CURATOR'S LEGAL EFFORTS AGAINST BANKRUPTCY ESTATE (BOEDEL) ASSETS SEIZED IN CRIMINAL CONFISCATION OF CORRUPTION CASES

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Abstract

This paper aims to analyze the legal aspects of the general seizure and criminal seizure in Indonesian positive law, as well as to understand the legal efforts of the curator towards the assets of bankrupt estates placed under criminal seizure for corruption and economic crimes. The method used in writing this article is the normative legal research method, which starts from the normative problem of conflict of norms, and the results of this journal article are to determine the position of general seizure and criminal seizure based on the principle of legal preference, namely the principle of lex superior derogat legi inferiori, lex posterior derogate legi priori, and lex specialis derogate legi generalis, and the legal efforts that can be taken by the curator when the assets of bankrupt estates are placed under criminal seizure is by filing an objection to the Corruption Court and by filing a pretrial against the seizure actions carried out by the corruption investigators. The legal status of general attachment and criminal attachment can be determined by the principles of legal preference, including lex superior derogat legi inferiori, lex posterior derogate legi priori, and lex specialis derogate legi generalis. In most cases, general attachment takes priority over criminal attachment, except in cases of corruption (tipikor). In such cases, neither general nor criminal attachment can take precedence over the other. If criminal attachment is imposed on a bankrupt estate, the Curator can file an objection with the Corruption Court within two months of the court decision.

Keywords: *Bankrupt Estate, Criminal Seizure, Legal Efforts*

1. INTRODUCTION

Bankruptcy or *pailit* refers to a situation where a debtor is unable to fulfill their debt obligations. The term "*pailit*" is another word for bankruptcy and includes the idea of financial instability. This term originated from a historical event where a debtor couldn't meet their creditor's demands, leading to the creditor's anger and destruction of chairs in the debtor's place. In French, "*pailit*" comes from "*failite*," which means a halt or delay in payment, while in English, it is known as "failure (Tirayo & Halim, 2019). According to M. Hadi Shubhan, bankruptcy is a debtor who does not have the ability to fulfill all payments to creditors. This state of inability to pay is caused by the condition of the debtor's business which is experiencing a setback and the debtor's finances are not good (financial distress) (Subhan, 2008).

In Indonesian positive law, the definition of bankruptcy can be found by examining Article 1 number 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (KPKPU Law) that:

"Bankruptcy is a general confiscation of all assets of a bankrupt debtor, the management and management of which is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law."

Based on the provisions of Article 1 number 1 of the KPKPU Law, it can be understood that the importance of bankruptcy is to manage and dispose of all the assets of the bankrupt debtor. In connection with this, the Curator is the party who carries out the management and settlement supervised by the Supervisory Judge. Referring to Article 1 number 5 of the KPKPU Law, it is stipulated that:

"A curator is the Estate Office or an individual appointed by the Court to manage and settle the assets of a Bankrupt Debtor under the supervision of a Supervising Judge in accordance with this Law."

The duties of the curator are explicitly regulated in Article 69 of the KPKPU Law that:

"(1) The Curator's duty is to manage and/or administer the bankruptcy estate.
(2) In carrying out its duties, the Curator:
a. it is not required to obtain the consent of or give prior notice to the debtor or one of the Debtor's organs, even though in circumstances outside bankruptcy such consent or notice would be required;
b. may make loans from third parties, only in order to increase the value of the bankruptcy estate."

In line with his duties, the Curator has several authorities in managing and/or administering bankruptcy assets which are regulated in the KPKPU Law as follows:

a. The Curator is authorized to act independently in the implementation of his duties (see Article 73 paragraph (3) of the Bankruptcy and Postponement of Debt Payment Obligations Law).
b. May obtain loans from third parties as long as it is for the purpose of enhancing the bankrupt estate (see Article 69 paragraph (2) letter b of the Bankruptcy and Postponement of Debt Payment Obligations Law).
c. Has the authority to encumber collateral, pledge, or other security rights with the approval of the Supervising Judge (see Article 69 paragraph (3) of the Bankruptcy and Postponement of Debt Payment Obligations Law).
d. The Curator may approach the court with the approval of the Supervising Judge, except for specific matters (see Article 69 paragraph (5) of the Bankruptcy and Postponement of Debt Payment Obligations Law).
e. The authority to sell collateral from separate creditors after 2 (two) months of insolvency (Article 59 paragraph (1) of the Bankruptcy and Postponement of Debt Payment Obligations Law) or the Curator sells movable property during the stay period (Article 56 paragraph (3) of the Bankruptcy and Postponement of Debt Payment Obligations Law).
f. Initiating legal actions based on the legal institution of action pauliana (Article 41 in conjunction with Article 47 paragraph (1) of the Bankruptcy and Postponement of Debt Payment Obligations Law).
g. Verifying debts and creating a list of debts (see Article 116 in conjunction with Article 117 of the Bankruptcy and Postponement of Debt Payment Obligations Law).
h. The Curator is authorized to sell the assets of the bankrupt estate for the purpose of liquidation (Yuhelson, 2019).

Related to the administration and/or liquidation of the bankrupt estate conducted by the Curator, it is a logical-juridical consequence of the legal event where a debtor is declared bankrupt based on a court decision. The decision declaring bankruptcy results in the debtor losing the right to control and manage the assets included in the bankrupt estate, where all the debtor's wealth is automatically placed under public seizure. Subsequently, in accordance with the Bankruptcy and Postponement of Debt Payment Obligations Law (KPKPU Law), administration and/or liquidation will be carried out by the Curator. However, in reality, legal issues arise when criminal seizure is also imposed on the assets of the bankrupt estate in cases of corruption. One notable publicized case is "Case Number 16/Pdt.Sus-GGL/2017/PN Niaga Jkt.Pst. j.o Number 88/Pdt.Sus-PKPU/2015/PN Niaga Jkt.Pst," which illustrates that PT. Meranti Maritime and Henry Djuhari, on August 22, 2016, were declared bankrupt by the Commercial Court at the Central Jakarta District Court based on Decision Number: 88/Pdt.Sus.PKPU/2015/PN.Niaga.Jkt.Pst. After the declaration of bankruptcy, all assets of Henry Djuhari (In Bankruptcy) were placed under public seizure by the curator. However, the Deputy Attorney General for Special Crimes, acting as the Investigator, seized and blocked the bankrupt estate assets, including Building Rights Certificate Number 2628, Ownership Rights Number 4395, and Number 3617, which were suspected to be obtained through corrupt practices by Henry Djuhari (Ruswati, 2022).

In light of the existing legal issues, the Supreme Court in 2022 established Supreme Court Regulation Number 2 of 2022 on Procedures for Resolving Good-Faith Third-Party Objections to Decisions of Confiscation of Non-Defendant Property in Corruption Cases (Perma 2/2022) as a strategic measure to address legal problems arising from the conflict of norms between Article 31 of the Bankruptcy and Postponement of Debt Payment Obligations Law (KPKPU Law), which essentially determines that public seizure terminates all other seizures, and Article 39 paragraph (2) of the Code of Criminal Procedure (KUHAP), which stipulates that criminal seizures can be made against bankrupt estate assets. Consequently, questions arise regarding the status of public seizure and criminal seizure post the enactment of Perma a quo, particularly concerning the fundamental legal issue of prioritization. Furthermore, a legal aspect that requires further analysis is related to whether, after the enactment of Perma a quo, the Curator can pursue other legal actions against the assets of the bankrupt estate that are subject to criminal seizure, in addition to filing objections with the Corruption Court as stipulated in Perma a quo.

Based on the results of the researcher's search, there are several journal writings that have the theme of legal issues similar to this paper such as a legal journal written by Lukman Ilman Nurhakim and Efa Laela Fakhriah (Nurhakim & Fakhriah, 2020) which focuses on the discussion of the curator's right to file a pretrial in the event that the bankruptcy estate assets that the investigator wants to manage and/or manage are placed under criminal confiscation. Furthermore, Siti Hapsah Isfardiyana (Isfardiyana, 2016) which discusses the position of general confiscation which should precede criminal confiscation in the administration of bankruptcy property. The difference between this article and the two articles with similar themes described previously is the novelty of this article, which examines the basis of Perma 2/2022, whereas when the two articles were written, the Supreme Court had not yet enacted the Perma a quo. In addition, this research specifically examines the legal efforts that can be made by the Curator of bankruptcy

estate assets that are placed under criminal cases of corruption (*tipikor*) confiscation after the enactment of Perma 2/2022.

2. RESEARCH METHODS

This paper uses a normative legal research method that departs from the problem of norms in the form of conflict of norms from the regulation of general confiscation (vide Article 31 of the KPKPU Law) with criminal confiscation (vide Article 39 of the Criminal Procedure Code) by examining also from the perspective of Perma 2/2022. The sources of legal materials contained in this writing consist of primary legal materials including the KPKPU Law, KUHAP, and related legislation as well as secondary legal materials including various books and scientific journals that can help to analyze primary legal materials. Furthermore, the document study technique is used as a legal material collection technique in this writing. The overall legal material collected will be analyzed qualitatively-normatively by interpreting and constructing statements contained in legislation using a statute approach and conceptual approach.

3. RESULTS AND DISCUSSION

3.1. Legal Aspects of the Position of General Confiscation and Criminal Confiscation in Indonesian Positive Law

The term confiscation terminology comes from the Dutch language, namely "*beslag*" and in Indonesian "*beslah*" where the raw term is called *sita* or confiscation. According to M. Yahya Harahap, the definition of confiscation can be described into several definitions as follows:

1. "Forced custody actions are carried out officially based on a court order or judgment;
2. The act of forcibly placing the defendant's wealth under custody (to take into custody the property of a defendant);
3. The determination and custody of seized items persist throughout the examination process until there is a legally binding court decision that validates or invalidates the seizure action; and
4. The items placed under custody include disputed property, but may also include items intended for use as a means of payment or debt settlement by the debtor or defendant, achieved through the sale by auction (executorial verkoop) of the seized items. (Harahap, 2017)"

Furthermore, Wildan Suyuthi also conveyed his understanding of *sita* (*beslah*), namely "as a legal action of the court on the movable and immovable objects belonging to the Defendant at the request of the Plaintiff to be monitored or taken to ensure that the Plaintiff's claim / Plaintiff's authority does not become empty (Prabowo, 2021). In other words, confiscation is the taking or withholding of a person's property which is carried out by stipulation or order of the President of the Court or the President of the Assembly as its basis." Regarding the types of confiscation itself include:

1. Marital seizure or *maritale beslag* is a seizure intended to ensure that the seized property cannot be sold, thus freezing the assets during the court examination of the divorce dispute between the petitioner and the opposing party.

2. Replevin seizure (*revindicatoir*) is a seizure requested by the owner of movable property that is in the possession of another person, either verbally or in writing, to the court chairman where the person holding the property resides.
3. Conservatory seizure (*conservatoir beslag*) is a security seizure against the debtor's property to ensure the enforcement of a civil judgment by liquidating or selling the seized property to meet the plaintiff's claims.
4. Adjustment seizure (*vergelijkende beslag*) is a seizure applied to property that has been placed under seizure in accordance with Article 436 Rv.
5. Execution seizure (*executorial beslag*) is a seizure of the wealth of the party defeated in a civil case, whether movable or immovable property, to enforce the final and legally binding judgment of the court.
6. Criminal seizure is a seizure carried out by investigators for the purpose of evidence in investigations, prosecutions, and trials.
7. Public seizure is a seizure directed at the entire assets of the debtor, both present and future, where the proceeds from the sale of the assets will be distributed fairly and proportionally among the creditors.

Delving deeper, theoretically, public seizure is a form of attachment recognized in civil law, particularly in bankruptcy law, which governs private relationships between individuals. The legal basis for the existence of public seizure in bankruptcy law is explicitly defined in Article 1, paragraph, of the Bankruptcy and Postponement of Debt Payment Obligations Law (KPKPU Law), which stipulates that:

"Bankruptcy is the public seizure of all assets of the bankrupt debtor, the administration and liquidation of which are carried out by the Curator under the supervision of the Supervising Judge as regulated in this Law."

According to Hadi Shubhan, the essence of general confiscation is "aimed at the debtor's property where the intention is to stop the action against the seizure of bankruptcy property by its creditors and to stop the transaction traffic on bankruptcy property by the debtor which is likely to harm its creditors (Subhan, 2008). Public seizure terminates individual seizures and executions carried out by creditors, requiring creditors to submit collectively (*consursus creditorium*)." Examining the Bankruptcy and Postponement of Debt Payment Obligations Law (KPKPU Law), public seizure, capable of concluding all other forms of attachment, is regulated in Article 31 of the KPKPU Law. From another perspective, under the public law regime, specifically criminal law, there is also a form of seizure known as criminal seizure. Criminal seizure involves a series of investigative actions to take over and/or secure movable or immovable property, tangible or intangible, for the purpose of evidence in investigations, prosecutions, and trials (see Article 1, number 16, Code of Criminal Procedure). Furthermore, based on Article 42, paragraph (1) of the Code of Criminal Procedure (KUHAP), it is stipulated that:

"(1) Investigators have the authority to instruct individuals in possession of seizable assets to surrender those assets for examination, and a written acknowledgment must be provided to the person surrendering the assets."

As further referred to in Article 39 of the Criminal Procedure Code, the items that can be subject to confiscation are also determined, namely:

"a) Property or claims of the suspect or defendant, entirely or partially alleged to have been obtained from a criminal act or as a result of a criminal act,
b) Assets that have been directly used to commit a criminal act or to prepare for it,
c) Assets used to obstruct an investigation,
d) Assets specially created or intended for committing a criminal act,
e) Other assets directly related to the criminal act."

The KUHAP determines the forms of confiscation which can be divided into three forms, namely ordinary or general confiscation, confiscation in necessary and urgent circumstances and confiscation in circumstances of being caught red-handed. Looking back at the provisions of Article 31 of the KPKPU Law with Article 39 of the Criminal Procedure Code, it creates a conflict of arrangements related to which confiscation takes precedence, to make it easier to understand the existing conflict of arrangements, it is further described in the form of a comparison table as follows:

Table 1. Comparison of Conflicts between General Confiscation and Criminal Confiscation Arrangements

KPKPU Law	KUHAP (Criminal Procedure Code)
Article 31 states that: (1) "The bankruptcy declaration decision results in the immediate cessation of all execution orders by the Court against any part of the Debtor's assets that have commenced before bankruptcy, and from that moment, no judgment can be executed, including or also by detaining the Debtor. (2) All seizures that have been carried out are considered null and void, and if necessary, the Supervising Judge must order their removal. (3) Without prejudice to the provisions of Article 93, a Debtor who is currently in custody must be released immediately after the bankruptcy declaration decision is pronounced."	Article 39 states that: (1) "Subject to confiscation are: a. Property or claims of the suspect or defendant, entirely or partially alleged to have been obtained from a criminal act or as a result of a criminal act; b. Assets that have been directly used to commit a criminal act or to prepare for it; c. Assets used to obstruct the investigation of a criminal act; d. Assets specially created or intended for committing a criminal act; e. Other assets directly related to the committed criminal act. (2) Assets subject to seizure in civil cases or bankruptcy may also be seized for the purposes of investigation, prosecution, and adjudication of criminal cases, as long as they meet the provisions of paragraph (1)."

In determining the position of public seizure and criminal seizure, especially regarding the fundamental question of which seizure should take precedence, it can be examined based on the principle of legal preference, namely the principles of *lex superior derogat legi inferiori*, *lex posterior derogate legi priori*, and *lex specialis derogate legi generalis*, which are further elaborated in the form of a comparative table as follows:

Table 2. Analysis of Legal Preference of General Confiscation vs Criminal Confiscation

General Confiscation	Criminal Confiscation
General confiscation is specifically regulated in the KPKPU Law.	Criminal confiscation is generally regulated in the Criminal Procedure Code (KUHAP)
Analysis based on the principle of lex superior derogat legi inferiori: Because general confiscation and criminal confiscation are both regulated in the legal product of the Act, general confiscation and criminal confiscation have the same legal position.	
KPKPU Law has been enacted since 2004.	The Criminal Procedure Code has been enacted since 1981
Analysis based on lex posterior derogate legi priori: Because the legal product governing general confiscation is more recently enacted than the Criminal Procedure Code, general confiscation should take precedence. However, for criminal confiscation in special cases such as criminal confiscation of tipikor cases, the criminal confiscation of tipikor cases takes precedence considering that the legal basis was promulgated in 2019 through Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (Tipikor Law).	
General confiscation is regulated in a special law, namely the KPKPU Law.	Criminal confiscation is regulated in general rules, namely the Criminal Procedure Code (KUHAP).
Analysis based on lex specialis derogate legi generalis: Because the legal basis for general confiscation, namely the KPKU Law, is more specific than the criminal confiscation regulated in the Criminal Procedure Code, general confiscation should take precedence. However, especially in criminal confiscation in special criminal offenses such as tipikor, general confiscation does not necessarily take precedence considering that the Tipikor Law is a special rule.	

Based on the analysis in table 2 above, it can be understood that general confiscation should take precedence over criminal confiscation. The exception to this precedence only occurs when the criminal confiscation carried out is confiscation in a special criminal case. In criminal confiscation of *tipikor* cases, general confiscation cannot take precedence, on the other hand, criminal confiscation also cannot be prematurely interpreted as taking precedence (Herawati & Widjaja, 2021). In relation to this conflict of norms, the existence of Perma 2/2022 cannot actually be used as a basis for consideration in deciding that criminal confiscation must take precedence over general confiscation. This is because general confiscation is based on a legal product at the level of a law that specifically regulates the field of bankruptcy, while Perma 2/2022 is a regulation at a level below the law. Although Perma 2/2022 cannot provide legal certainty in answering which confiscation must take precedence, at least after the enactment of Perma 2/2022 there has been a clear procedural procedure in filing an objection to the criminal confiscation of *tipikor* placed on the bankruptcy estate assets.

3.2. Curator's Legal Efforts Against Bankruptcy Trust Assets Confiscated by Corruption Crimes

Legal effort is the recourse provided by the law to an individual or legal entity to take certain actions in order to challenge a court decision, serving as a venue for parties dissatisfied with the decision due to its non-alignment with their desires (Hsb, 2015). Theoretically, legal remedies can be dichotomized into ordinary legal remedies and extraordinary legal remedies where ordinary law includes resistance/*verzet*, appeal, cassation while extraordinary legal remedies include judicial review (request civil) and third party resistance (*denderverzet*) against execution seizure (Sari et al., 2017). Then related to bankruptcy assets themselves are assets belonging to individuals or entities that experience bankruptcy or bankruptcy and have been declared by law. Legal efforts against bankruptcy estate assets placed in criminal confiscation of *tipikor* can be interpreted as an effort given by the law to fight against criminal confiscation that has been placed on bankruptcy estate assets due to the interests of investigation, especially in proving tipikor cases and / or as a result of additional punishment in the form of confiscation determined by the Tipikor court so that the assets cannot be cleaned up for the good of the creditors (Hutabarat et al., 2022). Looking into the provisions of Article 69 paragraph (1) of the KPKPU Law, it is explicitly regulated regarding the duties of the Curator that:

"The task of the Curator is to manage and/or administer the bankruptcy estate"

In carrying out his duties as mandated by Article 69 paragraph (1) of the KPKPU Law, the Curator may appear in court in accordance with the provisions of Article 69 paragraph (5) to ensure that the curator has not committed any errors or omissions in carrying out the management and/or administration duties that have caused losses to the bankruptcy estate.

ased on these provisions, the Curator has the legal basis to make various legal efforts regarding the management and/or administration process. Specifically, the legal effort that can be taken by the Curator when the bankruptcy estate assets are placed under criminal confiscation is to file an objection to the Corruption Court. Article 1 point 1 of Perma 2/2022 defines the definition of objection as:

"An objection is a request submitted by a third party in good faith to the court against a court decision that imposes forfeiture of goods not belonging to the defendant in a corruption case."

Furthermore, relating to applicants who have legal standing is regulated through Article 1 number 2 of Perma 2/2022 that:

"The Applicant is the owner, guardian, guardian of the owner of the goods, or curator in a bankruptcy case as a Third Party in Good Faith who submits a request for Objection as regulated in this Supreme Court Regulation."

Then the definition of the party referred to from the party in good faith is given in Article 1 number 3 of Perma 2/2022 that:

"A Third Party in Good Faith is a party who can prove to be the legal owner, guardian, trustee of the owner of the goods, or curator in a bankruptcy case for goods that are not legally related to the process of corruption."

Based on the provisions of Article 1 number 3 of Perma 2/2022, it can be understood that the Curator is included as a third party in good faith who can act as a petitioner for objections to bankruptcy assets that are placed under criminal confiscation in a tipikor case. Looking deeper into Perma 2/2022, related to the submission of objections itself, the procedure has been regulated according to Part Two of Perma 2/2022 that:

Article 3 Perma 2/2022

(1) "Goods or companies declared confiscated to become state property or for destruction can be objected to in writing by a Third Party of Good Faith.
(2) The third party eligible to submit an objection as mentioned in paragraph (1) is the owner, caretaker, guardian of the goods, or curator in bankruptcy cases of a property, whether in its entirety or partially subjected to confiscation.
(3) Objection requests may be submitted by the curator if the bankruptcy declaration is pronounced before the commencement of the investigation.
(4) Objections can be filed both before and after the requested object undergoes execution.
(5) An objection submitted before the execution does not impede the prosecutor at the Prosecutor's Office, the military judge at the military court/military high military court, or the Corruption Eradication Commission from carrying out the execution.
(6) In the event that an objection is raised after the executed object, the objection shall also include the Minister of Finance as a Co-Respondent."

Article 4 Perma 2/2022

a) "Objections must be submitted within a maximum period of 2 (two) months after the court decision in the Principal Case is pronounced in a public hearing.
b) In the event that the decision on the Principal Case is an appellate or cassation decision, objections must be submitted no later than 2 (two) months after the excerpt/copy of the decision is notified to the public prosecutor, defendant, and/or announced on the court notice board and/or electronically.
c) Objections can only be filed once by the same party.
d) The court clerk at the place where the objection is filed, within a maximum of 3 (three) days from the registration of the objection application, notifies the panel of judges adjudicating the Principal Case at the appellate and/or cassation level of the existence of the objection application.
e) The court announces every content of the verdict in corruption criminal cases through the Court Information System.
f) Objections are submitted in writing through electronic or conventional means to the corruption court at the district court or military court/high military court that adjudicates the Principal Case."

Referring to the provisions of Article 3 to Article 4 of Perma 2/2022 above, it can be understood that "an objection request can be submitted by the Curator if the bankruptcy declaration decision is pronounced before the commencement of the investigation and the objection can be submitted before or after the object requested for execution as long as it is submitted no later than 2 (two) months after the court decision on the main case is pronounced in a session open to the public. In addition, objections can only be filed 1

(one) time by the Curator." Basically, the examination process in the objection petition refers to the applicable procedural law, which is carried out with the first stage being the opening of the trial. Second, the examination of the identity of the Applicant and Respondent. Third, the reading of the objection. Fourth, the reading of responses to objections. Fifth, the applicant's evidence. Finally, the agenda is the pronouncement of the decision (vide Article 9 of Perma 2/2022). Specifically, a new objection request can be granted if the objection submitted meets the provisions of Article 12 of Perma 2/2022, namely:

"(1) The objection is granted if the Applicant can prove that:

a) *The applicant obtains the right to the object of the application before the investigation and/or confiscation is carried out;*
b) *The applicant obtained the rights to the object of the application based on good faith;*
c) *The object of objection is goods that are confiscated or destroyed in a corruption case; and*
d) *The applicant is not related to the criminal act of corruption committed by the defendant."*

On the determination of objections that have been decided by the Panel of Judges of the Corruption Court, it is still possible to take further legal action, namely by submitting a cassation application. This is expressly regulated in the Fifth Section on Legal Remedies Article 15 that:

"(1) The Applicant, Respondent and/or Co-Respondent may file a cassation appeal against the ruling on the objection.

(2) An application for cassation shall be filed no later than 14 (fourteen) days after the Determination is pronounced in an open session for the public or after the determination is notified to the absent party."

In another perspective, after the enactment of Perma 2/2022, the legal remedies that can be taken by the Curator have increasingly reflected legal certainty where before the enactment of Perma 2/2022 there was often confusion in practice regarding the terminology of legal remedies taken to the Corruption Court for the placement of criminal confiscation of bankruptcy estate assets along with its procedural legal aspects. However, even though the filing of objections to criminal confiscation of corruption has now been regulated in Perma 2/2022, this still does not make the Curator only able to take this legal effort in providing resistance to bankruptcy estate assets that are placed in criminal confiscation of corruption cases.

Another legal effort that can be taken is to file a pretrial against the seizure action taken by the tipikor investigator. If during the trial process the Investigator cannot prove the reason for the criminal confiscation of the bankruptcy estate, the judge has the right to order the Investigator to return the disputed object to the Curator and to manage and organize the bankruptcy estate. Thus, the curator can argue that the action of the Investigator in placing a criminal confiscation on the bankruptcy estate without seeking the approval of the supervisory judge is considered not to fulfill the provisions of the Legislation considering that there is a legal relationship (*Rechtsbetreeking*) between the object and the bankruptcy institution regulated in the KPKPU Law (Nurhakim & Fakhriah, 2020).

4. CONCLUSION

Determining the legal status of general attachment and criminal attachment can be examined based on the principle of legal preference, namely the principles of *lex superior derogat legi inferiori*, *lex posterior derogate legi priori*, and *lex specialis derogate legi generalis*. Based on the analysis, it can be understood that general attachment should take precedence over criminal attachment. The exception to this preference arises only when the criminal attachment pertains to the seizure in cases of specific criminal offenses. In cases of corruption (*tipikor*), general attachment cannot be prioritized over criminal attachment; conversely, the criminal attachment cannot be prematurely construed as having precedence. Legal recourse available to the Curator, if criminal attachment is imposed on the assets of a bankrupt estate, involves filing an objection with the Corruption Court. The Curator may submit an objection if the bankruptcy declaration is pronounced before the commencement of the investigation, and such objection can be filed either before or after the requested object undergoes execution, provided that the objection is submitted within a maximum period of 2 (two) months after the court decision in the principal case is pronounced in an open public hearing. Another legal effort that can be pursued is filing a pretrial motion against the actions of attachment conducted by the corruption investigator.

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