the interests of the parties can be carried out in an orderly manner to create legal certainty. In order to harmonize this, it must be seen which interests take precedence, the Criminal Procedure Code is a public law that must take precedence over bankruptcy law, so that general confiscation does not *mutatis mutandis* stop criminal confiscation either before the start of bankruptcy or after the bankruptcy declaration decision is pronounced. Investigators as state instruments or state apparatus authorized by the state may confiscate objects suspected of being used for crimes or as tools/means of crime or proceeds of crime.

As the view of the Universality Bankruptcy Theory according to Michelle Dean that the purpose of the current bankruptcy law is the result of the convergence of 2 (two) legal systems, namely civil law

and command law. The convergence of the two bankruptcy law systems occurred the first time England adopted some provisions of French bankruptcy law in the XVIII century. The convergence between the civil law system and the common law system that occurred in the mid XVII century marked the beginning of the birth of the universalist theory of bankruptcy law. It is no exaggeration if Michelle Dean mentions that the most basic theory in bankruptcy law is the universalist theory. The universalist theory of bankruptcy is built on the principle of collective execution or general confiscation of debtor assets that have been insolvent or unable to pay their debts. This theory is the principle of balance between creditors in bearing the consequences of debtor bankruptcy.

The universalist theory is a classical bankruptcy law theory whose application has developed according to the times. Universalist theory requires insolvency as a basis for declaring someone bankrupt. Insolvency is a condition where the debtor is no longer able to pay or fulfill his obligations to his creditors, because the debt is more than his assets and his business is no longer operating (not going concern). The situation of being insolvent and the debtor having several creditors became the basis for the general confiscation of the debtor's assets. Without an insolvency situation, a general confiscation (collective execution) has no legal power to be carried out on a person's property, even though the person is proven not to have paid his debts and the debt is more than his assets.

The general confiscation of bankrupt assets and the methods of payment to be taken are the soul of the universal theory. Thus, from the point of view of universal theory, the purpose of bankruptcy is to collect all the assets of debtors who have been unable to pay their debts (insolvency) for the benefit of all creditors. In practice, in some legal systems there is legal protection given to debtors with good ethics by way of debt relief. According to Levinthal, granting debt forgiveness or protecting the interests of debtors in good faith is not the main goal of bankruptcy law.

In addition, the ultimate goal of legislation is to serve the greatest happiness of the greatest number of people, the principle of happiness is achieved for the benefit of the people or the public interest, so that public laws are made and used for the wider public interest. If the general confiscation takes precedence, then it does not provide a sense of certainty and legal justice for the complainant and the person entitled to the confiscated object. Therefore, the Curator must first wait for the criminal decision relating to the confiscated object (the same object) to be decided by the court. With respect to evidence (confiscated objects), the court may decide:

- a. Is the evidence confiscated by the state;
- b. Whether the evidence is destroyed;
- c. Is the evidence attached to other case files;
- d. Whether the evidence is handed over to the most entitled party (victim witness or third party).

Based on the explanation above, the evidence that turns out to be used against a crime can be seen in Article 39 of the Criminal Code which states that "goods belonging to the convict obtained from a crime or intentionally used to commit a crime can be confiscated". The law must protect the interests of parties who are indirectly related to a case.

This is as if the debtor is declared bankrupt by the court, then a curator is appointed by the commercial court to manage the bankruptcy estate under the supervision of the supervisory judge. Regarding the curator, this is contained in the provisions of Article 1 number 5 of Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations which are stated as follows: "The curator is the Balai Harta Peninggalan or an individual who is appointed by the court to manage and settle the assets of the bankrupt debtor under the supervision of a curator. from the supervisory judge in accordance with this law." The curator must make every effort to secure the bankruptcy estate and keep all letters, documents, money, jewelery and other securities. In the event of negligence, the curator shall be responsible for the negligence in carrying out his duties resulting in the loss of the bankruptcy estate. Regarding the fees for the curator and the cost of bankruptcy, it will be determined later after the curator has completed his duties with the guidelines of the applicable laws and regulations.

The decision of the Supreme Court of the Republic of Indonesia Number 3 K/Pdt.Sus-Pailit/2019 if we relate it to the legal philosophy of Bankruptcy, it is the value of justice so that the law can provide its true purpose, namely providing benefits, usefulness and legal certainty. Based on the description previously explained by considering the three legal values, namely justice, expediency and legal certainty, the Supreme Court Decision Number 3 K/Pdt.Sus-Pailit/2019 is right to prioritize general confiscation of bankruptcy to be executed.

In terms of prioritizing general confiscation, of course, the curator must file a lawsuit for the cancellation of the criminal confiscation to the Commercial Court to place a general confiscation of bankrupt assets that has been criminally confiscated by the investigators. The Commercial Court in this case has absolute competence to examine, decide on bankruptcy issues and other matters related to bankruptcy. The Curator's rights are born on the basis of the decision of the Commercial Court, so that everything done by the Curator, whether in the context of lifting the criminal confiscation of the Debtor's

property, must obtain approval from the Commercial Court, namely through a legal product in the form of a decision, so that the legal status of the property becomes property. bankrupt.

The curator in this case has filed for the cancellation of the criminal confiscation to the Commercial Court at the Central Jakarta District Court which already has a decision, namely the Central Jakarta District Court decision Number 11/Pdt.Sus-Other Lawsuits/2018/PN.Jkt.Pst. dated September 19, 2018. The decision contains an order to lift and revoke all criminal confiscations that are on the property of the Pandawa Group Cooperative and Nuryanto which have been declared bankrupt, the decision of the Commercial Court also contains the cancellation of the determination of the Head of the District Court as the basis for the implementation of the criminal confiscation, so that the legal consequences of the decision of the Commercial Court will be an order to the Prosecutor's Office to hand over the goods contained as bankrupt assets to be handed over to the Curator.

After the issuance of a decision by the Commercial Court stating that to revoke all criminal confiscations on the assets of the debtor who has been declared bankrupt and cancel the determination of the Head of the District Court, at that time the Curator will have the authority to regain control to manage and settle the assets of the Pandawa Group Cooperative and Nuryanto which has been declared bankrupt with the aim of paying off the debts of the bankrupt Debtor to all of its Creditors.

Bankruptcy decision of the Commercial Court at the Central Jakarta District Court Number 37/Pdt.Sus-PKPU/2017/PN.Niaga.Jkt.Pst in conjunction with the Supreme Court's Decision Number 3 K/Pdt.Sus-Pailit/2019 and the analysis that has been described can be concluded that what has been decided by the Commercial Court at the Central Jakarta District Court Number 11/Pdt.Sus-Other Lawsuits/2018/PN.Jkt.Pst. September 19, 2018 is not against the law and makes the Curator authorized to take care of the bankruptcy estate. This is in accordance with Article 16 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations which says "The Curator has the authority to carry out the task of managing and settling bankrupt assets from the date the bankruptcy decision is pronounced even though the decision is appealed or reviewed. return". This is done so that there is no seizure by creditors of the bankruptcy estate.

Based on this description, it can be seen that the form of legal protection for creditors due to criminal confiscation of bankrupt assets (boedel) by investigators is in the form of repressive legal protection, in this case the curator who represents the interests of creditors has the right to file a lawsuit in order to carry out the task of managing and settling bankrupt assets. This is because if in the decision of the criminal case it turns out that the bankruptcy estate, either all or part of it is confiscated by the State or destroyed, then the State cannot be positioned as a privileged creditor. In the sense that the creditor in this case has the right to collect based on the rank or priority of his right to collect receivables that are on the bankrupt debtor.

CONCLUSION

Based on the description and discussion in the previous chapter, the author concludes that the form of legal protection for creditors due to criminal confiscation of bankrupt assets (boedel) by investigators is in the form of repressive legal protection, in this case the curator representing the interests of creditors has the right to file a lawsuit in order to carry out management and settlement of bankrupt assets. This is because if in the decision of the criminal case it turns out that the bankruptcy estate, either all or part of it is confiscated by the State or destroyed, then the State cannot be positioned as a privileged creditor. In the sense that the creditor in this case has the right to collect based on the rank or priority of his right to collect receivables that are on the bankrupt debtor. Thus, the curator is authorized to carry out the task of managing and settling the bankruptcy estate from the date the bankruptcy decision is pronounced even though an appeal or judicial review is filed against the decision.

In order to realize justice in law enforcement so as to create legal protection, laws and regulations of the same level (Book of the Criminal Procedure Code and Law of the Republic of Indonesia No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations) should not conflict with each other. each other, but the fact is that in the two rules there is a legal conflict between Article 39 paragraph (2) of the Criminal Procedure Code and Article 31 paragraph (1) and (2) of the Bankruptcy Law and PKPU, for that the government is expected to make the two rules run in harmony or match.

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