



Dispute on Execution of Criminal Confiscation Objects and General Seizures for Bankruptcy in Review from Legal Benefit

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ABSTRACT

Criminal foreclosures and general foreclosures of bankruptcy are different. Normative juridical research with statutory and case approaches. The aim is to find out and analyze criminal enforcement and bankruptcy at the same time that there was a conflict in the execution of the Pandawa Mandiri Group Savings and Loans Cooperative case (KSP Pandawa). The results of KSP Pandawa and Nuryanto's research, the chairman of KSP Pandawa went bankrupt, the decision of the Commercial Court at the Central Jakarta District Court and all assets were publicly confiscated. Nuryanto was convicted by the Depok District Court on charges of fictitious investment and an additional crime of auctioning all economic assets for the state. The Pandawa KSP Curator Team filed a lawsuit for a criminal verdict that was strengthened by the Supreme Court's Cassation Decision Number 3 K/Pdt.Sus-Bankrupt/2019. Amar Cassation requests that the Depok District Attorney hand over all confiscated assets to the Pandawa KSP Curator Team. The cassation decision fulfills legal benefits, KSP Pandawa can register receivables with the curator for verification and will receive proportional loss returns as stipulated in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations.

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1. INTRODUCTION

Indonesia is a country of laws. A legal state governed by law (Rahmatullah, 2020). Every policy carried out by the state, whether in the form of an order to do something or a prohibition to do something against its people, must be based on valid legal regulations. Likewise, in carrying out the functions of power, both serving the community and law enforcement, the government and its law enforcement officers must be based on applicable legal regulations. Policy making without being based on legal rules will create chaos in society. So that the goal of the state to create a safe, orderly and peaceful social life will not be realized.

Basically law is a method of human thinking that appears simultaneously with the development of humans themselves as a group of individuals or society, then arises the need to regulate an orderly life in a system. So at this stage the law has been present in the community because the law was born simultaneously with the development of society. The term by Marcus Tullius Cicero in the works of *De Republica* and *De Leibus* that the relationship between law and society is interrelated, it is impossible for society to live in an orderly manner in a social system

without any rules of conduct to regulate life which must be fulfilled with various things as human nature, such as private and public (Wiratmadinata, 2018).

The origin of the word law comes from English law and Dutch *rech loi* or French *droit*. In general, law is a regulation that is currently in effect and regulates aspects of people's lives in the interests of the individual and the state (Farahwati, 2019). So that the content of law is divided into public and private law (Wiratmadinata, 2018). The purpose of public law is to provide protection in the public interest and private law aims to protect in terms of individual interests (Arifardhani, 2019). Public law is a form of protection for the state by taking into account the public interest in which the implementation of the rules is carried out by the authorities, while private law, the implementation of the rules is left to each party. (Maryono & Azhar, 2018).

Simmons argues that criminal law is a type of public law because it regulates the relationship between individuals and society or the state for the benefit of society and is carried out when society really needs it. The difference between public law and private law is in the legal relationship that is regulated where public law normatively regulates the attitude of acts of binding legal subjects in general and private law norms which bind certain legal subjects in particular. (Pratama, 2020) or the nature of public law is coercive and private law is complementary, although there is also a coercive nature (Arifardhani, 2019).

An example of a type of public law is criminal law and a type of private law is civil law (Maryono & Azhar, 2018). Criminal law and civil law are legal regulations that have their respective functions. The two legal regulations cannot intervene in each other. In carrying out the judicial powers, the judge who examines, tries and decides on a criminal case cannot stop the process of examining a civil case if a criminal trial and a civil trial are conducted simultaneously against one legal subject. Vice versa, a judge in a civil trial cannot stop the ongoing criminal trial process against the same legal subject.

In the same case, criminal and civil problems may occur (Hariyono, 2021). The independent nature of the criminal trial process and civil trial, aside from not being able to intervene in each other, there are also no legal regulations that can act as a bridge for communication. It is common to find judge's decisions in criminal trials overlapping with judge's decisions in civil trials. This has an impact on the difficulty of executing court decisions, both criminal and civil, even though both have permanent legal force (in *craht van gewijsdee*). The parties feel that they have strong legitimacy with the court's decision so that they have the same right to execute the court's decision.

Conflicts of interest in the execution of decisions in the criminal and civil realms often occur, especially in the case of execution of confiscated objects with criminal confiscations and general confiscations in bankruptcy. There are many examples of cases of objects that were objects of general confiscation for bankruptcy simultaneously becoming objects of criminal confiscation which led to the decision of the Panel of Judges to seize the goods for the state. This happened because the legal subject apart from being a bankrupt debtor also faced criminal charges for the same incident. One of the cases that will be discussed in this study is the bankruptcy case of the Pandawa Mandiri Group Savings and Loans Cooperative (KSP) which went bankrupt and Nuryanto went bankrupt as the Chairman of the Cooperative. KSP Pandawa was declared bankrupt based on the decision of the Commercial Court at the Central Jakarta District Court Number 37/Pdt.Sus-PKPU/2017/PN.Niaga.Jkt.Pst. dated May 31, 2017. The bankruptcy decision was handed down after KSP Pandawa failed to fulfill its obligations to its creditors in the Postponement of Debt Payment Obligations (PKPU).

Simultaneously, Nuryanto, who was in bankruptcy as Chairman of the Pandawa Cooperative, was charged with committing the crime of collecting funds from the public without a business license from the leadership of Bank Indonesia or the Financial Services Authority (OJK) as referred to in Article 46 paragraph (1) of RI Law Number 10 of 1998 concerning Amendments to the Republic of Indonesia Law Number 7 of 1992 concerning Banking in conjunction with Article 69 of the Republic of Indonesia Law Number 21 of 2011 concerning the Financial Services Authority in conjunction with Article 55 paragraph (1) 1st in conjunction with Article 64 paragraph (1) of the Criminal Code. The Depok District Court panel of judges sentenced him to 15 years in prison and a fine of Rp. 200 billion. In addition, the Panel of Judges also imposed additional penalties in the form

of KSP Pandawa assets, especially objects that have economic value being auctioned and the proceeds are for the state. The first level decision was handed down on December 11, 2017 under Number 424/Pid.Sus/2017/PN.Dpk. The decision was upheld at the Appeal and Cassation level with Cassation Decision Number 1208 K/Pid.Sus/2018 dated August 14 2018 and hindered the ongoing bankruptcy process against KSP Pandawa and Nuryanto as Chairman of KSP Pandawa. The curator cannot execute a bankrupt boedel because of the decision of the criminal court which decided to auction off the assets and the proceeds for the state. In line with this, the victim's losses from the fictitious investment of KSP Pandawa cannot be recovered through the sale of bankruptcy assets. It is known that the victim's loss was estimated at IDR 3 trillion.

Because of this, since the first level court decision was pronounced by the Pandawa Mandiri Group KSP Curator Team in bankruptcy, it has filed another lawsuit with the Commercial Court at the Central Jakarta District Court up to the Supreme Court Cassation level. The Curator Team sued that the decision of the Depok District Court specifically regarding the execution of assets could not be implemented (Non-executable) and ordered the Depok District Attorney to immediately hand over the assets to the Pandawa KSP Curator Team. The lawsuit was decided and upheld up to the cassation level of the Supreme Court Number 3 K/Pdt.Sus-Pailit//2019 dated January 22 2019. The Supreme Court granted the lawsuit by the Pandawa Mandiri Group KSP Curator Team for bankruptcy.

Execution disputes in the realm of criminal court decisions and commercial civil courts in relation to assets that have economic value often occur. The bankrupt debtor's assets that have been placed under general confiscation for bankruptcy are at the same time subject to criminal confiscation. Until the climax of the court verdict, it was decided that the property would be auctioned off or confiscated to become the property of the state. So that the rights of victims of criminal acts to get compensation for losses through the bankruptcy mechanism also disappear. In this example case, it can be the object of study on the settlement of disputes over the execution of assets that are placed under criminal confiscation together with the general confiscation of bankruptcy if examined from the point of view of legal benefits.

Based on the description above, how is the resolution of disputes regarding the execution authority over objects placed under criminal confiscation and general bankruptcy confiscation simultaneously in the Supreme Court Decision Number 3 K/Pdt.Sus-Bankrupt//2019 in terms of legal benefits.

2. RESEARCH METHOD

The research method uses normative juridical research carried out by examining library materials (Pohan et al., 2021) then tested and studied on the principal legal aspects of the agreement in a juridical manner (Hia et al., 2020). In addition, this research is based on the above to seek certainty for fair law enforcement in accordance with the level of norms of applicable laws and regulations (Wijayanti & Wirasila, 2019) so that it includes normative juridical issues relating to criminal law regulations and bankruptcy law in force in Indonesia.

The approach used in this research is a statutory approach to examine statutory regulations which still have deficiencies, especially in field practice where there are deviations from the order of implementation (Adawiyah, 2022) and a case approach in the application of legal norms or rules in legal practice (Arliman, 2018) with the review of the Supreme Court Decision Number 3 K/Pdt.Sus-Bankrupt/2019.

The use of types and sources of data in this study were collected by researchers simply by using secondary data (Benuf & Azhar, 2020). In normative juridical research, it is necessary to emphasize data as legal material obtained and its role in providing research assistance in analyzing problems (Tan, 2021) sourced from the literature, obtained from laws and regulations, and other legal materials related to the problem (Israfil & Salat, 2020) The field of secondary data law is distinguished by : (a) Primary legal material is legal material that binds people to comply with the law, including legal products as study material and legal products as a means of providing criticism (Abduh, 2021) including in the research of the Criminal Code (KUHP), the Criminal Procedure Code (KUHP), the Civil Code (KUHPerdata), the Republic of Indonesia Law Number 10 of 1998 concerning Amendments to the Republic of Indonesia Law. Indonesia Number 7 of

1992 concerning Banking, Law of the Republic of Indonesia Number 21 of 2011 concerning the Financial Services Authority, Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt, Decision of the Commercial Court of the Central Jakarta District Court Number 37/Pdt .Sus-PKPU/2017/PN.Niaga.Jkt.Pst, Decision Number 424/Pid.Sus/2017/PN. Dpk, Cassation Decision 1208 K/Pid.Sus/2018, Supreme Court Number 3 K/Pdt.Sus-Bankrupt/2019, Decision Number 4/Pdt/Sus-PKPU.Pailit/2018/PN.Niaga.Mks, Decision Number 284 /Pid.Sus/2019/PN.Mks, Decision Number 692/Pid.B/2018/PN.Bdg, Decision Number 16/Pdt.Sus-PKPU/2019/PN.Niaga Central Jakarta District Court, Decision Number 15/Pdt .Sus-Pe, Cancellation of Peace/202/PN.Niaga.Jkt.Pst, Decision Number 425 to 429 Pid.Sus/2017/PN.Dpk, Decision Number 3 K/Pdt.Sus-Pilit/2019. (b) Secondary legal materials are all publications concerning law that do not consist of official documents (Utama et al., 2020) in the form of the results of expert research, scientific papers, scientific books and so on related to legal issues (Lubis et al., 2020). (c) Tertiary legal materials are supporting legal materials that provide instructions in order to obtain clarity on the primary and secondary legal materials mentioned above (Septiani & Zuhdy, 2020).

The use of library document study instrument techniques to collect data (Harefa et al., 2020) primary legal materials, secondary legal materials and tertiary legal materials which are the results of research on disputes over the authority to execute objects placed in criminal confiscation and general bankruptcy confiscation simultaneously in the Supreme Court Decision Number 3K/Pdt.Sus-Bankrupt/2019 based on a review of aspects of legal expediency. Then the acquisition is collected for descriptive qualitative analytical analysis by studying and understanding all existing secondary data (Lubis et al., 2020) interpreted by looking for positive legal norms, court decisions with permanent legal force related and doctrine used as a basis (Benuf & Azhar, 2020). So that the results are described in a comprehensive and systematic manner related to the basis of the Judge's considerations in his decision (Djanggih & Hipan, 2018).

3. RESULTS AND DISCUSSIONS

Criminal and bankruptcy cases with the same subject and object are not new to this case. There have been many examples of cases similar to this KSP Pandawa. Interestingly, the decisions of the Panel of Judges who examined, tried and decided on the a quo case were different. Among them is the bankruptcy case of PT. Trust with the Ummah in bankruptcy or what we know as Abu Tours. The bankruptcy decision was handed down by the Panel of Judges of the Commercial Court at the Makassar District Court Number 4/Pdt/Sus-PKPU.PAILIT/2018/PN.Niaga.Mks dated 20 September 2018. At the same time the Makassar District Court also conducted a criminal trial against PT. Amanah Bersama Umat is in bankruptcy and its Director Hamzah Mamba is in bankruptcy. In Decision Number 284/Pid.Sus/2019/PN.MKS dated 27 November 2019 the Panel of Judges handed down a criminal verdict against PT. Trust with the Ummah in bankruptcy and its Director. However, because previously there had been a Commercial Court decision on evidence, especially those with economic value, the Panel of Judges decided to return it to the Curator who handles bankruptcy.

Then the case of Aom Juang Sastra Ningrat who is also the Director of the Umrah travel agency PT. Balad Lumampah Solution (SBL). Bandung District Court Decision Number 692/Pid.B/2018/PN.Bdg dated 18 October 2018 handed down a criminal verdict against the person concerned. However, the panel of judges decided that the assets that were used as evidence were returned to the defendant and PT. SBL. So that after the decision, creditors can apply for Suspension of Debt Payment Obligations (PKPU) which was decided by the Commercial Court at the Central Jakarta District Court Number 16/Pdt.Sus-PKPU/2019/PN Niaga on 20 February 2019.

The latest is the case of PT. KSP Indosurya Cipta in bankruptcy. The panel of judges at the Commercial Court at the Central Jakarta District Court issued a bankruptcy decision after one of the creditors filed an application for canceling the settlement to postpone debt payment obligations. Decision Number 15/Pdt.Sus-Cancellation of Peace/2022/PN.Niaga.Jkt.Pst dated 11 August 2022. Currently, the criminal trial process is underway against the chairman of KSP Indosurya in the bankruptcy. It will be interesting to observe how the decision of the Panel of Criminal Judges in

handing down their verdict will be mainly related to evidence in the form of assets that have economic value.

The differences in the decisions of the Panel of Judges in cases similar to the object of this research indicate that there is no definite legal basis regarding what the position of a criminal seizure and general seizure of bankruptcy are if they have the same legal subject and object. If viewed from a legal perspective, Article 31 of the Bankruptcy Law states that at the time the bankruptcy declaration decision is pronounced, all court enforcement decisions on each part of the debtor's assets that have started prior to bankruptcy must be stopped immediately. The sentence immediately can be interpreted that at that moment, when the bankruptcy decision was pronounced, all court decisions other than those related to bankruptcy must be stopped. Still in the same article it is also stipulated that all confiscations that have been carried out are deleted and if necessary the Supervisory Judge must order their removal. The provisions of Article 31 are commonly used by the Curator in the event of a dispute over the authority to execute a bankrupt boedel with other institutions.

On the other hand, the Criminal Procedure Code (KUHP) in Article 39 paragraph (2) stipulates that objects that are confiscated due to civil cases or because of bankruptcy can also be confiscated for the purposes of investigating, prosecuting and trying criminal cases, as long as these objects have related to the crime in question. This provision is used by the Prosecutor's Office as the executor of court decisions to defend their right to execute. The provisions in the Bankruptcy Law and the Criminal Procedure Code do overlap and there is no harmony. The judge's decision was also different as described above. There is a decision that returns the confiscated objects to the Curator to continue the bankruptcy process, but there are also those that later in their decision the Panel of Judges decides to seize or auction off the confiscated objects and the proceeds are given to the state.

If seen in the study of law, there is a principle of *lex specialis derogate legi generali*. This principle states that a specific legal regulation overrides a general legal regulation (Pery et al., 2020). Looking at the context of the contents of the Bankruptcy Law, it can be said that this Law has a *lex specialis* position in relation to other laws, especially regarding confiscation of objects. The Bankruptcy Law has a strong legacy in each of its articles to take action on objects that are bankrupt boedels. So it is stated in the Law that all court decisions and confiscations are nullified and even strengthened by giving authority to the Supervisory Judge to order their expulsion. However, the misalignment of judges' views in deciding cases is a serious problem. There is no overlapping of laws and regulations in criminal law and bankruptcy civil law.

When examined further, the KSP Pandawa case is similar to the Abu Tours case. In the Abu Tours case, the bankruptcy decision was pronounced before the criminal verdict. Thus, the Panel of Judges who decided on the criminal case handed down a verdict on the confiscated assets being returned to the curator handling the a quo bankruptcy case. In the KSP Pandawa case, Decision Number 37/Pdt.Sus-PKPU/2017/PN.Niaga.Jkt.PSt went bankrupt earlier on May 31 2017. Meanwhile Decision Numbers 425 to 429/Pid.Sus/2017/PN The criminal charge at the first level was handed down on December 11, 2017, meaning that at the time the verdict was pronounced at the first level until the cassation of the status of the Pandawa assets was legal as a general confiscation of bankruptcy. The judge may issue a decision to return assets to the Pandawa KSP Curator in bankruptcy.

Due to the existence of two conflicting court decisions that eventually led to a dispute between the interested parties. The decision of the Panel of Cassation Judges Number 3 K/Pdt.Sus-Bankrupt/2019 which decided that the Prosecutor as the executor immediately handed over KSP Pandawa assets to the Curatorial Team, according to the author, was very wise. The judge's decision is one thing that is highly awaited by the parties involved in a trial. Judges through their decisions must be progressive and have professional values because education and experience do not have the interests and moral determination inherent in a just society. (Sutrisno, 2019).

Gustav Radbruch developed a theory in the application of law that must at least fulfill three value elements, namely justice, legal certainty and the benefit of law for society (Santoso, 2021). The accuracy and accuracy of the judge is required in the application of these basic values to

compile the legal construction of the decision, so that these values do not conflict with each other. The use of law is part of the legal ideals which are very important as a complement to the values of justice and legal certainty (Herawati, 2021). A good law is a law that is able to provide happiness in society. The fundamental basis of judicial decisions in sentencing is closely related to the views of judges in understanding law in terms of ontology, axiology and epistemology. The highest reference as a judge's guideline is the value of justice in a decision, of course there must be benefits from the case, providing the benefits of rights and obligations in the form of a judge's decision, must be accountable and the perpetrators who are being tried have rights as human beings as human rights and victims get justice and perpetrators carry out obligations with decisions fair judge. Benefits need to be considered in law enforcement so as not to cause unrest according to Prof. Satjipto Rahardjo justice is one of the main values but still besides benefits so that the comparison of law enforcement between benefits and sacrifices must be balanced (Palsari, 2021).

Before the criminal verdict was handed down against the Chairman of KSP Pandawa, the legal status of KSP Pandawa and its chairman were in a state of bankruptcy. The assets belonging to the bankrupt debtor are in a general confiscation position and will be settled by the Curator. Furthermore, the proceeds from the settlement of the bankruptcy assets will be distributed proportionally to creditors who are victims of the KSP Pandawa fictitious investment. With the existence of a criminal confiscation status that leads to a decision on criminally executing assets, the rights of creditors who actually become victims are lost. Therefore, the criminal verdict in this case does not meet the legal expediency aspect. The verdict of the Panel of Judges actually created a new problem, in which the victims of the KSP Pandawa fictitious investment who were already happy with the bankruptcy turned anxious and disappointed. It is appropriate that the Pandawa KSP Curator Team filed a lawsuit up to cassation on the criminal decision of the Head of the Pandawa KSP. The Cassation Decision on the Lawsuit submitted by the Pandawa KSP Curator Team has returned the legal benefits to the victims which had previously been lost.

Supposedly if it is proven that the state has been harmed by the actions of KSP Pandawa and its management, the state can also become a party to bankruptcy. The state can register its receivables with the Curator for further verification of the receivables. Article 1137 of the Civil Code of the State in a position as a creditor is also given a special position according to the law. The state has the right to recover its receivables before other creditors. Thus, all the rights of victims of criminal acts in the KSP Pandawa case can be fulfilled proportionally.

4. CONCLUSION

The Supreme Court's Cassation Decision Number 3 K/Pdt.Sus-Bankrupt//2019 is very appropriate. If seen from the timeline of the case, the bankruptcy decision had already been handed down even when the criminal proceedings against the Head of KSP Pandawa were still under investigation. Aspects of legal benefits that had been lost after the passing of a criminal verdict stating that all the assets of KSP Padawa and its management were auctioned off and the proceeds went to the state, have been returned with the a quo cassation decision. When examined more deeply, there is a need for alignment or special guidelines for a criminal case which is simultaneously faced with Bankruptcy and Postponement of Debt Payment Obligations (PKPU). This can be seen in the inconsistent decisions of the Panel of Judges in similar cases with different legal subjects. The criminal case of Abu Tours and PT. The SBL above is an example, the two cases were investigated, tried and the case was decided after a criminal verdict was issued against the Head of KSP Pandawa. However, the ruling of the Panel of Judges is also different from the criminal verdict of the Chairman of KSP Pandaawa, where in the case of Abu Tours and PT. SBL's decision ordered that the assets be returned through the Curator to be returned to the creditors proportionally.

Conflicts of interest between criminal confiscation and general confiscation of bankruptcy often occur in the execution of assets which are evidence of a crime and the object of general confiscation of bankruptcy simultaneously. The Prosecutor's Office as the executor of criminal decisions and the Curator in charge of handling bankruptcy assets have their own legal arguments in defending their authority. Meanwhile, there are no definite legal guidelines on how the mechanism for handling cases should this happen. From a *lex specialis* point of view, it is clear that

Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt has a more special position than the Criminal Code (KUHP) and the Criminal Procedure Code (KUHP). The state needs to be present to formulate a definite policy to be used as a guide in resolving this problem so that there is harmony in every judge's decision in court.

Every bankruptcy case will always be interesting to discuss and has its own uniqueness. Especially if the bankrupt debtor is simultaneously investigated, investigated and criminally prosecuted. Conflicts of interest will often occur between curators who are in charge of administering and clearing out bankruptcy assets belonging to debtors and investigators or public prosecutors in carrying out their duties in the criminal realm, mainly related to the right to confiscate objects belonging to bankrupt debtors who also have the status of suspects or defendants. Then the interest of the curator in terms of executing bankruptcy assets is to pay off the debtor's debts to his creditors and on the other hand the interests of the investigator or public prosecutor to carry out the confiscation in order to clarify a crime.

There is no definite legal regulation in the event of a conflict of interest in law enforcement as mentioned above. The curator will of course adhere to Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt while the investigator or public prosecutor will adhere to the Criminal Procedure Code (KUHP). Thus it is necessary to carry out further research and discussion if a case like the one above occurs considering that this has often happened.

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