

SUPREMACY OF LAW IN THE SETTLEMENT OF BANKRUPT DEBTORS' ASSETS INVOLVED IN CRIMINAL OFFENSES: AN ANALYSIS OF THE CONFLICT BETWEEN GENERAL BANKRUPTCY SEIZURE AND CRIMINAL SEIZURE

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DOI: <http://dx.doi.org/10.33603/responsif.v17i1.12006>

Accepted: 21 January 2026; Revised: 2 February 2026; Published: 17 February 2026

Abstract

This study examines the normative and practical conflict between general bankruptcy seizure (sita umum) under Article 21 of the Indonesian Bankruptcy Law and criminal seizure (sita pidana) conducted within criminal proceedings. Using statutory, conceptual, and comparative legal approaches, the research analyzes how overlapping authority between bankruptcy trustees (curators) and criminal law enforcement institutions-investigators, prosecutors, and the Corruption Eradication Commission (KPK)-creates legal uncertainty in the administration of debtor assets. The study finds that jurisprudential practices in Indonesia frequently prioritize criminal seizure, thereby undermining the bankruptcy principle of *pari passu pro rata parte* and weakening creditor protection. Through comparative insights, particularly from Malaysia's insolvency framework, this research proposes a legal harmonization model that emphasizes coordination mechanisms between bankruptcy administration and criminal asset recovery regimes to uphold legal certainty, fairness to creditors, and the supremacy of law. In Indonesia, problems emerge when a debtor is declared insolvent while concurrently undergoing criminal prosecution. This study analyzes the legal conflict between *sita umum* (general bankruptcy seizure), which guarantees equitable distribution among creditors, and *sita pidana* (criminal seizure), which safeguards assets for evidentiary purposes, confiscation, or reparation. This study employs a normative legal research methodology, incorporating statutory review, jurisprudence, and comparative analysis, to assess the Bankruptcy Law (Law No. 37/2004), the Criminal Procedure Code (KUHAP), and supplementary legislation, including the Anti-Money Laundering Law. Research indicates that Indonesian jurisprudence emphasizes criminal seizure, particularly in situations of corruption and fraud, frequently undermining creditor protection due to a lack of standardized regulations. A comparative analysis of Malaysia reveals a better integrated structure that protects creditors' rights while considering criminal justice objectives. Findings show that Indonesian jurisprudence prioritizes criminal seizure, especially in corruption and fraud cases, often weakening creditor protection due to the absence of harmonized regulations. A comparative review of Malaysia demonstrates a more coordinated framework that safeguards creditors' rights while accommodating criminal justice

interests. The study concludes that harmonization of Indonesian regulations, stronger coordination between curators and law enforcement, and clearer guidelines on overlapping claims are crucial to achieving legal certainty, creditor protection, and enforcement of justice. The institutional conflict between bankruptcy administration and criminal law enforcement has become increasingly visible in cases in which debtor assets are simultaneously subject to both bankruptcy proceedings and criminal investigations. In practice, curators responsible for managing bankruptcy estates often face competing claims from investigators or prosecutors seeking criminal seizure of the same assets. This institutional overlap generates uncertainty regarding which legal regime should prevail. Without clear coordination mechanisms, the enforcement of criminal law may inadvertently undermine the collective creditor protection principle embedded in bankruptcy law.

Keywords: Bankruptcy, Criminal Seizure, Creditor Protection, Legal Harmonization

A. INTRODUCTION

The intersection of bankruptcy and criminal processes in Indonesia engenders ambiguity in asset allocation. Bankruptcy law safeguards creditors, whereas criminal law emphasizes public interest and justice. This tension intensifies when the same assets are subjected to both civil seizure and criminal seizure. Bankruptcy and corruption-related criminal charges are two significant legal frameworks within Indonesia's legal system. Despite pursuing distinct objectives, they frequently converge in practice.

[1, 2, 3, 4].

Research Objectives

This study aims to:

1. Analyze the concept and mechanism of **general bankruptcy seizure (sita umum)** in bankruptcy law.
2. Explain the concept and mechanism of **criminal seizure (sita pidana)** in corruption offenses.
3. Examine the normative and practical conflicts between **sita umum** and **sita pidana**.
4. Formulate a legal harmonization model to effectively uphold the rule/supremacy of law.

Research Benefits

This study is expected to provide the following benefits :

1. **Theoretical Benefit:** To contribute to the development of legal scholarship, particularly bankruptcy law and anti-corruption criminal law, through an integrative approach.
2. **Practical Benefit:** To serve as a reference for judges, curators, prosecutors, the Corruption Eradication Commission (KPK), and policymakers in addressing conflicts in asset seizure. In addition, the findings are expected to provide a basis for legislative reform in the fields of bankruptcy and criminal law, and to strengthen inter-agency cooperation in managing

conflicts between **sita umum** and **sita pidana**.

Research Originality

This study offers novelty by proposing a legal harmonization model between general seizure in bankruptcy and criminal seizure in corruption cases through the establishment of an integrated asset management institution and clear rules on seizure priority to ensure legal certainty. This research is significant as it tackles a real legal issue and helps to comparative legal studies by assessing how Indonesia and Malaysia manage analogous situations.

The originality of this research lies in the formulation of a legal harmonization model that integrates bankruptcy administration and criminal asset recovery mechanisms. The model proposes coordinated asset management, judicial guidance on priority rules, and institutional communication between curators and criminal law enforcement agencies. This framework contributes to the broader academic discourse on the intersection between insolvency law and criminal justice systems, particularly in emerging legal systems.

Research on bankruptcy law and criminal asset recovery has advanced significantly in legal scholarship, particularly in the areas of creditor protection, insolvency administration, and criminal confiscation mechanisms. Classical bankruptcy theory emphasizes the principle of *pari passu pro rata parte*, which ensures proportional distribution of debtor assets among creditors through collective proceedings administered by a curator. Scholars such as Sjahdeini highlight the importance of bankruptcy mechanisms in protecting creditor rights and maintaining legal certainty in insolvency cases.

In parallel, studies on criminal law and asset recovery examine the state's authority to seize assets derived from criminal activities, such as corruption, fraud, or money laundering. Criminal seizure serves the objectives of deterrence, punishment, and recovery of public losses, as regulated in the Indonesian Criminal Procedure Code and complementary legislation on corruption and money laundering.

Comparative legal scholarship has also explored insolvency reforms and creditor protection mechanisms in various jurisdictions. Research on Malaysia's legal framework demonstrates that coordination between bankruptcy administration and criminal proceedings can reduce conflicts between asset distribution and criminal confiscation. Such frameworks allow the protection of creditor interests while still enabling the state to enforce criminal law and recover illicit assets.

Despite these developments, most prior studies analyze bankruptcy law and criminal asset recovery as separate legal regimes, with limited discussion of their institutional interaction when both mechanisms apply to the same debtor's assets.

Research Gap

Although numerous studies address bankruptcy law and criminal asset seizure independently, several important gaps remain in the literature.

First, existing research rarely examines the normative conflict between general bankruptcy seizure (*sita umum*) and criminal seizure (*sita pidana*) when both mechanisms target the same debtor assets. This overlap creates uncertainty regarding asset control and distribution, particularly when law enforcement agencies and bankruptcy curators claim authority over the same property.

Second, there is limited analysis regarding the hierarchy or priority between creditor claims and criminal asset recovery mechanisms. Indonesian jurisprudence tends to prioritize criminal confiscation in cases involving corruption or financial crimes, but the absence of explicit statutory guidance leads to inconsistent judicial decisions and weak creditor protection.

Third, comparative research on how different jurisdictions resolve conflicts between bankruptcy administration and criminal proceedings remains relatively underdeveloped. Although Malaysia offers examples of more coordinated procedures, systematic legal analysis comparing the two systems is still limited.

These gaps demonstrate the need for a more integrated legal analysis that bridges bankruptcy law and criminal law within a single framework.

B. LITERATURE REVIEW

Prior research has predominantly concentrated on bankruptcy or criminal law, with minimal investigation into their confluence. Researchers such as Sjahdeini underscore the importance of creditor protection, whereas Sidabutar highlights instances of misconduct within state firms. Simultaneously, research conducted by MahWengKwai & Associates in Malaysia indicated a more systematic approach to legislative reform, featuring an integrated framework for addressing issues related to both bankruptcy and criminal claims, thereby safeguarding creditors' interests. Comparative analyses indicate that Malaysia possesses more transparent processes for reconciling these legal claims. [3. 4]

C. METHODOLOGY

A critical examination of Indonesian jurisprudence demonstrates a consistent tendency to prioritize criminal seizure over bankruptcy seizure. Courts frequently allow assets already included in the bankruptcy estate to remain under criminal confiscation mechanisms. While

such an approach may support criminal asset recovery objectives, it raises significant concerns regarding creditor protection and the equitable distribution principle of *pari passu pro rata parte*. The absence of explicit statutory guidelines governing the interaction between bankruptcy and criminal procedures contributes to inconsistent judicial decisions. From a doctrinal perspective, bankruptcy law and criminal asset recovery pursue distinct but potentially overlapping objectives. Bankruptcy law primarily aims to ensure collective creditor satisfaction through orderly asset distribution, whereas criminal asset recovery focuses on deterrence, punishment, and the restoration of public losses. The absence of a structured coordination framework creates normative friction between these two regimes. Therefore, a harmonized approach is required to balance creditor protection with the enforcement of criminal justice objectives. [5. 11. 12. 8. 13]

This research employs a normative legal methodology, examining statutory regulations, case law, and jurisprudential principles. A comparison analysis with Malaysia is utilized to discern variances and optimal strategies in managing overlapping seizures. distinction between public and private law norms, as well as between legal certainty and legal value. This analysis examines legislative provisions, jurisprudence, and case studies, concentrating on the Bankruptcy Law (No. 37/2004), KUHAP, and supplementary laws, including the Anti-Money Laundering Law, Bankruptcy Act 1967 (Act 360) Malaysia, and Criminal Procedure Code (Act 593) Malaysia. The examination of legal documents using a deductive-inductive approach to derive conclusions from overarching legal theories and norms to specific cases, while inductive analysis was utilized to establish patterns for conflict resolution about seizures based on jurisprudential practice. A legal hermeneutic method was employed, interpreting legal writings in relation to the social background, values, and legal aims inherent in society. . [1. 19. 20. 21. 22]

D. DISCUSSION

Extended Doctrinal Discussion

Doctrinal Tension Between Bankruptcy Law and Criminal Asset Recovery. Insolvency law is fundamentally designed to create an orderly, collective process for resolving a debtor's financial distress. The principle of *pari passu pro rata parte* ensures that creditors are treated equally and that debtor assets are distributed proportionally according to verified claims. This principle reflects the collective nature of bankruptcy proceedings, which replaces individual enforcement with a centralized mechanism managed by the bankruptcy trustee (curator) under judicial supervision. In contrast, criminal asset seizure operates within the framework of

criminal justice, where the primary objectives include punishment, deterrence, and the recovery of state losses. Because criminal proceedings focus on public interest and law enforcement objectives, criminal confiscation mechanisms may disregard the collective creditor framework that characterizes bankruptcy law.

Creditor Protection Analysis

Implications for Legal Certainty and Creditor Protection When criminal seizure is applied to assets that form part of the bankruptcy estate, significant legal uncertainty emerges. Creditors may lose access to assets that should legally belong to the bankruptcy estate, thereby undermining the predictability of insolvency proceedings. In several Indonesian cases, courts have tended to prioritize criminal seizure on the grounds of protecting public interest, particularly in corruption cases involving state losses. However, such prioritization may weaken the structural logic of bankruptcy law and disrupt the equal treatment of creditors. From a comparative perspective, several jurisdictions attempt to mitigate this conflict by establishing procedural coordination between insolvency administrators and criminal authorities.

Comparative Legal Perspective

Comparative Perspective and the Need for Institutional Coordination, Comparative legal experience demonstrates that conflicts between insolvency proceedings and criminal confiscation are not unique to Indonesia. In several jurisdictions, including Malaysia and certain European systems, coordination mechanisms exist to balance these competing interests. Courts may require communication between insolvency administrators and prosecutors before assets are removed from the bankruptcy estate. Additionally, some legal systems introduce statutory priority rules that clarify whether criminal confiscation or insolvency distribution should prevail in specific circumstances. Such coordination mechanisms help maintain legal certainty while still enabling the state to pursue criminal accountability. [9. 10. 14. 15]

Legal Harmonization Framework

Proposed Legal Harmonization Model: Based on doctrinal analysis and comparative insights, this study proposes a legal harmonization framework comprising three key components. First, establish a procedural coordination mechanism between bankruptcy courts and criminal courts to ensure that asset management decisions consider both creditor interests and criminal justice objectives. Second, the development of statutory guidelines clarifying the

priority relationship between general bankruptcy seizure and criminal seizure in cases involving corruption or other economic crimes. Third, strengthening institutional communication among curators, prosecutors, investigators, and anti-corruption authorities. Through such an integrated framework, the legal system can reduce normative conflicts and promote a more coherent asset recovery regime that simultaneously protects creditor rights and supports criminal law enforcement.

Indonesian jurisprudence favors criminal confiscation, frequently to the detriment of creditors. The lack of regulatory harmonization leads to inefficiencies and legal ambiguity. In contrast, Malaysia offers organized coordination that safeguards creditor rights while enforcing criminal law. The legal systems of Indonesia and Malaysia exhibit several parallels, particularly in their emphasis on criminal law, with a focus on fraud, corruption, or illicit transactions. Nonetheless, there are considerable disparities in how the two nations address claims arising from both bankruptcy and criminal convictions concurrently.

Critical Analysis

The concept of a general seizure (*sita umum*) has several advantages, including providing legal certainty for creditors, preventing individual enforcement actions, and ensuring that asset distribution is conducted fairly. However, it also has weaknesses, such as the lengthy liquidation process, limited transparency and accountability of curators, and overlap with criminal seizure (*sita pidana*). To address these weaknesses, several reform measures are needed, including : (1) strengthening the role and accountability of curators, (2) digitalizing the recording system for bankruptcy estate assets, and (3) establishing an integrated asset execution institution capable of coordinating general bankruptcy seizure with criminal seizure. Through these reforms, the general seizure mechanism is expected to function more effectively in ensuring legal certainty, justice, and legal utility. In practice, seizures in corruption and money laundering (TPPU) cases often create problems, particularly when the debtor's debts and seized assets are also subject to PKPU proceedings or bankruptcy

Statutory Provisions in Malaysia.

- *Bankruptcy Act 1967 (Act 360), Malaysia*

Part III of the Act deals with “Administration of Property.”

This indicates that following a seizure, potentially associated with the enforcement of criminal or civil judgments, the good-faith purchaser is safeguarded, and the occurrence of bankruptcy does not inherently nullify those civil enforcement activities. This provides creditor protection in intersecting domains.

Part VII – Fraud / Penalties

Several sections criminalize various acts related to bankruptcy:

Section 113: “Penalty for absconding in order to avoid service of bankruptcy process or embarrass bankruptcy proceedings ...”

- Criminal Procedure Code (Act 593), Malaysia

Section 412: Restoration of possession of immovable property.

This demonstrates that, upon a criminal conviction, civil rights, including the restoration of property, are maintained; that is, the criminal judgment may lead to an order for property restoration despite the involvement of powers and interests intersecting with civil law.

Mechanism of General Seizure by the Curator

The implementation of a general seizure is carried out through several stages regulated under Law No. 37 of 2004, namely: [1]

1. Bankruptcy Decision – The Commercial Court issues a bankruptcy ruling if it is proven that the debtor has at least two creditors and has failed to pay a due and payable debt.
2. Appointment of a Curator – After the bankruptcy ruling, the court appoints a curator to administer and liquidate the bankruptcy estate.
3. Inventory of the Bankruptcy Estate – The curator must record all of the debtor’s assets, both existing assets and those acquired subsequently.
4. Liquidation and Auction – The debtor’s assets are sold—generally through a public auction mechanism—to generate cash proceeds.
5. Distribution **to Creditors** – The auction proceeds are distributed to creditors according to their respective legal ranking. In practice, several obstacles arise, such as assets concealed by the debtor, ownership disputes, objections from third parties, and weak inter-agency coordination.

The Role of the Supervisory Judge

The supervisory judge oversees the bankruptcy process, particularly regarding the

curator's duties and authority. The supervisory judge is authorized to decide objections submitted by creditors or the debtor, and to determine the amount of costs and the curator's professional fees. The Commercial Court, on the other hand, has authority to adjudicate bankruptcy cases, resolve objections to the list of claims, and ratify composition agreements (homologation). These two roles are crucial to ensure that the general seizure operates in accordance with the principles of legal certainty and justice.

Creditors' Rights and Legal Ranking

In bankruptcy, creditors are divided into several categories:

1. Preferred Creditors – creditors who have statutory privileges, for example the state's right to taxes or employees' rights to unpaid wages.
2. Secured Creditors (Separatist Creditors) – creditors holding security interests in rem (e.g., mortgage, fiduciary security, pledge, or security right over land), who may enforce their collateral as if no bankruptcy existed.
3. Concurrent Creditors – ordinary unsecured creditors who are paid proportionally after secured and preferred creditors have been satisfied. This classification system often gives rise to conflicts, particularly when the debtor's assets are also subject to criminal seizure. In such circumstances, the question arises as to the priority between creditors' interests and the state's interests.

Statutory Provisions in Indonesia

1. Bankruptcy Law and Suspension of Debt Payment Obligations (No. 37/2004),
Article 1 point 1 → Bankruptcy constitutes a comprehensive seizure of all assets belonging to the bankrupt debtor, which are administered and resolved by a curator under the oversight of a supervisory judge.
Article 16 (1) → A bankruptcy declaration renders the assets of the insolvent debtor liable to general seizure (sita umum).
Article 24 → The curator is empowered to administer and resolve the bankruptcy estate from the moment the bankruptcy ruling is issued.
2. Indonesian Criminal Procedure Code (KUHAP – Law No. 8 of 1981) [2]
Article 39 (1) ↑ Seizable objects encompass: ⇒ Property or receivables of the suspect/defendant that are reasonably believed to have been acquired via criminal activity.
Objects utilized directly in the perpetration of a criminal crime.

Objects expressly designed or intended for the perpetration of a criminal crime.

Other items closely associated with the criminal offense.

Article 46 stipulates that seized items must be returned to their original owner unless the court determines that they are to be taken by the State.

3. Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering

Article 77. Investigators, public prosecutors, or courts are empowered to mandate the confiscation of assets believed to have been obtained through money-laundering activities.

Article 78 (1). Seizure shall be executed upon written authorization from the presiding judge of the local district court.

Article 80. Seized assets may be forfeited to the State pursuant to a court order with permanent legal effect.

Article 18 of Indonesia's Anti-Corruption Law stipulates further penalties, including the confiscation of assets acquired via corruption violations and the obligation to pay compensation (replacement payment). In reality, this signifies that the proceeds of corruption may be seized and subsequently confiscated and auctioned in order to recover state losses.

Regulatory Difference:

The absence of explicit harmonization between criminal law and bankruptcy law in Indonesia results in uncertainty and irregular asset allocation during instances of overlapping criminal and bankruptcy seizures. This intensifies legal ambiguity and diminishes creditor safeguards. In Malaysia, while criminal law takes precedence in matters of illicit activities and fraud, there exists a distinct delineation of authority between criminal law and bankruptcy law. The system is more organized, facilitating a more efficient and equitable resolution while enhancing protection for creditors.

This study's innovation is the development of a legal harmonization model that combines bankruptcy management with criminal asset recovery processes.

Unlike previous research that examines bankruptcy and criminal law separately, this study develops a framework that:

1. Integrates bankruptcy proceedings and criminal confiscation mechanisms through coordinated institutional procedures.

2. Proposes clear priority rules for determining whether bankruptcy seizure or criminal seizure should prevail in cases involving overlapping claims.
3. Introduces an inter-institutional coordination model involving bankruptcy courts, criminal courts, curators, prosecutors, and anti-corruption authorities.
4. Uses comparative insights from Malaysia to formulate a more structured approach for resolving conflicts between creditor protection and criminal justice objectives.

Through this approach, the study contributes theoretically to the intersection of insolvency law and criminal justice systems, while also offering practical recommendations to improve legal certainty, creditor protection, and asset recovery mechanisms in Indonesia.

Table of Element Description

State of the Art	Existing research discusses bankruptcy law (creditor protection, <i>pari passu</i> principle) and criminal asset recovery separately, with limited analysis of their intersection.
Research Gap	Lack of integrated legal analysis on conflicts between general bankruptcy seizure and criminal seizure, absence of clear priority rules, and limited comparative studies addressing coordination mechanisms.
Novelty	Proposes a legal harmonization model integrating bankruptcy administration and criminal asset recovery, including institutional coordination, priority rules, and comparative insights from Malaysia.

D.CONCLUSION

Indonesia should harmonize bankruptcy and criminal law to reduce legal uncertainty. The concept of the supremacy of law, as elaborated by Hans Kelsen and A. V. Dicey, requires a legal system that is both hierarchical and consistent. In this context, bankruptcy law and criminal law should operate within a single legal structure that is mutually complementary, rather than one negating the other. Indonesian jurisprudence demonstrates an urgent need for inter-institutional coordination mechanisms. When bankruptcy estate assets are also seized by criminal law enforcement authorities, the curator and the public prosecutor should not be placed in opposition; instead, they should work under the principle of judicial cooperation. True supremacy of law means the supremacy of the legal system, not the supremacy of institutions. Stronger coordination between curators and law enforcement, clearer regulatory guidelines, and reforms to enhance creditor protection are essential. Malaysia's system offers lessons for creating a more predictable and fair legal environment. Therefore, several recommendations are made as follows: Enhancing Regulatory Harmonization in Indonesia,

Improving Coordination Between Law Enforcement, Strengthening Creditor Protection, and Encouraging Legal Reform.

Recommendations

Asset Digitalization and Transparency. The recording system for seized assets and assets of the bankruptcy estate should be integrated into a single national digital platform. This would prevent data manipulation and ensure public accountability for every state-managed asset. A Restorative Justice Approach. In situations where a bankrupt debtor's assets are intermingled with assets derived from criminal conduct, the principles of restorative justice should be applied. The state and creditors could reach an agreement on the distribution of proceeds from seized assets through court-facilitated mediation, so that all parties obtain a balanced benefit.

Abbreviations

BMI - Body Mass Index

UUKPKPU - Indonesian Bankruptcy and Suspension of Debt Payment Obligations Law

KPK - Corruption Eradication Commission

UNCAC - United Nations Convention Against Corruption

RAB - Budget Plan (Rencana Anggaran Biaya)

Acknowledgments

The author expresses gratitude to the Faculty of Law at Universitas Pembangunan Nasional "Veteran" Jakarta and Universitas Dharma Indonesia for their academic support in the research preparation, as well as to all parties engaged, directly or indirectly, in the completion of this work.

Author Contributions

Chairul Aman: Conceptualization, Methodology, Investigation, Formal analysis, Writing original draft, Writing review and editing.

Conflicts of Interest

The authors declare no conflicts of interest.

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