

Disparity Between Criminal Confiscation and General Confiscation and its Legal Implications

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Abstract. Disparity in the regulation of criminal confiscation and general confiscation is a complex issue in the context of criminal law. Criminal confiscation and general confiscation have different purposes, with criminal confiscation aiming to secure resources related to a specific crime, while general confiscation aims to secure assets that are considered unauthorized or unlawful. The differences in scope, procedure and legal consequences between these two types of confiscation pose challenges in maintaining fairness and legal sustainability. This research investigates the essential differences between the two types of confiscation and their legal implications in practice. Research on the disparity between criminal and general confiscation arrangements and their legal implications is relevant in the context of improving and refining the criminal justice system.

Keywords: Disparity, Criminal Confiscation, General Confiscation, Legal Implications

1 Introduction

Disparities in criminal law refer to inequalities or differences in legal treatment of individuals or groups within the legal system. Disparities can occur in various aspects of criminal law, including in its application. In the context of criminal law, the confiscation process is one of the important instruments in law enforcement. However, in practice, there are two types of confiscation that are commonly used, namely criminal confiscation and general confiscation. Criminal confiscation and general confiscation are two forms of asset expropriation or confiscation processes used in the context of law enforcement, but both have different principles, procedures and legal implications.

Criminal confiscation is an act of asset seizure carried out as part of the investigation or prosecution process of a particular criminal offense. The criminal confiscation process is usually carried out by law enforcement agencies, such as the police or other investigative bodies, as part of an effort to secure evidence or eliminate the means of crime. Criminal confiscation can be conducted before or during the judicial process against a suspect.

General confiscation, on the other hand, is a confiscation action carried out without any direct involvement in the context of tax administration, non-criminal law enforcement activities, or even in the context of government regulations related to natural resource management. Seizures under general confiscation may be carried out by relevant government agencies, such

as tax authorities or other relevant departments. A country's criminal law system has a very important role in maintaining justice, protecting society, and enforcing the rule of law. One of the instruments used in this system is the confiscation process, which aims to confiscate evidence related to violations of the law. The disparity between the regulation of criminal confiscation and general confiscation, as well as its legal implications, is a major concern in academic and practical legal studies. The impact of this disparity can include unfairness in the treatment of individuals, abuse of power by law enforcement officials, and obstacles in the pursuit of true justice.

The position of general confiscation and criminal confiscation in corruption crimes, general confiscation aims to stop or freeze all legal actions related to the assets of bankrupt debtors, while criminal confiscation aims for evidentiary purposes. [1] The purpose of criminal confiscation according to Article 1 point 16 of Regulation No.8 of 1981 concerning the Criminal Technique Code (KUHAP) which makes sense of that seizure is a progression of moves by specialists to initiate over or potentially hold heavily influenced by portable or steady, unmistakable or elusive items to serve proof in examinations, indictments and preliminaries. [2] In cases of extraordinary corruption crimes that cost the state tens of trillions of rupiah, criminal confiscation must take precedence over bankruptcy confiscation because it involves public money. The concept of prioritizing bankruptcy confiscation over criminal confiscation cannot be generalized. The position of criminal confiscation and general bankruptcy confiscation is still a matter of debate until now. [3]

Confiscation is carried out against an object both movable and immovable that is suspected of being used or obtained from a criminal offense. Confiscation has a coercive nature, with the confiscation it is hoped that it will shed light on an event and prevent the destruction of evidence of a criminal act by the perpetrator. [4] The confiscated object is then stored in the confiscated goods storage house (RUPBASAN). In general, the confiscation of evidence in criminal cases includes: [5]

1. Strengthen the position of valid evidence;
2. Seek and find the material truth of a criminal offense;
3. Affirms the judge's conviction of the prosecutor's charges.

Confiscation of objects that are reasonably suspected of being tools or proceeds of a criminal offense is the result of a criminal offense is one of the important instruments in evidence. Objects that are confiscated must be properly cared for by investigators or public prosecutors according to the level of examination of the criminal case. The position of confiscated objects is actually the same as a person who is designated as a suspect or defendant. As long as the legal status is not yet in chart, the presumption of innocence still applies to the suspect or defendant. Likewise for confiscated objects, as long as the verdict on the criminal offense related to the object is not yet in chart, the status of the object still belongs to the suspect or owner from which the object was confiscated.

Investigators are obliged to maintain the confiscated object until a court decision is legally binding. If the confiscated object is perishable, dangerous or requires high costs for maintenance during storage, then the investigator or public prosecutor with the witness of the suspect or defendant or his attorney can secure or auction the confiscated object. The proceeds from the auction of the confiscated object will be used as evidence in the examination of the related criminal offense. The important point that needs to be understood is that the confiscation of an object is solely for evidentiary purposes. Against objects that are confiscated, the Panel of Judges who examine, hear and decide cases must also give a verdict on the confiscated object.

The decision of the Panel of Judges can be in the form of forfeiture to the state, destroyed or returned to who is most entitled to the object.

Based on the above explanation, the research problem formulation can be stated: How is the essential difference between criminal confiscation and general confiscation in criminal law? And what are the legal implications of the disparity between criminal confiscation and general confiscation on individual human rights and fair legal protection?

2 Methodology

The exploration utilized recorded as a hard copy is standardizing juridical. The wellsprings of lawful materials utilized in this examination are essential legitimate materials and auxiliary lawful materials. Essential materials used are legal science books. The types of approaches used in this research are legislative approaches, comparative legal research approaches, cases and legal analysis approaches. The data processing method used is the analysis method which is then outlined in descriptive analysis writing.

3 Results and Discussion

Confiscation is derived from the Dutch term *beslag*, [6] and the Indonesian term *beslah* but the basic term is sita or confiscation. The dictionary of economic law defines confiscation as the entrustment of disputed goods to a third party, appointed by the parties to the dispute or by the court. The third party is obliged to hand over the disputed item to the party declared entitled after a court decision. [6]

M. Yahya Harahap himself gave the definition of confiscation, namely: [7]

1. The act of forcibly placing the *property of a defendant into a state of custody (to take into custody the property of a defendant)*;
2. Forced *custody* is done *officially* based on a court or judge's order;
3. The goods placed in custody are disputed goods, but may also be goods that will be used as a means of payment or repayment of the debtor's or defendant's debt, by selling at auction (*executorial verkoop*) the seized goods; and
4. The stipulation and safeguarding of confiscated goods lasts during the examination process, until there is a court decision that is legally binding, which states whether or not the confiscation action is valid.

Seizure in the Criminal Method Code is managed independently in two sections, the initial segment is for the most part directed in Part V (five), the fourth piece of Article 38 to Article 46 of the Criminal Strategy Code and a small part is set out in Chapter XIV (fourteen) related to confiscation confirmed in the provisions of Article 1 point (16) of the Criminal Methodology Code, to be specific a progression of moves made by specialists to dominate or potentially hold heavily influenced by versatile, unmistakable and immaterial items for the reasons for proof in examination, indictment and assessment in court. Article 38 section (1) is an assertion of lawful assurance so there is no disarray about who can complete seizure, by establishing the groundwork for the guideline of separation (distinction) and useful specialization (who is authorized) institutionally (institution). Although it is possible that at the time of prosecution or

the level of examination in court it is deemed necessary to confiscate an object, the judge issues a stipulation so that the public prosecutor orders the investigator of the Indonesian Police to carry out the confiscation.

Criminal confiscation and general confiscation are two different types of confiscation in criminal law. Criminal confiscation is confiscation that is applied in the process of handling criminal cases. Meanwhile, general confiscation, just like criminal confiscation, is also applied in the process of handling cases, but more specifically to bankruptcy cases. Chapter 11 is an overall seizure of all resources of a bankrupt debt holder whose administration and the executives is completed by a keeper under the management of an administrative appointed authority as controlled in the UUK-PKPU19. Public seizure (public connection, gerechtelijk beslag) is completed against the debt holder's all's resources to accomplish a repayment between the borrower and his banks or so the resources are partitioned decently among his loan bosses. [8]

Article 1132 of the Common Code expresses that overall seizure applies to the indebted person's all's resources, both existing and procured during the insolvency cycle. The account holder's resources become guarantee for all lenders and the returns from the offer of these merchandise are partitioned by the proportion of their particular receivables except if among the banks have substantial purposes behind priority.

In Article 16 of the Common Regulation, general seizure is done by controlling the debt holder's all's resources by designating a guardian. The caretaker is approved to complete the assignment of overseeing as well as controlling the insolvency bequest from the date the liquidation is announced. General seizure is expected to keep the indebted person from committing acts that might hurt the interests of his creditors and stop the traffic of transactions against bankruptcy assets by the debtor which may harm his creditors so that the assets can be utilized for the benefit of his creditors. In addition, general confiscation ensures that the debtor's assets are not contested by his creditors. When creditors execute their assets individually, it will harm the debtor and other creditors so that control over bankruptcy property needs to be put under the control of the court, as stated in the principle of debt collection. [9] This general confiscation occurs by law so that it does not require a special action or certain legal actions such as other confiscations contained in civil law. All seizures that have been made are nullified and if necessary the Supervisory Judge must order their removal.

General confiscation is applied in situations where there is a seizure of the goods described as taxable by a third party or there are signs of insolvency. [10] This general confiscation is very interesting to discuss because the Bankruptcy Law makes it the starting point of a bankruptcy as stipulated in Article 1 number 1 of Regulation Number 37 of 2004 concerning Insolvency and Suspension of Obligation Installment Commitments (Chapter 11 Regulation), liquidation is an overall seizure of all resources of the bankrupt debt holder whose administration and removal are completed by the caretaker under the management of the administrative appointed authority. The meaning of chapter 11 represents that liquidation is about broad seizure, in spite of the way that the extent of insolvency in Regulation Number 37 of 2004 concerning Liquidation and Suspension of Obligation Installment Commitments isn't simply connected with general confiscation but also covers several other rules outside of general confiscation such as rehabilitation and the legal situation of the debtor after the end of the administration.

The nature of general confiscation in the bankruptcy process is by operation of law. This is because to carry out confiscation in the bankruptcy process does not require special action as with other confiscations in civil law. General confiscation in bankruptcy has the specificity of being able to lift other confiscations if at the time of being declared bankrupt, the bankrupt debtor's property is/was already in confiscation.

In liquidation regulation, the resources of the bankrupt party (chapter 11 home) are remembered for the object of general seizure (gerechtelijk beslag). In Article 21 of Regulation Number 37 of 2004 concerning Liquidation and Suspension of Obligation Installment Commitments, general seizure in chapter 11 incorporates the borrower's all's resources at the time the chapter 11 decision is articulated as well as everything got during chapter 11. At the point when the liquidation decision is articulated, the debt holder by regulation loses his entitlement to deal with his resources. The account holder completely gives the authority over to deal with his resources for the guardian. These resources incorporate the account holder's all's resources at the time the chapter 11 decision is articulated as well as all resources acquired during the insolvency interaction. However, there are assets or assets of the debtor that are not allowed to be subject to general confiscation with the aim that they are used properly by the bankrupt debtor, in Article 22 of the Bankruptcy Law states:

1. Objects used to support the debtor's work, including animals used for work, medical equipment, bedding used by the debtor and his family and foodstuffs sufficient for 30 days for the debtor and the debtor's family located on the premises.
2. Anything earned by the bankruptcy debtor from his/her employment as salary, wages, pension, waiting money or allowance, to the extent determined by the Supervisory Judge.
3. Money given to a debtor to fulfill a statutory support obligation.

There is a significant difference between confiscation in criminal law and confiscation in the context of general bankruptcy confiscation. If in criminal law confiscation is carried out for evidentiary purposes and there is a possibility of returning confiscated objects after the completion of the trial process and the decision is legally binding. If the object seized in criminal evidence is a dangerous object or an object obtained by harming the state, the object is confiscated for destruction or for the state to compensate for losses. Responsibility for confiscated objects rests with the investigator or public prosecutor in accordance with the level of examination. The most important issue in any criminal proceeding is that of proof, because it is from the answer to this question that the accused will be found guilty or acquitted. For the purpose of such proof, the presence of objects involved in the criminal offense is indispensable. The presence of objects involved in a criminal offense is indispensable. The objects in question are commonly known as evidence or *corpus delicti*, namely evidence of crime. The evidence has a very important role in the criminal process. [11]

In the mean time, general seizure in liquidation is a type of seizure of all borrower resources did by the Custodian under the management of the Administrative Appointed authority. Confiscation in general confiscation of bankruptcy is part of the systematic management of bankruptcy property in order to maintain the value of the bankruptcy property during the bankruptcy process, so that it still has a high selling value. The Curator is responsible for selling the bankruptcy assets by auction or underhand with the approval of the Supervisory Judge. [12]

The returns of the offer of liquidation resources by the Guardian are then appropriated to lenders reasonably to take care of the obligations of the bankrupt account holder. Fair distribution in bankruptcy is based on the principles of *paritas creditorium*, *pari passu pro rata parte* and structured creditors. [13] These three principles are the main principles in bankruptcy and cannot be separated from each other. *Paritas creditorium* means balance for all creditors. Creditors have equal rights to all bankruptcy assets owned by the debtor, both portable and resolute articles, both existing and future. [14] The principle of *pari passu pro rata parte* means that all creditors have equal rights to the bankruptcy estate, unless there are other arrangements in the legislation that make the creditor prioritized or prioritized over other creditors. This

standard underscores the circulation of the bankrupt account holder's resources for its loan bosses proportionally based on the amount of their respective receivables, not equally. Thus, the distribution of assets fulfills the element of justice and prevents the seizure of control of the debtor's assets by its creditors. The structured creditor principle is a classification of the position of creditors according to their respective classes. [15]

Thus, general confiscation in bankruptcy is a confiscation of all assets of the debtor, both those that have existed before the bankruptcy decision, and those that will exist in the future during bankruptcy. Seizure overall seizure is completed by the Caretaker under the management of the Administrative Adjudicator. The principal motivation behind broad seizure in chapter 11 is to settle the obligations of the bankrupt borrower to its lenders relatively and forestall the capture of the bankrupt debt holder's resources by its lenders. This is different from confiscation in the context of criminal law, where confiscation is carried out by investigators with the aim of only proving in related criminal cases. Confiscation is only carried out on objects that are related to the criminal offense, regardless of who the object is in. The Panel of Judges who examine, try and decide the criminal case will decide whether the confiscated object is returned to the defendant or to who is most entitled to the object or seized for the state.

Confiscation in general bankruptcy confiscation and criminal confiscation has significant differences. According to the subject, confiscation in bankruptcy is carried out against the assets of the bankrupt debtor, while in criminal confiscation the confiscation is carried out against objects that are in the control of the suspect or other parties related to the suspect. The object of general bankruptcy confiscation includes all assets of the bankrupt debtor, both those that existed before the bankruptcy verdict was pronounced, and those that will exist during bankruptcy.

On the other hand, the object of confiscation in criminal confiscation includes objects suspected of being related to a criminal offense, both those in the possession of the suspect and those in the hands of other parties. The purpose of confiscation in general confiscation of bankruptcy is for the arrangement of bankruptcy assets by the Curator under the supervision of the Supervisory Judge to be subsequently distributed to Creditors proportionally. Meanwhile, the purpose of confiscation in criminal confiscation is solely as evidence to make light of a criminal offense.

There is another goal that is no less important in confiscation, apart from providing certainty to the plaintiff that his claim has been guaranteed and has meaning and value if his claim is granted by the court, namely the existence of confiscation, means that there is definitely an object of execution for the plaintiff's victory, or it is concluded that the object of execution is certain. This keeps the plaintiff's victory from being illusory (empty) so that the plaintiff's victory has a material, namely the confiscated goods.

In practice, it is often found that a legal subject is involved in a criminal incident and becomes a bankruptcy debtor simultaneously for the same event. This has an impact on the object of confiscated objects which are simultaneously carried out criminal confiscation for evidentiary purposes and placed general bankruptcy confiscation for auction purposes. This situation results in a conflict of interest between the Investigator or Public Prosecutor and the Curator, where each feels entitled to confiscate the confiscated object. The main difference between criminal confiscation and general confiscation lies at the level of the case described. Criminal confiscation applies in the situation of criminal cases, while general confiscation applies in the situation of bankruptcy cases.

The procedure for law enforcement officials to carry out their duties in society, whether it is preventive or repressive action, is the realm of Criminal Procedure Law which has the aim of

seeking and approaching the material truth, in particular the total reality of a crook case by deciding the arrangements of criminal strategy regulation genuinely and precisely.

The party in charge of enforcing criminal law feels authorized to carry out criminal confiscation based on Article 39 paragraph (2) of the Criminal Procedure Law which states 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 trial of criminal cases. On the other hand, the Curator, who has the authority to conduct general seizure of the resources of bankrupt borrowers, utilizes the legitimate premise of Article 31 passage (1) and section (2) of Regulation Number 37 of 2004 concerning Chapter 11 and Suspension of Obligation Installment Commitments. The article states that, a bankruptcy verdict has the effect that all court enforcement decisions against any part of the Debtor's assets that have been initiated before bankruptcy, must be stopped immediately and since then no decision can be implemented including by holding the Debtor hostage. In addition, all foreclosures that have been made are extinguished and if necessary the Supervisory Judge must order their striking off.

These overlapping statutory provisions result in sharp differences in interpretation between law enforcers. In the end, legal opinions will be built according to the needs and interests of each party. The implementation of criminal confiscation which then continues with a judge's decision to confiscate the confiscated object from the defendant and use it for the state usually occurs in the event that the defendant according to the Panel of Judges is proven to have committed a criminal act of corruption or a criminal act of money laundering. On the other hand, as in this first travel case, there are thousands of victims who have suffered losses with a large enough nominal value hoping that these losses can be returned. Seeing such legal facts, if examined in terms of justice, certainty and legal benefits, the general confiscation of bankruptcy should be prioritized over confiscation in criminal acts. The implementation of general bankruptcy confiscation will be more beneficial to the community, especially creditors who have bills against bankrupt debtors. The verdict of confiscation of the defendant's assets in a Money Laundering Crime case is usually associated with the existence of state losses. In such cases, if it can be proven that the state suffered losses due to the defendant's actions, the state, through the State Attorney, can also be a party to the bankruptcy petition. [16] At least if the defendant has simultaneously become a bankrupt debtor, then the state through the State Attorney can register the receivables with the Curator for further verification of the receivables.

According to Purnadi Purbacaraka, *lex specialis derogate lex generali* means that if there is an event that is special in nature, special laws and regulations that regulate it must be applied. Even though, the special event may also be subject to laws and regulations that are more general or broader in scope. Hartono Hadisoeparto characterizes the guideline of *lex posteriori disparege legi priori* that, another regulation replaces or refutes the old regulation for however long it is about a similar material. The place of Regulation Number Long term 2004 on Liquidation and Suspension of Obligation Installment Commitments is *lex specialis* to the Criminal Code, especially those governing bankruptcy. Even so, in terms of novelty, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations is a newer law compared to the Criminal Code. Based on the above review, the position of general bankruptcy confiscation has a higher or prioritized position compared to criminal confiscation.

The legal implications of the disparity between criminal confiscation and general confiscation on individual human rights in fair legal protection can be complex and vary depending on the context. However, some common implications can be found, namely:

1. Inequality in the Protection of Individual Human Rights: The disparity between criminal and general confiscation may lead to inequalities in the protection of individual human rights. For example, in criminal confiscation proceedings,

individuals' rights to privacy, security, and personal freedom may be more jeopardized due to involvement in the investigation or prosecution of a criminal offense. On the other hand, in general confiscation, the individuals involved may face the same risks regarding the confiscation of goods or assets, without having to go through the same rigorous criminal law process.

2. Risk of Abuse of Power: the disparity between criminal and general confiscation also increases the risk of abuse of power by law enforcement officials or government agencies. In some cases, general confiscation proceedings can be used as a tool to oppress or restrict individual freedoms without a sound basis, which is contrary to the principles of human rights and justice.
3. Conformity with the Principle of Due Process: The protection of individual human rights in the context of due process is a fundamental principle in a democratic legal system. Disparities between criminal and general confiscation may affect compatibility with this principle. For example, if general confiscation procedures lack transparency or provide little space for individuals to defend their rights, this may lead to a violation of the principle of due process.
4. Access to Justice and the Courts: The protection of individual human rights in the context of due process is a fundamental principle in a democratic legal system. Disparities between criminal and general confiscation can affect compliance with this principle. For example, if general confiscation procedures lack transparency or provide little space for individuals to defend their rights, this may lead to a violation of the principle of due process.

To ensure the protection of individual rights and fairness in legal treatment, it is important for the legal system to pay attention to and address the disparity between criminal and general confiscation. This can be done through reforms or adjustments in legal regulations that take into account the need for the protection of individual human rights, the fairness of the legal process, and the balance between public safety and individual rights. The duty of law is to create and realize justice. Justice is the ultimate goal in relation to living together. In the interest of living together, there are three basic values of law, namely justice, expediency and legal certainty. [17] Regulation capabilities as an insurance for human interests. For human interests to be secured, the law should be executed. The execution of the actual law can happen regularly, calmly, yet can likewise happen because of infringement of the law. For this situation the law that has been abused should be authorized. It is through this policing the law turns into a reality. In upholding the law there are three components that must constantly be thought of, in particular: legitimate sureness (Rechtssicherheit), convenience (Zweckmassigkeit) and equity (Gerechtigkeit). [18]

The law must be implemented and enforced. Every person or human being certainly expects the law to apply and be implemented when a concrete event occurs as it should. How the law is that must apply; basically it is not allowed to deviate: *fiat justitia et pereat mundus* (even though this world collapses the law should in any case be implemented). This is what is generally anticipated by legitimate assurance. Legitimate sureness is a justiciable security against inconsistent activity, and that implies that an individual will be able to obtain something desired under certain conditions. The community certainly expects that with legal certainty, community life will be more orderly. The law functions to create and realize legal certainty because it aims at public order.

The primary motivation behind regulation is to make an organized society, making request and equilibrium. With the accomplishment of request in the public eye, it is normal that human interests will be secured. In accomplishing this objective, the law is entrusted with splitting

freedoms and commitments between people in the public arena, separating authority and directing how to take care of legitimate issues and keeping up with lawful assurance.

4 Conclusions and Suggestions

4.1 Conclusion

The disparity between criminal and general confiscation arrangements and their legal implications is a complex and relevant issue in the context of the criminal justice system. From the analysis that has been conducted, it can be concluded that there are fundamental differences between criminal confiscation and general confiscation in terms of purpose, procedure, scope of application, and legal impact. Criminal confiscation is related to criminal proceedings, while general confiscation can occur in an administrative or civil context. The disparity between these two types of confiscation can have significant implications for individual human rights, particularly in relation to the protection of privacy, security and access to justice.

Inequalities in the protection of individual human rights may result from differences in the process and application of confiscation. There is a risk of abuse of power by law enforcement officials or government agencies in both types of confiscation, but in the context of general confiscation, this risk may be higher due to the lack of clear boundaries in procedure and application. The principles of protection of individual human rights and fairness in the legal process should be seriously considered in formulating regulations on criminal confiscation and general confiscation. Efforts to reduce disparities and ensure due process fairness are important in maintaining the integrity of the criminal justice system. By understanding and addressing the disparity between criminal and general confiscation arrangements and their legal implications, it is hoped that the criminal justice system can become more fair, efficient and reliable in maintaining public safety while protecting individual human rights. Cooperation between various stakeholders, including the government, law enforcement agencies, academia and civil society, is required to achieve this goal.

4.2 Suggestions

In overcoming disparities in the regulation of criminal confiscation and general confiscation to improve legal justice, it is necessary to encourage regulatory harmonization between criminal confiscation and general confiscation to reduce disparities in procedures, scope, and legal impact. This harmonization should take into account the protection of individual human rights and the principle of due process justice. Strengthen the protection of individual human rights in both types of confiscation, including by clarifying the procedures to be followed by law enforcement officials, providing greater access to individuals to defend their rights, and strengthening oversight of the implementation of confiscation.

Increase transparency and accountability in the criminal confiscation and general confiscation processes by ensuring that confiscation procedures are open, well documented and accountable. This includes strengthening independent oversight mechanisms as well as providing greater access to the public to monitor the confiscation process. Encourage closer collaboration between law enforcement agencies, government, academia and civil society in formulating policies and practices related to criminal and public confiscation.

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