

IMPLEMENTATION OF A JUDGE'S DECISION REGARDING THE EVIDENCE STATUS IN CRIMINAL CASES RELATED TO BANKRUPTCY CONFISCATION

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ABSTRACT

This article discusses criminal acts with the characteristics of a large number of victims and losses, one of which is the case of PT First Travel and Abu Tour with the same motive and article being charged. For the purposes of examining criminal cases since the preliminary examination stage, the process of confiscating evidence has been carried out, including goods which are the object of a crime, proceeds of a crime and other goods related to a crime, including goods in bankruptcy confiscation. The issues discussed are the application of the status of evidence in criminal cases related to bankruptcy confiscated goods in a judge's decision and efforts to return evidence in meeting the victim's loss due to a crime. Using the normative juridical research method, it was concluded that the consideration of judges, which is one of the most important aspects in determining the realization of the value of a judge's decision, was not carried out carefully and thoroughly, one of which was in decisions 3096 K/Pid.Sus/2018 and 3127 K/PID.SUS/2019 which makes no sense at all. Efforts are needed to return the confiscated evidence from the victim to overcome the losses suffered, in several ways, namely improving the search and filing administration system for evidence subject to confiscation from the investigation stage so that the case files at the prosecutor's office are included if there is already a bankruptcy confiscation.

Keywords: bankruptcy confiscation; confiscated object; criminal law; judge's decision.

INTRODUCTION

In examining criminal cases, from the investigation stage to the trial, the presence of evidence plays a crucial role. Evidence can shed light on the occurrence of a criminal act and ultimately be used to prove the defendant's guilt, supporting the judge's conviction, as alleged by the Public Prosecutor. This evidence includes objects related to the criminal act, the outcomes of the criminal act, and other items connected to the criminal act. To maintain security and integrity, particularly when intended for use as evidence in court proceedings, confiscation is conducted.¹

Regarding the evidence used for the purpose of proving, investigators have the authority to carry out confiscation, as regulated in Article 1 number 16 of Law No. 8 of 1981 on Criminal Procedure Law (hereinafter referred to as "KUHP"), which states: "Confiscation is a series of actions by the investigator to take over and/or retain movable or immovable objects, tangible or intangible, for the purpose of evidence in the investigation, prosecution, and court proceedings. Confiscation can only be carried out by investigators based on the permission of the Chief of the District Court."²

In accordance with the formulation of Article 1 number 16 of KUHP, confiscation is the act of taking over items to be stored or retained under the control of the investigator. The evidence subjected to confiscation subsequently becomes confiscated items. Article 39 of KUHP specifies what can be subjected to confiscation:

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¹ Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHP; Penyidikan dan Penuntutan*, Sinar Grafika, Jakarta: 2014, p. 265.

² See Article 38 paragraph (1) and (2) KUHP.

1. Items or claims belonging to a suspect or defendant that are wholly or partially suspected to have been obtained from criminal activities or as a result of criminal activities (Article 1 paragraph a).
2. Items that have been directly used in the commission of a criminal act or in preparation for a criminal act (Article 1 paragraph b).
3. Items used to obstruct the investigation of criminal activities (Article 1 paragraph c).
4. Items specially made or intended for the commission of a criminal act (Article 1 paragraph d).
5. Other items directly related to the criminal act in question (Article 1 paragraph e).
6. Items in the possession of the civil litigation or bankruptcy proceedings can also be confiscated for the purposes of investigation, prosecution, and adjudication of criminal cases, as long as they meet the provisions of Article 1 and Article 2 of KUHAP.

In cases involving economic crimes such as fraud, embezzlement, and money laundering, three key components come into play: the perpetrator, the criminal act itself, and the proceeds of the crime (proceeds of crime). The proceeds of the crime can take the form of money or wealth in other forms, such as real estate, jewelry, commercial papers, and so forth. These proceeds of the crime are then used as evidence and subjected to confiscation as state-seized property.

Regarding the evidence used as state-seized property, in some cases of criminal acts that have occurred in the past 5 years, an interesting issue has arisen and become a subject of debate. This is because in the confiscation carried out by investigators, there are also items or objects that are part of civil litigation or bankruptcy cases. This is made possible because Article 39, paragraph 2 of KUHAP states that items in the possession of civil litigation or bankruptcy proceedings can also be confiscated for the purposes of investigation, prosecution, and adjudication of criminal cases, as long as they meet the provisions of paragraph 1.

Law Number 37 of 2004 regarding Bankruptcy and Postponement of Debt Payment Obligations (hereinafter referred to as "**Bankruptcy Law**"), Article 1, number 1, defines bankruptcy as the public seizure of all the assets of the bankrupt debtor, the management and settlement of which are carried out by a curator under the supervision of a supervising judge, as regulated in this law. The public seizure referred to is the confiscation of the entire assets of the debtor for the purpose of settling all the debtor's debts as mentioned in Article 1131 and Article 1132 of the Civil Code (hereinafter referred to as "**KUH Perdata**").

Article 1131 and 1132 of KUHPerdata aim to prevent individual seizures or executions and the attempt by creditors to outdo one another. Creditors, consisting of two or more individuals, must act collectively (*concursum creditorum*)³ to obtain their rights because creditors have an equal claim to all of the debtor's assets (*paritas creditorium*).⁴ The wealth must be distributed fairly and

³ Fred. B. G. Tumbuan, *lampiran makalah Menelaah Konsep Dasar dan Aspek Hukum Kepailitan, Prosiding Rangkaian Lokakarya Terbatas Masalah-Masalah Kepailitan dan Wawasan Hukum Bisnis Lainnya 2004 Kepailitan dan Transfer Aset Secara Melawan Hukum*, Pusat Kajian Hukum, Cetakan Pertama, Jakarta: 2005, p. 96.

⁴ M. Hadi Shubhan, *Hukum Kepailitan Prinsip, Norma dan Praktik di Pengadilan*, Kencana Prenada Media Group, Jakarta: 2012, p. 27.

proportionally among the creditors, unless there is a compelling reason to prioritize one over the others (*pari passu prorata parte*).

From the formulation, it can be understood that bankruptcy means the general confiscation of the debtor's assets. This confiscation aims to ensure that all creditors receive equitable payments from the management of the seized assets.⁵ The certainty in the implementation of the general confiscation is regulated in Article 31, paragraph (2) of the Bankruptcy Law, which states:

“The declaration of bankruptcy has the effect that all court execution orders against any part of the Debtor's assets that were initiated before bankruptcy must be stopped immediately, and from that moment on, no order can be executed, including detaining the debtor. All confiscations that have been carried out become void, and if necessary, the supervising judge must order their cancellation.”

Therefore, when a judge has declared a debtor bankrupt, the general confiscation of the debtor's entire wealth takes effect. The consequence is that all previous confiscations become void and transition into the general bankruptcy confiscation to expedite the resolution of the interests of the bankrupt estate and the rights of the creditors by the trustee. However, suppose the assets of the bankrupt estate are related to a criminal case and have been confiscated by investigators. In that case, it raises the question of whether general bankruptcy confiscation and asset management can still be carried out.

The position of confiscation or seizure in criminal cases and general confiscation in bankruptcy has been a subject of debate among legal experts. The debated aspects include:

First, public law aspect. In this context, criminal and tax law experts adhere to the public interest represented by criminal and tax laws. On the other hand, civil and bankruptcy law experts also consider bankruptcy cases as public matters involving the common interest, especially when they involve numerous creditors, as seen in cases like First Travel (63,000 creditors)⁶ and Abu Tour (1,822 creditors)⁷

Second, justice aspect. Civil law experts argue that general confiscation should be prioritized because, from a justice perspective, it ensures the fulfillment of creditors' rights and prevents rights violations.⁸ In criminal law, the justice aspect implies that the guilty should be punished, and to achieve this, supporting evidence, including confiscated items, is crucial.

Third, utility. According to civil law experts, prioritizing general confiscation would result in the swift and fair resolution of debt matters, without disrupting the economy, both on a small and large

⁵ Sentosa Sembiring, *Hukum Dagang*, Citra Aditya Bakti, Bandung: 2015, p. 246.

⁶ Siti Hapsah Isfardiyana, “Sita Umum Kepailitan Mendahului Sita Pidana dalam Pemberesan Harta Pailit”, *Padjadjaran Jurnal Ilmu Hukum*, Vol. 3, No. 3, 2016, p. 644-645.

⁷ Himawan, 9 Mei 2018, “Nilai Tagihan Kreditur PKPU Abu Tours Capai Rp 1 Triliun”, <http://news.rakyatku.com/read/100477/2018/05/09/nilai-tagihan-krediturpkpu-abu-tours-capai-rp1-triliun>, accessed on 11 February 2020.

⁸ Siti Hapsah Isfardiyana, *Op. Cit.*, p. 648.

scale. Conversely, if other forms of confiscation, such as criminal confiscation, take precedence, it ensures the security of assets, and the confiscated items can serve as evidence.⁹

Fourth, determination and decision aspect. Civil law experts assert that general confiscation should take precedence because it constitutes a judicial judgment, whereas confiscation is considered merely a determination. In civil procedural law, a judgment and a determination are two distinct entities. A judgment is a pronouncement made by the judge during a court hearing, while a determination is a decision by the court regarding voluntary petitions. According to Hadi Shubhan, a court judgment can only be annulled by another court judgment.¹⁰

Law enforcement in criminal cases, where there is an intersection between criminal confiscation and bankruptcy confiscation, as elaborated above, has seen numerous cases in Indonesia. However, to focus on the matter at hand, we will discuss the cases of fundraising from the public for financing Umrah pilgrimages, namely, PT First Travel and PT Abu Tour (*Amanah Bersama Umat*). The case examination and analysis will center on how the judge's decision regarding the status of confiscated evidence in criminal cases affects the return of these items to the rightful owners.¹¹

To understand the role of the judge's decision in determining the status of confiscated evidence and identifying the most rightful claimant of the seized property, an analysis will be conducted in the context of the First Travel case, which was filed for Suspension of Debt Payment Obligation (PKPU) on July 25, 2017, in the Central Jakarta Commercial Court, case number 105/Pdt.Sus-PKPU/2017/PN Jkt.Pst, and concluded on August 22, 2017. The judgment in the criminal case is found in Decision Number 3096 K/Pid.Sus/2018. Similarly, the case of Abu Tour (*Amanah Bersama Umat*) was submitted to the Makassar Commercial Court under case number 4/Pdt.Sus-PKPU/2018/PN Mks on September 20, 2018, with the criminal case judgment in Decision Number 3127 K/Pid.Sus/2019. Understanding the application of the judge's decision regarding the status of confiscated evidence is crucial because it plays a vital role in protecting the rights of victims of criminal acts and can provide valuable insights for law enforcement in the resolution of cases, ultimately preventing similar cases in the future, which may employ various *modi operandi*.

RESEARCH METHOD

This research is based on normative legal research or doctrinal legal research, which utilizes secondary data sources. To address the research issues, a case approach is employed, focusing on court judgments. The court judgments under scrutiny are Decision Number 3096 K/Pid.Sus/2018 (related to Suspension of Debt Payment Obligation with case number 105/Pdt.Sus-PKPU/2017/PN Jkt.Pst) and are analyzed in comparison with Decision Number 3127 K/Pid.Sus/2019 (related to Suspension of Debt Payment Obligation with case number 4/Pdt.Sus-PKPU/2018/PN Mks.). The selection of these judgments is based on the similarities in cases involving the status of confiscated

⁹ *Ibid.*

¹⁰ *Ibid.*, p. 645.

¹¹ See Article 194 KUHAP jo. Article 197 paragraph (1) KUHAP.

evidence in criminal cases, which intersect with bankruptcy confiscation, with the underlying motive being the collection of funds from the public for Umrah pilgrimages.

DISCUSSION

Implementation of Evidence Status in Criminal Cases Related to Bankrupt Confiscation in Judge Decision

The definition of evidence in criminal cases pertains to the object of the offense (the object of the crime) and the tools used to commit the offense (the means used to commit the crime), including items that are the result of a crime. Characteristics of items that can become evidence include:¹²

1. Material Object
2. Self-Explanatory
3. Most Valuable Means of Proof
4. Requires Identification with Witness Testimony and Defendant's Statements.

In the Indonesian Criminal Procedure Code (KUHAP), although there isn't a specific and explicit definition of what constitutes evidence, the term "*barang bukti*" (evidence) is mentioned in various articles, indicating its significance in criminal proceedings. Here are some instances where the term "evidence" is mentioned:

1. Article 5, Paragraph (1) Letter a Subparagraph 2: One of the investigator's authorities is to search for evidence.
2. Article 8, Paragraph (3) Letter b: When the investigation is considered complete, the investigator transfers the responsibility for the suspect and the evidence to the public prosecutor.
3. Article 18, Paragraph (2): In cases of apprehension without an arrest warrant, the apprehender must immediately hand over the apprehended person along with any evidence to the nearest investigator or assistant investigator.
4. Article 21, Paragraph (1): One of the reasons for the necessity of detention is when there is a concern that the suspect or defendant will destroy or remove evidence.
5. Article 181, Paragraph (1): The presiding judge shows all evidence to the defendant and asks if they recognize it. If necessary, the presiding judge also shows the evidence to the witnesses.
6. Article 194, Paragraph (1): In cases of criminal conviction or acquittal, the court orders that the seized evidence be handed over to the party entitled to receive it, as named in the judgment, unless, according to legal provisions, the evidence must be confiscated for the benefit of the state or destroyed to render it unusable.
7. Article 203, Paragraph (2): In Summary Proceedings, the public prosecutor presents the defendant along with witnesses, experts, interpreters, and the necessary evidence.

¹² Andi Hamzah, *Hukum Acara Pidana Indonesia (edisi revisi)*, cet.1. Sinar Grafika, Jakarta: 2001, p. 254.

Provisions regarding “evidence”, although stipulated in the aforementioned articles, do not explicitly specify the status of a piece of evidence. In contrast, in the Common Law system, such as in the United States, evidence is categorized differently. In the American Criminal Procedure Law, what is referred to as “forms of evidence” includes real evidence, documentary evidence, testimonial evidence, and judicial notice. In the Common Law system, real evidence (evidence in the form of tangible objects) holds the highest value as a form of evidence. However, it should be noted that in the Indonesian criminal procedure, evidence, including real evidence, is not categorized as such.¹³

Based on the description above, it can be understood that evidence does not fall under the classification of types of evidence. Article 183 of the Indonesian Criminal Procedure Code (KUHP) stipulates that to establish criminal liability of a defendant, their guilt must be proven by at least two pieces of valid evidence. Through the establishment of guilt with at least two pieces of valid evidence, the judge acquires the conviction that the criminal act indeed occurred, and the defendant is the one who committed it.

As previously explained in earlier sections, concerning the status of evidence, although it may not be formally classified as a valid type of evidence, it serves the purpose of reinforcing valid evidence in legal practice or court proceedings. This demonstrates the connection between physical evidence and valid evidence. According to Article 181 of the Indonesian Criminal Procedure Code (KUHP), it is evident that in the criminal process, the presence of physical evidence in a court hearing is of utmost importance for the judge to seek and establish the material truth in the case under consideration. Below, two court decisions that are the subjects of this research will be described:

1. First Travel Case (Decision Number 3096 K/Pid.Sus/2018)

The First Travel case occurred in 2017 and involved a criminal act of fraud committed by a husband and wife. They were Andika Surachman and Anniesa Desvitasari Hasibuan, the leaders of PT First Anugerah Karya Wisata (First Travel). They engaged in fraudulent activities by failing to send pilgrims on their scheduled Umrah trips despite having received full payments. The number of victims amounted to 63,310 people, with a total loss of IDR 905.33 billion.

Three of the victims, namely Hendarsih, Euis Hilda Ria, and Ananda Perdana Saleh, filed for PKPU (Suspension of Debt Payment Obligations) against PT First Anugerah Karya Wisata (First Travel), which is a Limited Liability Company engaged in Umrah travel services, as the PKPU Respondent. This was outlined in the decision by the Commercial Court of Central Jakarta Number 105/PDT.SUS-PKPU/2017/PN. Niaga. In summary, the contents of this decision are as follows:

- a. Granting the Petitions for Suspension of Debt Payment (“**PKPU**”) submitted by PKPU Petitioners I, PKPU Petitioners II, and PKPU Petitioners III against PKPU Respondent/PT. FIRST ANUGERAH KARYA WISATA in their entirety.

¹³ Andi Hamzah, *Op. Cit.*, p. 245.

- b. Determining Temporary Suspension of Debt Payment Obligations (PKPUS) against PKPU Respondent/PT. FIRST ANUGERAH KARYA WISATA for a maximum period of 45 (forty-five) days from the pronouncement of the aforesaid decision;
- c. Appointing a Supervising Judge from the Commercial Court Judges at the Central Jakarta Commercial Court as the Supervising Judge to oversee the PKPU process of PKPU Respondent;
- d. Appointing and commissioning SEXIO YUNI NOOR SIDQI, S.H., ABDILLAH, S.H., and LUSYANA MAHDANIAR, S.H., as Curators, enabling them to act as the Debt Payment Obligation Suspension Process Management Team for PKPU Respondent, and/or as the Curator Team in the event that PKPU Respondent is declared bankrupt due to PKPU failure;
- e. Instructing the MANAGEMENT TEAM to summon PKPU Respondent and Creditors known by registered mail or through couriers to appear at the hearing, which must be conducted no later than the 45th (forty-fifth) day from the pronouncement of the Temporary Suspension of Debt Payment Obligation Decision;
- f. Charging the case costs to PKPU Respondent.

In its development, the PKPU process for PT First Anugerah Karya Wisata officially concluded with a peace agreement.¹⁴ The Panel of Judges at the Central Jakarta Commercial Court officially issued a peace agreement or homologation decision. The proposal for the peace agreement presented by First Travel consisted of three main provisions:

- a. First, First Travel would arrange for the departure of pilgrims for Umrah.
- b. Second, they would provide refunds to pilgrims who chose not to go.
- c. Third, First Travel requested a period of six to twelve months to establish a new management team, which meant that the option of arranging departures could only be realized in 2019, while the refund option could be implemented two years after homologation.

In the case of PT First Travel, a criminal investigation process against the individuals involved was simultaneously conducted, and they received judgments. The Director of First Travel, Andika Surachman, was sentenced to 20 years in prison, the Director of First Travel, Anniesa Hasibuan, also received a 20-year prison sentence, and the Head of the Finance Division, Siti Nuraidah Hasibuan, alias Kiki, was sentenced to 15 years in prison.¹⁵

The judgment by the court regarding the determination of the status of evidence in the case of Andika Surachman (Court Decision Number 3096 K/Pid.Sus/2018) remained unchanged

¹⁴The debtor is given a maximum of 270 days to prepare a peace plan and have it agreed upon by the creditors, as stipulated in Article 265 of Bankruptcy Law.

¹⁵Ambaranie Nadia Kemala Movanita, *Ini 7 Pengakuan Menarik Para Terdakwa Kasus First Travel*", diakses dari <https://nasional.kompas.com/read/2018/04/24/10414071/ini-7-pengakuan-menarik-para-terdakwa-kasus-first-travel?page=all>, accessed on 6 November 2020.

at the cassation level, affirming the decision at the appellate level, which in turn upheld the decision at the District Court level. The considerations by the judge regarding the status of evidence in this case were as follows:

- a. The pieces of evidence were returned to the individuals whose names were mentioned in the decision.
 - b. Regarding pieces of evidence numbered 1 to 529, the Appellant in Cassation/Prosecutor, as stated in the cassation memorandum, requested that this evidence be returned to prospective pilgrims of PT First Anugerah Karya Wisata through the Asset Manager of First Travel's Victims, based on Deed Number 1, dated April 16, 2018, made before Notary Mafruchah Mustikawati, SH, M.Kn, for distribution in a proportional and equitable manner. However, during the trial, it was revealed that the Asset Manager of First Travel's Victims had sent a letter and a statement rejecting the return of this evidence.
 - c. As evidenced during the trial, these pieces of evidence were the proceeds of crimes committed by the Defendants and were seized from the Defendants, who were proven to have committed not only the crime of "Fraud" but also the crime of "Money Laundering". Therefore, based on the provisions of Article 39 of the Criminal Code ("KUHP") in conjunction with Article 46 of the Criminal Procedure Code (KUHP), these pieces of evidence were confiscated for the state.
2. Abu Tours Case (Amanah Bersama Umat) Decision Number 3127 K/Pid.Sus/2019

Following the First Travel case, another case involving Hajj and Umrah travel emerged, this time with an even larger number of victims and greater financial losses. This case involved Abu Tours and was initially investigated by the South Sulawesi Regional Police (Polda Sulawesi Selatan) in early 2018. Many reports were received from pilgrims who had paid for trips to the Holy Land of Mecca but were unable to embark on their pilgrimage. During the police investigation, it was revealed that approximately 86,720 pilgrims had their Umrah trips canceled after they had already paid for the journey. The total financial loss in this case amounted to IDR 1.8 trillion.¹⁶

Three victims of the Abu Tours case filed for PKPU (Penundaan Kewajiban Pembayaran Utang or Postponement of Debt Payment) as applicants. The applicants were: (1) Hj. Harmawati; (2) St. Nurhayati Arifin; and (3) Syalbiah S. The respondents in the case included: (1) PT. Amanah Bersama Umat (Abu Tours); (2) Muhammad Hamzah Mamba; and (3) Nursyariah Mansyur. The case was heard at the Makassar Commercial Court under Case Number 4/Pdt.Sus-PKPU/2018/PN Mks. The PKPU decision rendered in this case was as follows:

¹⁶Hendra Cipto, Reni Susanti, "*Sembunyikan Uang Jamaah, Istri Bos Abu Tours Jadi Tersangka*". diakses dari <https://regional.kompas.com/read/2018/07/12/13550491/sembunyikan-uang-jamaah-istri-bos-abu-tours-jadi-tersangka>, accessed on 6 November 2020.

- a. Accept and approve the applications submitted by the PKPU applicants against the PKPU respondents in their entirety.
- b. Declare that the PKPU respondents are in a Temporary Postponement of Debt Payment (PKPU) status for 45 days, with all legal consequences.
- c. Appoint a Commercial Court Judge at the Makassar District Court as the Supervisory Judge.
- d. Appoint and appoint TASMAL GULTOM, S.H., M.H. as the Curator.

After the PKPU decision, because Hamzah Mamba, as the Director of Abu Tours, did not demonstrate good faith in creating a peace proposal, on August 20, 2018, the Commercial Court in Makassar issued a decision declaring that the PKPU respondent, PT Abu Tours, Muhammad Hamzah Mamba, and Nursyariah Mansyur were bankrupt with all legal consequences. Some of the factors needed in regulating bankruptcy and Postponement of Debt Payment (PKPU) are:¹⁷

- a. To avoid disputes over the Debtor's assets when multiple creditors are simultaneously seeking to collect debts from the Debtor.
- b. To prevent situations where creditors holding property rights demand their rights by selling the Debtor's assets without considering the Debtor's or other creditors' interests.
- c. To prevent fraud committed by one of the creditors or by the Debtor itself.
- d. To distribute the Debtor's assets fairly and proportionally based on the size of each creditor's claim.¹⁸

Simultaneously with the submission of the PKPU request, criminal proceedings were also initiated against Hamzah Mamba (CEO of Abu Tours), Nursyariah Mansyur (wife of Abu Tours' owner Hamzah Mamba), Muhammad Kasim (former financial manager of Abu Tours), and Chaeruddin (Abu Tours' commissioner). The Defendants were tried separately and were charged by the Public Prosecutor with a combination of alternative and cumulative charges, which are as follows: FIRST: Article 372 of the Indonesian Criminal Code (KUHP) in conjunction with Article 55(1) point 1 of the KUHP and Article 64(1) of the KUHP or SECOND: Article 378 of the KUHP in conjunction with Article 55(1) point 1 of the KUHP and Article 64(1) of the KUHP and SECOND: Article 3 of Law No. 8 of 2010 Regarding the Prevention and Eradication of Money Laundering in conjunction with Article 55(1) point 1 of the KUHP and Article 64(1) of the KUHP.

In the case where the determination of the status of evidence is found in the verdict of the defendant Chaeruddin, in Case Number 3127 K/PID.SUS/2019, the cassation decision

¹⁷ Man S. Sastrawidjaja, *Hukum Kepailitan dan Penundaan Kewajiban Pembayaran Utang*, Alumni, Bandung: 2014, p. 71-72.

¹⁸ Jono, *Hukum Kepailitan*, Sinar Grafika, Jakarta: 2013, p. 3.

upheld the decision of the lower court in the Makassar District Court. Regarding the evidence, there are no more detailed considerations, but it is directly mentioned in the verdict as follows:

- a. For pieces of evidence numbered from 1 to 207, they shall be returned to the rightful owner through the Curator appointed based on the Decision of the Commercial Court of Makassar Number 4/Pdt.Sus- PKPU/2018/PN.Mks, dated September 20, 2018.
- b. Other pieces of evidence numbered from 1 to 176 shall be used as evidence in the case of Corporate Crime of PT. Amanah Bersama Umat (PT. ABU TOURS).

The considerations of the judge are one of the most crucial aspects in determining the realization of the value of a judge's decision that contains justice (*ex aequo et bono*) and legal certainty. These considerations should be approached with thoroughness, fairness, and precision. Likewise, the considerations regarding the status of confiscated evidence are guided by legal provisions. According to Article 42(2) of the Indonesian Criminal Procedure Code (KUHAP), if a case has been concluded, the confiscated items are returned to the person or persons mentioned in the verdict (they are handed over to the rightful owner). This principle is reinforced by Article 194(1) of the KUHAP.

Several legal consequences arise from a bankruptcy decision issued by a panel of judges. Firstly, the legal authority of the Debtor to manage and administer their bankruptcy estate is revoked, and all assets of the Debtor are subject to a general confiscation.¹⁹ Furthermore, the impact of a bankruptcy decision on a company includes the loss of control over the company's assets by all of its organs, and debt settlements are based on Articles 1131 and 1132 of the Civil Code.²⁰ In the case of First Travel, the judge's consideration did not address the assets that were subject to bankruptcy confiscation.²¹ Instead, the judge stated that evidence related to money laundering, according to Article 39 of the KUHP in conjunction with Article 46 of the KUHAP, is seized for the state. This decision may be seen as insufficiently thorough and precise, as it leads to the assets being considered "seized for the state", which would ultimately be auctioned with the proceeds going to the state's treasury. This can lead to an unjust outcome for the victims of the crime, as the assets accumulated by the perpetrators are the proceeds of their criminal activities, while from the victims' perspective, these assets were derived from their lawful funds intended for performing the Umrah pilgrimage.

In contrast, in the Abu Tours case where money laundering was also proven, the judge did not provide a comprehensive and detailed consideration of the status of the evidence in the decision but directly included it in the verdict. The verdict stated that the confiscated evidence would be returned to those entitled to it through the Curator.²² This decision is more accommodating to the losses suffered by the victims.

¹⁹ Juditia Damlah, "Akibat Hukum Putusan Kepailitan dan Penundaan Kewajiban Pembayaran Utang Berdasarkan Undang-Undang Nomor 37 Tahun 2004", *Jurnal Lex Crimen*, Vol. VI, 2017, p. 91.

²⁰ Ragga Bimantara, "Penyelesaian Kredit Macet Perseroan Melalui Eksekusi Hak Tanggungan Atas Nama Pribadi", *Jurnal Bina Mulia Hukum*, Vol 3 No 2, March 2019, p. 242.

²¹ Commercial Court of Central Jakarta Decision Number 105/PDT.SUS-PKPU/2017/PN.Niaga.JKT.

²² Commercial Court of Makassar Decision Number 4/Pdt.Sus-PKPU/2018/PN Mks.

Efforts to Return Confiscated Evidence to Compensate Crime Victims

Starting from the implementation of the judge's decision regarding the status of confiscated evidence, as described above, it can be seen that the judge's decision has not yet provided justice and legal certainty for victims who have suffered losses due to criminal acts. Therefore, various efforts are needed to return confiscated evidence in criminal cases so as not to cause losses to the victims. These efforts include the following:

Since the process of evidence seizure and documentation must be clearly and explicitly stated, including evidence related to bankruptcy seizures. This documentation is the basis for the Public Prosecutor in creating case files, ensuring that the evidence used in the case is clear and detailed from the investigation process to the court proceedings. According to Article 46 paragraph (2) of the Criminal Procedure Code (KUHAP), this provision aims to protect the rights of the owner or the person entitled to a property that is in the possession of the suspect/defendant and has been seized for the purpose of the criminal case.

In the context of victims, they can take action through the mechanisms provided in Articles 98 and 99 of the KUHAP. According to these provisions, if the accused's actions cause losses to others, the aggrieved party can request the Chief Judge to combine the compensation claim case within the ongoing criminal trial. This provision also applies to victims who have suffered losses due to a criminal act. Such a request can be submitted at the latest before the public prosecutor reads the indictment or, in the absence of the public prosecutor, before the judge delivers the verdict. If the judge accepts the compensation claim, they will determine the amount of compensation in their judgment. In practice, this mechanism is rarely used by victims, and there is a lack of detailed rules governing the process of combining compensation claims, so public prosecutors often do not provide victims with the opportunity to file claims and gather evidence of their losses.

In reality, the mechanism of compensation claims also serves to ensure the legal objectives. It not only acts as a deterrent to criminal offenders but also provides protection to victims through compensation. The principles of victim protection and recovery are now emphasized in criminal law, particularly in the context of restorative justice. The First Travel case can serve as a lesson in the effort to apply a restorative justice approach to criminal acts that clearly result in financial losses to the victims. If only the public prosecutor informed the victims about the provisions of Article 98 of the Criminal Procedure Code (KUHAP) and encouraged them to request consolidation before the judge, it is highly likely that the proceeds from the auction of First Travel's seized assets would be prioritized to compensate the victims rather than being handed over to the state.²³

From the perspective of the Public Prosecutor, efforts can be made through the mechanism outlined in the Attorney General's Regulation (Perja) No. 27 of 2014, in conjunction with Attorney

²³Indonesia Judicial Research Society (IJS), *Polemik Perampasan Aset kasus Frist Travel oleh Negara: Bagaimana Agar Korban Bisa Memperoleh Ganti rugi*, di unduh dari <https://theconversation.com/polemik-perampasan-aset-kasus-first-travel-oleh-negara-bagaimana-agar-korban-bisa-memperoleh-ganti-rugi-127447> tanggal 6 November 2020.

General's Regulation (Perja) No. 9 of 2019 concerning Asset Recovery Guidelines. In essence, these regulations provide guidelines for asset recovery activities conducted by the Prosecutor's Office through the Center for Asset Recovery (Pusat Pemulihan Aset - PPA). These provisions specify that one of the asset recovery activities is the return of assets to victims or rightful claimants, which includes victims of crimes.²⁴ To facilitate this process, prosecutors must demand the return of assets seized from the perpetrator to the victim, explicitly identifying the party entitled to receive the returned assets. This should be accompanied by evidence of ownership, including written evidence and witness testimonies establishing the victim's ownership of the seized property. Within 7 days of a court decision that has obtained legal force, the prosecutor must return the assets/seized property to the victim or rightful claimant based on an order from the Chief Prosecutor's Office.²⁵

In the development of the First Travel case, the convicted parties, Andika Surachman, Anniesa Hasibuan, and Kiki Hasibuan, alias Siti Nuraida Hasibuan, have filed an extraordinary legal remedy in the form of a Judicial Review (Peninjauan Kembali - PK). The Supreme Court has issued a decision regarding this judicial review, as seen in Decision No. 365 PK/Pid Sus/2022. Regarding the judge's considerations related to the status of evidence, the Judicial Review Assembly disagrees with the original verdict in part, specifically regarding evidence in the form of money in bank accounts and economically valuable assets, which had been confiscated for the state. This is because, in this particular case, there are no rights of the state that have been harmed. Based on these considerations, the decision of the Judicial Review Assembly states that as these items of evidence originated from prospective umrah pilgrims, they must be returned to the rightful owners of the evidence, namely, the prospective umrah pilgrims who made payments to PT First Travel, as well as subcontractors whose rights have not been paid by the Petitioners through PT First Travel, with the payment mechanism entrusted to the executor.

The decision of the Judicial Review, including its implications for the status of evidence, does not provide a definitive solution to the issue of evidence status. The absence of a time limitation for filing a Judicial Review, coupled with the possibility of executing a legally binding verdict before the Judicial Review takes place, creates numerous complications concerning the quantity of assets and the connection to bankruptcy seizures for the return of evidence. Therefore, the primary focus should remain on the judge's considerations, especially at the *judex factie* level, to ensure that the evidence's status is determined accurately and meticulously based on clear factual information.

CLOSING

The judge's considerations, one of the most crucial aspects in determining the value of a judge's decision, particularly regarding the status of evidence subject to seizure and its intersection with bankruptcy seizures, have not been conducted meticulously or thoroughly, taking into account the

²⁴ See Chapter VI regarding "Asset Return" for victims in Annex Perja No. 27 of 2014 (page 22) combined with Perja No. 9 of 2019.

²⁵ See Chapter VI on "Asset Return," specifically section C (Asset Return to the Eligible Parties) in Annex Perja No. 27 of 2014 combined with Perja No. 9 of 2019, p. 29.

aspect of victims' losses in criminal cases. Consequently, the evidence becomes state-seized property. In contrast, in Case No. 3127 K/PID.SUS/2019, the judge did not provide any considerations but merely stated in the verdict that the seized items should be returned to the curator. While the second verdict did take bankruptcy seizures into account, the absence of judge's considerations leaves the decision without a guarantee of legal certainty regarding the restitution of losses suffered by victims of criminal acts. The existence of a judge's decision in the Judicial Review stage concerning the status of evidence can pose various challenges for the Public Prosecutor as the executor of the verdict.

Therefore, various efforts are required for the return of evidence seized from victims to mitigate the losses experienced. This can be achieved through several means, including: improving the administrative system for tracing and documenting evidence subject to seizure, starting from the investigative stage, to make case files at the Public Prosecutor's Office more explicit by classifying the origin and ownership of the evidence, including cases involving bankruptcy seizures. This will facilitate and provide certainty to the judge in determining who is entitled to the evidence in question. Encouraging an active role on the part of victims through the mechanism provided in Article 98 of the Criminal Procedure Code (KUHP) to uphold the principle of victim protection and recovery in criminal law, as part of the emphasis on restorative justice. Optimizing the role and position of prosecutors in accordance with the Prosecutor General's Regulations (Perja) in the recovery and return of assets to victims.

REFERENCES

Book

- Andi Hamzah, *Hukum Acara Pidana Indonesia (edisi revisi)*, cet.1: Sinar Grafika, Jakarta: 2001.
- Fred. B. G. Tumbuan, *lampiran makalah Menelaah Konsep Dasar dan Aspek Hukum Kepailitan, Prosiding Rangkaian Lokakarya Terbatas Masalah-Masalah Kepailitan dan Wawasan Hukum Bisnis Lainnya 2004 Kepailitan dan Transfer Aset Secara Melawan Hukum*, Cetakan Pertama Pusat Kajian Hukum, Jakarta: 2005
- Jono, *Hukum Kepailitan*, Sinar Grafika, Jakarta: 2013.
- Kadir Husin dan Budi Rizki Husein, *Sistem Peradilan Pidana di Indonesia*, Sinar Grafika, Jakarta: 2016.
- Lilik Mulyadi, *Seraut Wajah Putusan Hakim Dalam Hukum Acara Pidana Indonesia*, PT Citra Aditya Bakti, Bandung: 2014.
- M. Hadi Shubhan, *Hukum Kepailitan Prinsip, Norma dan Praktik di Pengadilan*, Kencana Prenada Media Group, Jakarta: 2012.
- Man S. Sastrawidjaja, *Hukum Kepailitan dan Penundaan Kewajiban Pembayaran Utang*, Alumni, Bandung: 2014.
- Sentosa Sembiring, *Hukum Dagang*, Citra Aditya Bakti, Bandung: 2015.
- Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHP; Penyidikan dan Penuntutan*, Sinar Grafika, Jakarta: 2014.

Journal

- Juditia Damlah, "Akibat Hukum Putusan Kepailitan dan Penundaan Kewajiban Pembayaran Utang Berdasarkan Undang-Undang Nomor 37 Tahun 2004", *Jurnal Lex Crimen* Vol. VI, 2017.
- Ragga Bimantara, "Penyelesaian Kredit Macet Perseroan Melalui Eksekusi Hak Tanggungan Atas Nama Pribadi", *Jurnal Bina Mulia Hukum*, Vol 3 No 2, March 2019.
- Siti Hapsah Isfardiyana, "Sita Umum Kepailitan Mendahului Sita Pidana dalam Pemberesan Harta Pailit", *Padjadjaran Jurnal Ilmu Hukum*, Vol. 3, No. 3, 2016.

Legislations

- Attorney General's Regulation (Perja) Number 27 of 2014, in conjunction with Attorney General's Regulation (Perja) Number 9 of 2019 regarding the Asset Recovery Guidelines.
- Commercial Court of Central Jakarta Number 105/PDT.SUS-PKPU/2017/PN. Niaga.
- Commercial Court of Makassar Decision Number 4/Pdt.Sus-PKPU/2018/PN Mks.
- Court Decision Number 3096 K/Pid.Sus/2018.
- Court Decision Number 3127 K/PID.SUS/2019.
- Indonesian Civil Code.
- Law Number 1 of 1946 regarding the Indonesian Criminal Code.
- Law Number 8 of 1981 regarding the Criminal Procedure Law.
- Law Number 8 of 2010 regarding the Prevention and Eradication of Money Laundering.
- Law Number 37 of 2004 regarding the Bankruptcy and Postponement of Debt Payment Obligations.

Other Resources

- Ambaranie Nadia Kemala Movanita, *Ini 7 Pengakuan Menarik Para Terdakwa Kasus First Travel*", Retrieved from <https://nasional.kompas.com/read/2018/04/24/10414071/ini-7-pengakuan-menarik-para-terdakwa-kasus-first-travel?page=all>. on 6 November 2020.
- Flora Dianti, *Apa Perbedaan Alat Bukti dengan Barang Bukti?*. Retrieved from <https://www.hukumonline.com/klinik/detail/ulasan/lt4e8ec99e4d2ae/apa-perbedaan-alat-bukti-dengan-barang-bukti-> on 2 November 2020.
- Hendra Cipto, Reni Susanti, *Sembunyikan Uang Jamaah, Istri Bos Abu Tours Jadi Tersangka*". Retrieved from <https://regional.kompas.com/read/2018/07/12/13550491/sembunyikan-uang-jamaah-istri-bos-abu-tours-jadi-tersangka> on 6 November 2020.
- Himawan, 9 Mei 2018, "Nilai Tagihan Kreditur PKPU Abu Tours Capai Rp1 Triliun", Retrieved from <http://news.rakyatku.com/read/100477/2018/05/09/nilai-tagihan-krediturpkpu-abu-tours-capai-rp1-triliun>, on 11 February 2020.
- Indonesia Judicial Research Society (IIRS), *Polemik Perampasan Asset kasus First Travel oleh Negara: Bagaimana Agar Korban Bisa Memperoleh Gantirugi*, retrieved from https://theconversation.com/polemik-perampasan-aset-kasus-first-travel-oleh-negara-bagaimana-agar-korban-bisa-memperoleh-ganti-rugi-127447_on on 6 November 2020.