

The Legal Analysis Regarding the Overlap of Authorities to Carry Out Seizure in the Problem of Criminal Offenses

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Abstract

Confiscation has consistently been a contentious issue in legal discourse, particularly concerning the jurisdictional overlap between general confiscation and criminal confiscation. This study employs a normative legal research methodology, utilizing primary and secondary legal materials analyzed through statutory and analytical-conceptual approaches. The research examines the juridical framework of confiscation authority within Indonesian criminal law, specifically addressing corruption cases. The findings reveal that criminal confiscation, grounded in public law principles, takes precedence over general confiscation due to its function in protecting public interests and facilitating criminal investigations. However, this prioritization does not negate the rights protected by general confiscation; rather, criminal confiscation serves evidentiary purposes, after which confiscated assets must be returned to legitimate claimants. The study concludes that Article 39(2) of the Criminal Procedure Code provides legal legitimacy for prioritizing criminal confiscation, while simultaneously requiring investigators to maintain confiscated objects under court supervision rather than direct investigator control. This research contributes to resolving the normative conflict between criminal and civil confiscation procedures, offering practical guidance for law enforcement and judicial authorities.

Keywords: Criminal Confiscation; General Confiscation; In a Criminal Context.

INTRODUCTION

Globally, the intersection of criminal law and insolvency law presents complex challenges for legal systems, particularly in asset recovery and creditor protection (Gobile, Awoyemi, & Ogunwale, 2024; Gopalan & Guihot, 2015). The World Bank estimates that corruption costs developing countries approximately \$1.26 trillion annually, with asset confiscation serving as a critical tool in recovery efforts. The overlap between general seizure and criminal seizure has long been a topic of debate among legal experts (Gyimesi, 2022; Saleh, Reuber, & Beyenburg, 2019). This overlap often creates complexities in the legal system, particularly in the context of criminal law and bankruptcy. In the criminal context, this overlap can occur when assets that should be seized by the public prosecutor in a criminal case are also seized in criminal proceedings (Donald & Hall, 2020). This can complicate the investigation and prosecution process, as the division of assets between the various interested parties becomes complicated (Green & Roiphe, 2016).

On the other hand, in bankruptcy cases, the overlap between general seizure and criminal seizure can impact the asset recovery process for creditors (Kurniawan, 2023; Usman, Supanto, & Sulistiyono, 2016). Sometimes, the ownership of the assets of companies affected by bankruptcy. Therefore, this issue is an important topic in legal discourse and requires in-depth thinking from criminal law and bankruptcy experts to overcome the complexities that may arise (Eichmann, 2016).

In Indonesia, this problem manifests acutely in cases involving both bankruptcy proceedings and criminal prosecution (Gouldin, 2016; Ivanov, Tishutina, Dyablova, Artemova, & Khmelev, 2022; McGlynn, 2017). The urgency of this research stems from the increasing frequency of such cases, which create legal uncertainty for law enforcement agencies, curators, creditors, and defendants (Engstrom & Gelbach, 2021; Grosso & O'Brien, 2017; Maqueda & Chen, 2021). Between 2015 and 2020, Indonesian commercial courts recorded a 23% increase in bankruptcy cases with concurrent criminal investigations, highlighting the practical need for clearer jurisdictional guidelines.

The background to the overlapping problem between general confiscation and criminal confiscation is due to the existence of two legal remedies applied simultaneously in a bankruptcy case, namely a bankruptcy lawsuit in a commercial court and a criminal case in a district court (Chandra, 2022; Putri, 2021). The occurrence of two legal remedies against one case is because the *a quo* case contains elements that can be used as a basis for a bankruptcy lawsuit and a criminal report.

For example, in the bankruptcy case of the Pandawa Group savings and loan cooperative (KSP) which occurred in 2017. In this case, there was a condition of default by the debtor against the creditor. This condition certainly meets the bankruptcy requirements stated in Law Number 37 of 2004 which consists of: (1) a minimum of 2 or more creditors; and (2) one debt that has matured and can be collected. By fulfilling the requirements for filing a bankruptcy lawsuit, KSP Pandawa (bankrupt debtor) was declared bankrupt on May 31 2017 (Commercial Court Decision No. 37/Pdt.Sus-PKPU/2017/PN Niaga.Jkt.Pst, n.d.). However, there are also criminal aspects in this case, namely the offense of fraud and money laundering. In this case, the administrator of KSP Pandawa (the defendant) was proven to have carried out activities to collect funds from the public without a business license and was sentenced to a criminal sentence on December 11, 2017. The criminal sentence essentially stipulates the following: (1) imprisonment for the defendant, and (2) determining that the defendant's evidence/assets be confiscated to be auctioned and the proceeds deposited into the state treasury (Andrian, 2023).

Several scholars have examined this jurisdictional conflict. Isfardiyana (2016) argues that general bankruptcy seizure should precede criminal seizure to protect creditor rights, emphasizing the primacy of civil obligations. Conversely, Syarif, Sunarmi, and Yunara (2023) contend that criminal confiscation in money laundering cases must take priority due to the public interest dimension and evidentiary requirements. Fernando (2020) adopts a middle position, suggesting that the nature of the underlying crime should determine priority. Meanwhile, Andrian (2023) highlights the practical disputes between curators and prosecutors in liquidating bankrupt estates, demonstrating the real-world consequences of this normative ambiguity. These divergent perspectives underscore the need for comprehensive analysis that reconciles competing interests.

Despite existing scholarship, a significant gap remains: no study has systematically analyzed the normative hierarchy between Article 39(2) of the Criminal Procedure Code and Article 31(2) of Law Number 37 of 2004 concerning Bankruptcy (UUK-PKPU) specifically in corruption cases. This research addresses this gap by examining how public law principles should inform prioritization decisions in asset confiscation, particularly when corruption—a crime against the state and society—is involved.

The novelty of this research lies in its integrated approach, combining doctrinal analysis with practical case examination to develop a hierarchical framework for confiscation authority. Unlike previous studies that focus on either criminal or civil dimensions separately, this research synthesizes both perspectives while prioritizing the public interest rationale inherent in corruption prosecution. Furthermore, this study proposes procedural safeguards to ensure that criminal confiscation priority does not permanently violate civil rights.

Talking about criminal confiscation, the legal basis for confiscation in criminal cases is regulated in Article 1 number 16 of Law Number 8 of 1981 concerning Criminal Procedure Law, which states "Confiscation is a series of actions by investigators to take over and/or store under their control movable or immovable, tangible or intangible objects for the purposes of evidence in investigations, prosecutions and trials."

According to Nindyo Pramono, Professor of the Faculty of Law at Gadjah Mada University (UGM), this definition clearly states that confiscation is carried out for evidentiary purposes. Confiscation only applies to objects or goods needed for evidentiary purposes, prosecution, and trial. The form of confiscation involves taking over and/or storing.

In Article 39 paragraph (2) of the Criminal Procedure Code, objects that are in confiscation due to civil cases or bankruptcy can also be confiscated for the purposes of investigation, prosecution and trying criminal cases, as long as they meet the provisions of paragraph (1) (Article 39 paragraph (2) of the Criminal Procedure Code). Article 39 paragraph (1) of the Criminal Procedure Code regulates objects that can be subject to confiscation: a. objects or claims of suspects or defendants that are wholly or partly suspected of being obtained from criminal acts or as the result of criminal acts; b. objects that have been used directly to commit criminal acts or to prepare for them; c. objects that are used to obstruct the investigation of criminal acts; d. objects that are specifically made or intended to commit criminal acts; e. other objects that have a direct relationship with the criminal act committed (Heriani, n.d.).

Contrasting with criminal confiscation, which is rooted in public law and aims to serve state interests in crime prosecution, general seizure is a form of seizure recognized in civil law, particularly bankruptcy law, which regulates private relationships between individuals. A general seizure aims to protect creditors' interests against actions by the debtor that could harm the bankrupt estate and to halt the execution of the debtor's assets by the creditors to fulfill their respective rights. This can maximize the collection of the bankrupt estate for payment to all creditors (Isfardiyana, 2016). This fundamental distinction between public law (criminal confiscation) and private law (general confiscation) creates the normative tension that this research seeks to resolve.

Based on Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU) Article 1 number 1 bankruptcy is "General confiscation of all assets of a bankrupt debtor whose management and settlement are carried out by the Curator under the supervision of a supervising judge". Based on the above definition, bankruptcy is a confiscation of assets. In these assets there is a legal relationship between creditors and debtors. Regarding confiscation, it has been placed initially in Article 1131 and Article 1132 of the Civil Code (KUHPperdata), with the intention of preventing creditors from carrying out confiscation or execution themselves (*eigenrichting*) (Syarif et al., 2023).

Based on the explanation in the previous paragraph, there is something interesting in this article, namely that general confiscation and collateral confiscation have their own urgency and respective interests, so which one should take priority in this case? So there is a problem formulation that is worth putting forward, namely how to regulate confiscation in the context of criminal law, and how to analyze the legal authority for confiscation in the context of criminal acts of corruption in Indonesia.

This article aims to provide a description and analysis of how the regulations regarding confiscation are regulated in the context of criminal law, as well as to find the most effective solution to the problem of overlapping authority in the event of corruption problems in Indonesia. The benefits of this research are threefold: (1) theoretical—contributing to legal doctrine on the hierarchy of legal norms in confiscation procedures; (2) practical—offering guidance to law enforcement agencies, curators, and courts in handling concurrent criminal and bankruptcy cases; and (3) policy-oriented—providing recommendations for legislative reform to clarify ambiguous provisions and prevent future jurisdictional disputes. Ultimately, this research aims to balance the imperatives of criminal justice with the protection of civil rights and creditor interests.

METHOD

This research employed normative legal research. Normative legal research examines legal products that experience problems, such as legal gaps, overlapping norms, or norm conflicts. This paper used a statutory approach and analytical-conceptual approaches to legal concepts. It also utilized primary and secondary legal materials, systematic methods, and descriptive-evaluative analysis.

The population of this study consisted of all Indonesian legal provisions governing confiscation in both criminal and civil contexts, including the Criminal Procedure Code (Law No. 8 of 1981), the Bankruptcy Law (Law No. 37 of 2004), the Corruption Eradication Law (Law No. 31 of 1999 jo. Law No. 20 of 2001), and related implementing regulations. The sample comprised specific articles addressing confiscation authority: Articles 38, 39, and 284 of the Criminal Procedure Code; Articles 1, 21, and 31 of Law No. 37 of 2004; and Article 38 of the Corruption Eradication Law. A purposive sampling technique was employed to select these provisions based on their direct relevance to confiscation jurisdiction.

Data collection techniques included: (1) literature study of primary legal materials (statutes, court decisions) and secondary legal materials (legal textbooks, journal articles, expert opinions); (2) documentary analysis of case law, particularly Decision Number 37/Pdt.Sus-PKPU/2017/PN Niaga.Jkt.Pst involving KSP Pandawa; and (3) content analysis of legal expert opinions published in legal databases and academic journals.

Data sources comprised: (1) primary legal materials, including Indonesian legislation (Criminal Procedure Code, Bankruptcy Law, Corruption Eradication Law) and court decisions from commercial courts and district courts; (2) secondary legal materials, such as legal textbooks, academic journals (*PADJADJARAN Journal of Law*, *Locus Journal*, *Adigama Law Journal*, *Jurnal Justisi*), and legal commentary from online legal databases (hukumononline.com); and (3) tertiary legal materials, including legal dictionaries and legal encyclopedias.

Data analysis employed a prescriptive analysis technique with the following steps: (1) inventory and systematization of legal norms related to confiscation; (2) interpretation of legal provisions using grammatical, systematic, and teleological methods; (3) identification of normative conflicts between Article 39(2) of the Criminal Procedure Code and Article 31(2) of the Bankruptcy Law; (4) application of legal principles (*lex superior*, *lex specialis*, public interest primacy) to resolve conflicts; and (5) construction of a hierarchical framework for confiscation authority with emphasis on corruption cases.

This research was conducted through library research without specific geographical limitation, focusing on the Indonesian national legal framework. Legal materials were accessed through university libraries, online legal databases, and official government legal repositories between March 2024 and November 2024.

RESULT AND DISCUSSION

Confiscation Regulations in Indonesian Criminal Law

Confiscation is part of the investigation regulated in the Criminal Procedure Code or often referred to as the Criminal Procedure Code. "Confiscation is a series of investigative actions designed to be taken or kept under his control." Control of movable or immovable goods, tangible or intangible, as evidence in investigations, prosecutions and judicial processes. Because confiscation is a mandatory act, it can only be carried out by investigators with the permission of the head of the district court, in accordance with the provisions of Article 38(1) of the Criminal Procedure Code. to the district court. For practical reasons, an application for a seizure warrant is usually made simultaneously with an application for a search warrant. Except in urgent cases, where it is not possible to request permission in advance from the Head of the District Court. The Criminal Procedure Code regulates and authorizes investigators to confiscate movable or immovable goods, both physical and non-physical, as referred to in Article 39(1) of the Criminal Procedure Code, namely. Goods or banknotes belonging to the suspect can be confiscated. Objects that are said to be obtained by the defendant in whole or in part from a criminal act or as a result of a criminal act, objects that are used directly to commit or prepare a criminal act, objects that hinder the investigation of a criminal case, objects that are made specifically for the commission of or intended for a criminal act and other objects that are directly related to the criminal act committed.

Article 284 paragraph (2) of the Criminal Procedure Code allows for deviations or exceptions from the provisions of the Criminal Procedure Code regarding the criminal procedure process for a specific crime regulated in a particular law. One of these is Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, and Law Number 30 of 2002 concerning the Corruption Eradication Commission.

Then Article 39 paragraph (1) and paragraph (2) of the Criminal Procedure Code regulates objects that can be confiscated by investigators, including objects that are in confiscation due to civil cases or due to bankruptcy for the purposes of investigation, prosecution and trying criminal cases. Article 39 paragraph (2) of the Criminal Procedure Code provides legitimacy to investigators to confiscate objects that have been under general bankruptcy confiscation. Considering the provisions of Article 31 (2) of the UUK and Article

39 (2) of the Criminal Procedure Code, Article 31 (2) of the UUK only applies in the context of civil law. Because, the criminal confiscation of the assets of the bankruptcy administrator cannot be carried out on the basis of a general bankruptcy case. However, in this case, this is permitted based on Article 31 paragraph 2 of the UUK. To deal with conflicting standards between Article 31 Paragraph 2 and Article 39 Paragraph 2 of the UUK (Syarif et al., 2023).

Legal Analysis of Confiscation Authority in Corruption Crimes

A constant topic of discussion regarding confiscation authority is whether criminal confiscation takes priority, or whether general confiscation related to bankruptcy should take precedence. This is certainly an interesting topic to analyze.

When discussing confiscation, specifically in the legal context of corruption, criminal confiscation should be prioritized. The logic behind this is quite simple: when discussing corruption, we are talking about the public interest, and in corruption, the public is always the victim. Because its interests encompass a wider audience, criminal confiscation is the one that must be prioritized for the purpose of providing evidence in court. However, it is important to emphasize that the existence of a criminal confiscation does not mean that the confiscation is not considered equally. However, after the use of criminal confiscation as evidence in a corruption case, the prosecutor is obliged to return the confiscated items to the owners to protect their rights.

Regarding the existence of a preliminary criminal confiscation, this is supported by the opinion of Professor of the Faculty of Law, UGM, Eddy OS Hiariej, where he stated that "indeed, the position of criminal confiscation is given more priority than general confiscation, considering that the criminal character, which is public law, has a higher position than private law.

However, it's important to emphasize that in the context of criminal seizures, investigators may request seizure, but control of the object cannot be granted to the investigator; it must remain in the court's control. Investigators require the object only for evidentiary purposes.

Then the Director of Special Economic Crimes at the Criminal Investigation Agency of the Indonesian National Police, Brigadier General Rudy Heryantor Adi Nugroho, said that in carrying out his duties, his party is clearly guided by the Criminal Procedure Code, especially Article 39. Article *a quo* states that objects that are in confiscation due to civil cases or bankruptcy can also be confiscated for the purposes of investigation, prosecution and trying criminal cases (Qurani, 2019).

Then, besides the opinions of legal experts, according to regulations, carrying out criminal confiscation is also legalized according to Indonesian law, even though the confiscation must also be carried out according to civil law. This is regulated in the Criminal Procedure Code. Where objects that can be confiscated are regulated in Article 39 paragraph (1) of the Criminal Procedure Code, as follows:

1. Objects or bills of a suspect or defendant which are suspected of being obtained in whole or in part from a criminal act or as a result of a criminal act;
2. Objects that have been used directly to commit a crime or to prepare for it;
3. Objects used to obstruct the investigation of a crime;
4. Objects specifically made or intended to commit crimes; and

5. Other objects that have a direct relationship with the crime committed.

Then, in Article 39 paragraph (2) of the Criminal Procedure Code it is stipulated that objects that are in confiscation due to civil cases or due to bankruptcy can also be confiscated for the purposes of investigation, prosecution and trying criminal cases, as long as they meet the provisions of paragraph (1). These objects must be stored in a state confiscated objects storage house (RUP BASAN). The storage of confiscated objects is carried out as well as possible and responsibility for it lies with the authorized official according to the level of examination in the judicial process and the objects are prohibited from being used by anyone. As long as there is no state confiscated objects storage house in the relevant place, the storage of the confiscated objects can be carried out at the police office, government and in urgent circumstances in another storage place or remain in the original place where the objects were confiscated (Fernando, n.d.).

Based on existing regulations, prioritizing criminal confiscation over general confiscation is actually legal, but with the urgency of public interest, even prioritizing criminal confiscation still means that the confiscated items will be returned and will always be under state supervision.

CONCLUSION

Confiscation, as regulated in Indonesia's Criminal Procedure Code (KUHP), constitutes a mandatory investigative action whereby investigators, with prior permission from the district court head under Article 38(1), seize and control movable or immovable, tangible or intangible goods as evidence for investigations, prosecutions, and trials—often applied for alongside search warrants, except in urgent cases. Article 39(1) authorizes confiscation of suspect-owned items, those wholly or partly derived from crimes, used to commit or prepare crimes, hindering investigations, specially made for crimes, or directly related to criminal acts. In cases of overlapping authorities between criminal and general (civil) confiscation, criminal confiscation takes precedence due to its grounding in public interest, yet it does not negate general confiscation rights; post-evidentiary use, seized assets must be returned to legitimate claimants. Empirical studies could examine real-world implementation challenges in corruption cases involving overlapping confiscation claims, such as inter-agency coordination between investigators and bankruptcy courts, to develop streamlined protocols.

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