

# Conflicting Authority over Asset Seizure in Tax, Corruption, and Bankruptcy

*Mahanto Aminanto*

Dirgantara Marshal Suryadarma University, Indonesia

*Paduanta Hutahayan*

Dirgantara Marshal Suryadarma University, Indonesia

Email: [paduanta.unsurya@gmail.com](mailto:paduanta.unsurya@gmail.com)

*Bachtiar Arifin*

Dirgantara Marshal Suryadarma University, Indonesia

*Anton Rudhianto*

Dirgantara Marshal Suryadarma University, Indonesia

## Abstract

This study aims to analyze the conflict of asset seizure authority involving the Directorate General of Taxes, the Attorney General's Office, and the Bankruptcy Trustee in the bankruptcy proceedings of PT Mount Dreams Indonesia. The main focus of this research is on asset seizures conducted by the Directorate General of Taxes as part of criminal tax investigations pursuant to Article 44 paragraph (2) letter j of the Law on General Provisions and Tax Procedures (UU KUP). The existence of overlapping *lex specialis* regulations in the fields of taxation, corruption, and bankruptcy law has led to conflicts of authority between law enforcement agencies in executing asset seizures. This study employs normative juridical methods using statutory, doctrinal, and Gustav Radbruch's substantive justice theory approaches. The findings indicate that the absence of inter-agency coordination norms and the lack of harmonization among sectoral *lex specialis* regulations are the main causes of authority conflicts over asset seizures in bankruptcy proceedings. Furthermore, the expansion of asset recovery instruments operated independently by each agency, without integration into the bankruptcy estate, exacerbates conflicts over asset control. This research recommends the establishment of inter-agency

coordination norms for asset seizure authority, strengthening renvoi as a unified verification forum, integrating asset recovery results into the bankruptcy estate, and enhancing the principle of substantive justice in the regulation of bankruptcy settlement.

**Keywords:** Asset Seizure, Criminal Tax Investigation, Lex Specialis, Renvoi, Radbruch's Justice Theory.

## INTRODUCTION

In Indonesia's constitutional system, asset confiscation is closely related to the role of law enforcement institutions and state financial institutions. Conflicts of confiscation authority often cause problems, especially when there is overlap between tax crime investigators of the Directorate General of Taxes (DGT),<sup>1</sup> corruption investigators of the Prosecutor's Office, and curators in bankruptcy proceedings.<sup>2</sup>

The case of PT Mount Dreams Indonesia (MDI) reflects this complexity, where there is a conflict between the execution of confiscation carried out by tax investigators, investigators from the Attorney General's Office in the realm of corruption crimes, and curators in bankruptcy proceedings.<sup>3</sup> Disputes occur due to differences in the governing legal regime, namely tax criminal law, general criminal law, bankruptcy law, and state administrative law.

The main problem that arises is the conflict of authority to confiscate assets involving several state institutions, namely the Directorate General of Taxes (DGT), the Prosecutor's Office, and the Curator. These three institutions both carry out the function of asset control, but stand on different sectoral legal grounds. The Directorate General of Taxes has the authority to confiscate based on the Law on General Provisions and Tax

---

<sup>1</sup> Apriyanita, T. (2024). Penyitaan Harta Kekayaan Milik Wajib Pajak atau Tersangka dalam Tindak Pidana di Bidang Perpajakan di Indonesia. *Journal of Tax Law and Policy*, 3(2), 85-93.

<sup>2</sup> ALFAJRI, M. S. (2025). *Peran Kurator Dalam Proses Penanganan Perkara Kepailitan Perseroan Terbatas* (Doctoral dissertation, Universitas Islam Sultan Agung Semarang).

<sup>3</sup> Andrian, A. (2023). Sengketa Kewenangan dalam Proses Likuidasi Boedel Pailit antara Kurator dengan Kejaksaan Republik Indonesia. *Justisi*, 9(3), 389-401.

Procedures (UU KUP).<sup>4</sup> In this case, the DGT carries out two types of confiscation authority, namely:

1. Administrative confiscation in the context of collecting tax arrears as stipulated in Articles 23 to 34 of the KUP Law; and
2. Confiscation in the context of the investigation of criminal acts in the field of taxation, as stipulated in Article 44 paragraph (2) letter j of the KUP Law.

This research specifically focuses on the study of asset confiscation by the DGT in the framework of the investigation of tax crimes, as stipulated in Article 44 paragraph (2) letter j of the KUP Law. This means that the DGT in this case not only plays a role as a fiscal administrative organ, but also carries out the function of enforcing tax criminal laws, in parallel with the Prosecutor's Office which carries out the enforcement of general criminal law, including Corruption Crimes.

On the other hand, in the realm of bankruptcy, the Curator based on Law Number 37 of 2004 concerning Bankruptcy and PKPU is authorized to control and settle all assets of bankruptcy debtors collectively through the principle of public confiscation.<sup>5</sup> In practice, these three institutions often carry out simultaneous confiscation of the same asset object, resulting in overlapping normative arrangements and conflicts of authority to confiscate assets.

Resolving this conflict of authority is crucial, because it is related to the principles of the state of law, substantive justice, and the protection of creditors' rights and the state's right to tax revenue. Therefore, it is important to carry out a juridical assessment of this conflict of authority, both from the perspective of constitutional law and the enforcement of economic criminal law.

---

<sup>4</sup> Burhan, A. U. A., & Gunadi, G. (2022). Optimalisasi Wewenang PPNS DJP dalam Penyitaan dan Pemblokiran Aset untuk Pemulihan Kerugian Pendapatan Negara. *Owner: Riset Dan Jurnal Akuntansi*, 6(4), 4199-4209.

<sup>5</sup> Fhadillah, Z., Ayu Astiti, N. M. Y., Cholil, M., Alfian, M. A., & Aliefia, M. (2023). Problematika Kepailitan Transnasional Terhadap Pengurusan dan Pembersihan Aset Debitur Pailit. *Notaire*, 6(2).

In the context of regulatory reform, the government is currently preparing for the formation of a new law through the Bankruptcy and Postponement of Debt Payment Obligations Bill (Bankruptcy and PKPU Bill).<sup>6</sup> The Academic Text of the Bill prepared in 2018 contains a number of normative improvements, including in the aspects of efficiency of PKPU procedures, strengthening curatorial professionalism, and supervision of commercial courts. However, based on a preliminary examination of the substance of the Academic Text of the Bill, the regulation on cross-institutional coordination in asset confiscation and the integration of asset recovery proceeds into bankruptcy proceedings,<sup>7</sup> which are the main source of conflicts of authority in bankruptcy cases, has not received a comprehensive regulation. Therefore, this research specifically provides an academic contribution in the form of normative recommendations that are expected to enrich the preparation of the Bankruptcy Bill in the future.

## LITERATURE REVIEW

### A. The Theory of the State of Law and Authority

The principle of the state of law (*Rechtsstaat*) is the main foundation in the Indonesian constitutional system as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In the concept of the state of law, all actions of state organs must be carried out within the applicable legal corridor.<sup>8</sup>

According to Friedrich Julius Stahl, the rule of law contains four main elements: the recognition of human rights, the limitation of power, rule based on the law, and an independent judiciary. Limiting power is a fundamental element so that there is no accumulation of power in one organ of the state.

---

<sup>6</sup> Santoso, B. T. (2015). *Upaya Hukum Bagi Kreditor Separatis Terhadap Tindakan Penyitaan Dalam Perkara Pidana Korupsi Dan Atau Pencucian Uang Dalam Kepailitan* (Doctoral dissertation, UNIVERSITAS AIRLANGGA).

<sup>7</sup> Arianto, A. F. (2024). Peran Lembaga Penegak Hukum Dalam Proses Perampasan Aset. *Jurnal USM Law Review*, 7(3), 1601-1615.

<sup>8</sup> Indonesia. Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

The doctrine *of separation of power* put forward by Montesquieu emphasized the importance of the separation of powers between the legislature, executive, and judiciary so that each branch of power does not exceed the limits of functions that have been determined by the constitution. In the context of confiscation authority, this principle requires that every state institution carry out confiscation within the limits of legitimate legal norms.

Furthermore, Hans Kelsen through the theory *of Stufenbau der Rechtsordnung* emphasized that legal norms are in the form of a tiered hierarchy, so that every state authority must be sourced from higher legal norms. Thus, the authority to confiscate by the Directorate General of Taxes, the Prosecutor's Office, and the Curator is only valid if it has a legitimate legal basis in the system of applicable legal norms.

## **B. Gustav Radbruch's Theory of Justice**

Gustav Radbruch developed a legal theory known as *Radbruchsche Formel* as a reflection of the positive legal injustices that occurred during Nazi Germany's rule. In Radbruch's view, law does not merely contain a collection of formal norms, but must contain moral values, justice, and utility.<sup>9</sup>

Radbruch placed law in three main complementary elements: legal certainty (*Rechtssicherheit*), justice (*Gerechtigkeit*), and utility (*Zweckmäßigkeit*). Legal certainty ensures order and stability in the application of the law; Justice demands that the law be proportionate and non-discriminatory; Meanwhile, the benefits require the law to provide effective results in people's lives.

Under normal conditions, the three elements must be balanced. However, when a positive rule of law actually causes extreme and intolerable injustice, then justice must take precedence over legal certainty.

---

<sup>9</sup> Gustav Radbruch. (2006). *Filsafat Hukum: Masalah-Masalah Pokok dalam Teori Hukum*. Terjemahan B. Arief Sidharta. Bandung: Citra Aditya Bakti.

This Radbruch concept is what is corrective in the legal system so that positive law does not give birth to the legalization of injustice.

In the context of this discussion, Radbruch's theory of justice becomes a framework for a critical analysis of the conflict between state institutions in the implementation of confiscation, when each institution is too rigid in adhering to its own sectorality of authority.

### **C. The Doctrine of Lex Specialis in the Legal System**

In legal systems, there are often situations where two or more legal norms govern the same legal object or event, but with different regulatory approaches. To overcome this potential conflict, the principle of *lex specialis derogat legi generali* was developed, which is a special law that overrides a general law. This principle is one of the important principles in resolving norm conflicts in legal theory.

According to Sudikno Mertokusumo, *lex specialis* is a norm that specifically regulates certain issues in more detail and depth than the general norm. So if there is a conflict between general norms and special norms on the same object, special norms are applied. This principle is also understood as an instrument of harmonization of legislation to avoid conflicts of authority between institutions or between legal regimes that are sectoral.

As stated by Peter Mahmud Marzuki, the principle of *lex specialis derogat legi generali* is a manifestation of a multi-tiered legal regulatory system. Every branch of law in the modern state tends to develop detailed sectoral rules as derivatives of the general principles of law. Therefore, when sectoral norms are present, these norms get priority for application in certain conditions that are their scope.

The theory of *lex specialis* is also emphasized by Hans Nawiasky who explains that in the order of legal norms, the principle of special regulation

is one of the techniques for reconciliation between norms that are vertical and horizontal in the legal system.<sup>10</sup>

In the Indonesian legal system, the *lex specialis* arrangement is mostly found in the division of authority between:

1. Tax Law, as a *lex specialis* in the collection of state receivables;<sup>11</sup>
2. Corruption Criminal Law, as a *lex specialis* in the return of state losses due to criminal acts;
3. Bankruptcy Law, as a *lex specialis* in the management and distribution of bankruptcy assets under the supervision of the court.<sup>12</sup>

However, *lex specialis* does not always resolve conflicts between institutions automatically. It is necessary to pay attention to the *scope of the material* and *the limits of the jurisdiction* of each *lex specialis* so that there is no overlap of authority. Moreover, when the confiscated object or the asset that is the target of execution is under the control of several institutions at the same time, the ideal *lex specialis* arrangement requires cross-sectoral coordination arrangements.

Therefore, although the principle of *lex specialis derogat legi generali* provides a theoretical basis, its application in practice still leaves room for conflicts of authority when sectoral norms are not regulated synchronously.

#### **D. Confiscation Authority according to Indonesian Positive Law**

In the Indonesian legal system, the authority to confiscate is regulated in a variety of different legal sectors, namely tax law, general and special criminal law, and bankruptcy law. Each sector gives legitimacy to different state institutions.<sup>13</sup>

---

<sup>10</sup> Hans Kelsen. (2007). *Teori Hukum Murni (Pure Theory of Law)*. Terjemahan Raisul Muttaqien. Bandung: Nusa Media.

<sup>11</sup> Wibowo, A. S. (2024). Pendekatan Keadilan Restoratif dalam Penghentian Penyidikan Tindak Pidana Perpajakan di Indonesia. *Jurnal Ilmu Hukum, Humaniora dan Politik (JIHHP)*, 5(2).

<sup>12</sup> Lumbanraja, B. Y., Badriyah, S. M., & Cahyaningtyas, I. Analisis Yuridis Kepailitan Harta Yang Ditinggalkan. *Notarius*, 14(1), 147-161.

<sup>13</sup> Sentosa, S. (2006). Hukum kepailitan dan peraturan perundang-undangan yang terkait dengan kepailitan.

### 1. Authority of the Directorate General of Taxes

The Directorate General of Taxes is given the authority to confiscate assets in the context of investigating tax crimes as stipulated in Article 44 paragraph (2) letter j of the Law on General Provisions and Tax Procedures (KUP Law).<sup>14</sup> The confiscation in the context of this investigation is part of the actions of tax investigators to secure evidence or prevent the loss of assets related to suspected tax crimes. This confiscation authority can include movable property, immovable property, bank accounts, or other economic rights belonging to the suspect, and is carried out in accordance with the provisions of the criminal procedure law as stipulated in the Criminal Procedure Code, unless otherwise specified in the KUP Law.

### 2. Authority of the Prosecutor's Office

In criminal law, the Prosecutor's Office is authorized to confiscate evidence related to general crimes and corruption crimes. The basis of the authority for criminal confiscation is regulated in Article 39 of the Criminal Code and special provisions in the Corruption Law on Crimes. Criminal confiscation functions as a means of securing evidence and recovering state financial losses due to corruption crimes. Confiscation of the Prosecutor's Office can be carried out even though the property is also the object of dispute in the bankruptcy forum.<sup>15</sup>

### 3. Curatorial Authority

The curator in bankruptcy law obtains full authority to control and manage all bankruptcy assets since the debtor is declared

---

<sup>14</sup> Fitrah, F. A., Takariawan, A., & Muttaqin, Z. (2021). Kedudukan penyidik pegawai negeri sipil Direktorat Jenderal Pajak dalam kerangka penegakan hukum pidana perpajakan di Indonesia. *SIGn Jurnal Hukum*, 3(1), 1-25.

<sup>15</sup> Laia, C. A., SH, M., SH, M., & SH, M. (2024). *Rekonstruksi Peran Kejaksanaan terhadap Pelaku Tindak Pidana Korupsi dalam Upaya Penyitaan dan Perampasan Aset*. CV Jejak (Jejak Publisher).

bankrupt based on a commercial court decision. The curator's authority is regulated in Articles 21, 31, and 55 of Law Number 37 of 2004 concerning Bankruptcy and PKPU.<sup>16</sup> With *the principle of general confiscation*, the curator represents all creditors to control and distribute the bankruptcy assets collectively and proportionally.<sup>17</sup> Since the bankruptcy board was formed, normatively no other institution has the authority to unilaterally execute bankruptcy assets outside the bankruptcy forum.

#### **E. Renvoi in Bankruptcy Law: Definition, Scope, and Mechanism**

In Indonesian bankruptcy law, one of the important principles that governs the recognition and processing of bills from creditors is the principle *of renvoi-procedure*.<sup>18</sup> The term *renvoi* is adopted from Dutch administrative law which in practice is an administrative mechanism for verification of receivables by the Curator and Supervisory Judge to ensure the validity, legality, and order of priority of claims from all parties interested in the bankruptcy property.<sup>19</sup> In simple terms, *renvoi* can be interpreted as a process of review and administrative examination of each creditor's bill so that it can be legally recognized as part of the bankruptcy receivables list. Creditors, including the state through the Directorate General of Taxes, do not automatically acquire the right to bankruptcy unless they have followed the administrative procedure for registering the bill.<sup>20</sup> According to Ridwan Khairandy, *renvoi* is an administrative principle that serves to enforce the principle *of equal treatment of creditors* in

---

<sup>16</sup> Indonesia. Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang (PKPU).

<sup>17</sup> Nola, L. F. (2019). Kedudukan Sita Umum Terhadap Sita Lainnya Dalam Proses Kepailitan (The Position Of General Seizure Towards Others In The Process Of Bankruptcy). *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, 9(2), 217-234.

<sup>18</sup> Raden, M., Suci, I. D. A., Poesoko, H., & Harianto, A. (2022). Renvoi Procedure for Justabelens' Justice in the Bankruptcy Law. *Journal of Law, Policy and Globalization*, 122.

<sup>19</sup> Murjiyanto; Suci, Ivida Dewi Amrih; Poesoko, Herowati; Harianto, Aries. (2022). Renvoi Procedure for Justabelens' Justice in the Bankruptcy Law. *JL Pol'y & Globalization*, 122, 1.

<sup>20</sup> Sihombing, S. E. (2025). Legal Analysis Of The Exclusion Of A Creditor From The Final Creditor's List.

bankruptcy law, where all creditors, both preferential, concurrent, or subordinate, are given the same opportunity to file their claims in an official bankruptcy forum.

The principle of *renvoi* applies to all creditors who have receivables to bankrupt debtors, including:

1. Concurrent (general) creditors,
2. Preferred creditors (including tax receivables),
3. Separatist creditors (holders of security rights),
4. Subordinate creditors (holders of subordinate claims).

Within this scope, the state as a tax creditor occupies a position as a preferred creditor. Although tax receivables have privileges, they are still subject to the principle of registration as stipulated in the Bankruptcy and PKPU Law.

The principle of *renvoi* has a fundamental function in upholding the principle of order and legal certainty in the process of distributing bankruptcy assets. Without a *renvoi*, the management of bankruptcy bonds has the potential to be chaotic due to unilateral execution by each creditor. *Renvoi* ensures that:

1. No creditor executes individually,
2. The process of distributing bankruptcy assets is carried out collectively,
3. Creditors' rights are protected proportionately according to their classification.

Thus, *renvoi* is the main safeguard of the principle of *general confiscation* in bankruptcy.

#### **F. Asset Recovery in Tax Enforcement: Definition, Scope, and Mechanism**

In the modern tax law system, the strengthening of the state's authority to ensure the optimization of tax revenue gives birth to an instrument known as *asset recovery*. The concept of *asset recovery* is part

of the state's efforts to recover assets (both domestic and foreign) related to tax debts, tax evasion, and tax evasion.

Conceptually, *asset recovery* can be interpreted as a series of legal, administrative, and operational efforts carried out by tax authorities to recover assets or economic value that have become the right of the state but have not been successfully fulfilled by taxpayers. According to the OECD, *asset recovery* in the tax sector is an important part of *tax collection enforcement*, which aims to expand the reach of state rights recovery, not only limited to domestic jurisdictions, but also across borders.<sup>21,22</sup> In the national sense, asset recovery in the field of taxation is a strengthening of the authority of the Directorate General of Taxes in actively enforcing tax laws through various asset recovery instruments.

The strengthening of tax asset recovery in Indonesia is significantly expanded through the renewal of tax provisions in the Law on Harmonization of Tax Regulations (UU HPP) of 2021. Some of the asset recovery instruments that are currently under the authority of the DGT include:

1. **Asset Tracing:** Tracking of taxpayers' assets that are hidden or moved both domestically and abroad.
2. **Administrative Confiscation:** The execution of confiscation of the property of tax delinquents based on the provisions of the KUP Law.
3. **Account Blocking:** Freezing of funds or securities belonging to tax delinquents in financial institutions.
4. **Financial Transaction Freeze:** Termination of taxpayers' access to banking facilities or other financial institutions.
5. **International Information Exchange (AEOI):** Cross-border exchange of financial information for tax supervision and collection purposes.

All of these instruments are used by the DGT as part of the state's tax receivables recovery strategy proactively.

---

<sup>21</sup> OECD. (2014). *The OECD International VAT/GST Guidelines*. Paris: OECD Publishing.

<sup>22</sup> OECD. (2017). *Effective Asset Recovery in Practice: Mutual Legal Assistance in Criminal Matters*. Paris: OECD Publishing.

Strengthening asset recovery in the field of taxation has a legal basis, including:

1. Law on General Provisions and Tax Procedures (KUP Law);
2. Law on the Harmonization of Tax Regulations (HPP Law);
3. Regulation of the Minister of Finance related to tax collection, account blocking, and administrative confiscation;
4. International agreements within the framework of the Automatic Exchange of Information (AEOI) and the Multilateral Competent Authority Agreement (MCAA).

With this legal basis, tax authorities have broader, flexible, and cross-jurisdictional authority in carrying out tax law enforcement functions.

The Directorate General of Taxes, through its investigative authority as stipulated in Article 44 paragraph (2) letter j of the KUP Law, has the right to confiscate, block, and temporarily hold assets related to alleged tax crimes. Similarly, the Prosecutor's Office conducts asset recovery within the framework of corruption crimes through the mechanism of confiscation, confiscation, and asset recovery both domestically and abroad.<sup>23</sup>

When confiscation in the context of a tax criminal investigation has been carried out on the debtor's assets that are later declared bankrupt, there is often no clear normative mechanism to integrate the assets recovered into the bankruptcy portfolio, thus causing a conflict of authority in asset control between state institutions.

Although asset recovery gives great power to the tax authorities in confiscating and recovering receivables, when the debtor is declared bankrupt, the asset recovery authority is still subject to the principle of *general confiscation* carried out by the Curator. All the DGT's billing rights against bankrupt debtors must be included in the renvoi-procedure system,

---

<sup>23</sup> Pardede, M. (2020). Aspek hukum pemberantasan tindak pidana korupsi oleh korporasi dalam bidang perpajakan. *Jurnal Penelitian Hukum De Jure*, 20(3), 335-362.

as an integral part of the orderly administrative order for the management of bankruptcy debtors.<sup>24</sup>

Therefore, at the level of legal theory, tax asset recovery does not stand absolutely above the bankruptcy system, but rather is in a synchronization system between tax law and bankruptcy law.

## METHODS

### A. Types and Approaches to Research

This research is a normative (doctrinal) legal research with a juridical-normative approach.<sup>25</sup> This type of normative legal research is used because this research focuses on the study of positive legal norms, legal theories, legal principles, and laws and regulations related to the authority of confiscation in the Indonesian legal system.<sup>26</sup>

The juridical-normative approach was chosen to systematically review the applicable legal provisions, both vertically and horizontally, related to the conflict of confiscation authority by the Directorate General of Taxes, the Prosecutor's Office, and the Curator in bankruptcy cases, especially in the case of PT Mount Dreams Indonesia. This research also relates relevant legal theories, such as Gustav Radbruch's theory of justice, Hans Kelsen's theory of authority, and the principle *of lex specialis derogat legi generali*.

### B. Data Sources and Legal Materials

The sources of legal materials in this study consist of:

1. Primary Legal Materials Namely the applicable laws and regulations, including:
  - a. the Constitution of the Republic of Indonesia in 1945;

---

<sup>24</sup> Isfardiyana, S. H. (2016). Sita Umum Kepailitan Mendahului Sita Pidana dalam Pemberesan Harta Pailit. *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 3(3), 2.

<sup>25</sup> Sudikno Mertokusumo. (2014). *Penemuan Hukum: Sebuah Pengantar*. Yogyakarta: Liberty.

<sup>26</sup> Peter Mahmud Marzuki. (2017). *Penelitian Hukum: Edisi Revisi*. Jakarta: Kencana.

- b. Law Number 6 of 1983 concerning General Provisions and Tax Procedures (KUP Law) and its amendments in the Law on Harmonization of Tax Regulations (HPP Law);
  - c. Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes;
  - d. Law Number 8 of 1981 concerning the Criminal Procedure Law (KUHAP);
  - e. Law Number 37 of 2004 concerning Bankruptcy and PKPU;
  - f. Court decisions related to bankruptcy, tax, and corruption cases.
2. Secondary Legal Materials Namely legal literature, textbooks, results of previous research, scientific articles, and opinions of legal experts, including:
    - a. Task: Gustav Radbruch;
    - b. The works of Hans Kelsen;
    - c. Literature on the theory of authority, the theory of justice, tax law, economic criminal law, and bankruptcy law;
    - d. Academic papers related to the regulation of confiscation authority.
  3. Tertiary Legal Materials, namely legal dictionaries, legal encyclopedias, and other supporting documents.

### **C. Legal Material Collection Techniques**

The technique of collecting legal materials is carried out by:

1. Library research on laws and regulations, legal literature, and academic articles;
2. Tracking court decisions related to the issue of conflict of confiscation authority;
3. Analysis of secondary legal materials from reliable and relevant sources.

#### **D. Legal Materials Analysis Techniques**

The analysis of legal materials is carried out qualitatively using normative analysis methods. The qualitative approach is used to describe, study, and interpret legal provisions relevant to research problems in a systematic, structured, and argumentative manner.

In the analysis, this study also uses the deductive logic method, which is to draw legal conclusions based on a systematic analysis of legal norms, legal theories, and case studies that are the object of research.

### **DISCUSSION**

#### **A. Chronology of the Case of PT Mount Dreams Indonesia**

The case involving PT Mount Dreams Indonesia (MDI) stemmed from the company's deteriorating financial condition due to failure to manage long-term financial obligations. PT MDI is one of the companies engaged in the property development and investment sector which in recent years has experienced significant financial pressure. Initially, PT MDI faced cash flow difficulties due to a decline in sales of the developed property project. In an effort to maintain its business continuity, the company applied for various loan facilities to several financial institutions, including from national banks. However, the deteriorating liquidity conditions caused PT MDI to experience arrears in the payment of its creditor obligations.<sup>27</sup>

In these conditions, the Directorate General of Taxes (DGT), through the tax law enforcement process, found that there were allegations of tax crimes committed by PT MDI, related to the incorrect reporting and payment obligations for Income Tax (PPh), Value Added Tax (VAT), and other tax sanctions. The findings were then followed up through the investigation process of tax crimes in accordance with the provisions of Article 44 paragraph (2) letter j of the Law on General Provisions and Tax Procedures (UU KUP). In the context of the investigation, the Directorate

---

<sup>27</sup> Mahkamah Agung Republik Indonesia. Putusan Putusan Pengadilan Niaga terkait Kepailitan PT Mount Dreams Indonesia (Putusan Fiktif Simulatif sebagai Kerangka Studi Kasus).

General of Taxes carried out asset confiscation actions for the purpose of securing evidence and preventing the transfer of assets during the investigation process.<sup>28</sup> The confiscation was carried out by state tax investigators on fixed assets, company accounts, and a number of movable assets belonging to PT MDI, without going through a court determination process, as stipulated in the authority of tax criminal investigation.

After PT MDI was declared bankrupt, a new problem arose when the company's assets that had previously been confiscated by the DGT and the Prosecutor's Office became part of the bankruptcy portfolio that should be under the control of the Curator. Each law enforcement agency still adheres to the legality of its own confiscation, without an adequate coordination mechanism between institutions. This triggered a conflict of authority to confiscate PT MDI's assets. The dispute dragged on when the Curator objected to the unilateral confiscation by the DGT and the Prosecutor's Office, postulating that all assets of the bankruptcy debtor, including those that had been previously confiscated, should be managed in a *general confiscation* system under the Bankruptcy Law. Due to the lack of clarity in synchronization between state institutions, the process of resolving bankruptcy bankruptcy is hampered and results in legal uncertainty for other creditors.

## **B. Legal Status of Assets Before and After Bankruptcy**

In the case of PT Mount Dreams Indonesia (MDI), the main issue that causes legal complexity is not just the existence of tax debts, alleged corruption, or inability to pay commercial debts, but rather the legal status of the company's assets that have been confiscated by several law enforcement agencies before the bankruptcy decision was declared.

The issue of the legal status of this asset is at the heart of the problem, because the existence of assets that have been confiscated by the Directorate

---

<sup>28</sup> Lienaldy, D. N., Freddy, F., Gading, M. R. I., Farhan, M., & Laia, A. (2024). Pembuatan UU Perampasan Aset ditinjau dari Parameter Ahli. *Almufi Jurnal Sosial dan Humaniora*, 1(3), 398-409.

General of Taxes and the Prosecutor's Office raises a legal question: are the assets still included in the bankruptcy estate or have they been excluded from the scope of bankruptcy assets?

### 1. Legal Status of Assets Before the Bankruptcy Judgment

Before the bankruptcy decision was issued, several confiscation actions had been carried out by various institutions, namely:

- a. The Directorate General of Taxes carries out the confiscation of assets on behalf of PT MDI in the context of investigating tax crimes, as stipulated in Article 44 paragraph (2) letter j of the Law on General Provisions and Tax Procedures (UU KUP). The confiscation was carried out as a legal action to secure evidence and prevent the transfer of assets during the investigation process.
- b. The Prosecutor's Office conducted criminal confiscation of assets allegedly related to the proceeds of corruption crimes,<sup>29</sup> based on the Criminal Code and the Corruption Law.

At this stage, confiscation by the DGT and the Prosecutor's Office is carried out in their respective channels without any direct connection with the bankruptcy process. In positive law, confiscation carried out by the DGT is effective as long as the debtor does not file a lawsuit. Meanwhile, the confiscation of the Prosecutor's Office is criminal, which is subject to the ratification of the criminal court in the judicial process.

### 2. Legal Status of Assets After Bankruptcy Judgment

When the Commercial Court determines that PT MDI is in bankruptcy, the principle of *general confiscation* as stipulated in Article 21 and Article 31 of the Bankruptcy and PKPU Law applies. In *the principle of general confiscation*, all of the debtor's assets that

---

<sup>29</sup> Rahmani, I. (2020). *Konflik Kewenangan Sita Umum Kepailitan Dan Sita Pidana (Studi Kasus Kepailitan PT. Meranti Maritime Dan Henry Djuhari (Dalam Pailit) Serta Kepailitan PT. Sinar Central Rejeki (Dalam Pailit))* (Doctoral dissertation, UNIVERSITAS AIRLANGGA).

existed at the time of bankruptcy, including assets that were in the control of a third party, became part of the bankruptcy estate and were under the control of the curator. This is where the problem arises. Are assets that have previously been confiscated by the DGT or the Prosecutor's Office automatically excluded from bankruptcy?

In legal practice, assets that are still in the status of "temporarily confiscated" or "no legally binding decision" are generally still seen as part of the bankruptcy bankruptcy will. Thus, confiscation by the DGT and criminal confiscation by the Prosecutor's Office remain subject to bankruptcy arrangements after the bankruptcy judgment is rendered.<sup>30</sup>

However, if there are assets that have been confiscated for the state based on a criminal court decision that has permanent legal force before bankruptcy, then the assets are exempt from bankruptcy because they have become state property.

### 3. The Problem of Regulatory Disharmony

In the case of PT MDI, most of the assets seized by the DGT and the Prosecutor's Office are still in "temporary confiscation" status and have not been finalized in a court ruling. However, both the DGT and the Prosecutor's Office maintain physical control over these assets, even though a bankruptcy ruling has been issued.<sup>31</sup>

This is what creates ambiguity in the legal status of assets:

- a. From the point of view of bankruptcy law: all assets that have not been seized by legally binding decision are included in the bankruptcy debtors;

---

<sup>30</sup> Syarif, M., Sunarmi, S., & Yunara, E. (2023). Kedudukan Sita Pidana Harta Benda Tindak Pidana Pencucian Uang dengan Kedudukan Sita Umum Kepailitan. *Locus Journal of Academic Literature Review*, 757-768

<sup>31</sup> Ridwan Khairandy. (2011). *Hukum Kepailitan di Indonesia*. Yogyakarta: FH UII Press.

- b. From the point of view of the DGT and the Prosecutor's Office: the assets that have been confiscated are seen as the exclusive guarantee of the settlement of their respective obligations.

Due to the absence of harmonized norms between sectors, there is no normative mechanism that expressly regulates how to settle the status of assets that have been confiscated before bankruptcy.

#### 4. Implications of Asset Status on Creditors' Rights

The main consequences of the unclear legal status of these assets are:

- a. Inhibition of the verification process of the receivables list in bankruptcy;
- b. Uncertainty of rights for concurrent creditors, other preferences, or the state;
- c. The potential for double claims by the state, both as holders of administrative/criminal confiscation rights and as preferred creditors in bankruptcy forums.

This implication clearly hinders the effectiveness of the bankruptcy settlement process and threatens the principle of *creditorum parity* that is upheld in the bankruptcy system.

### **C. Conflict of Confiscation Authority in the Case of PT Mount Dreams Indonesia**

The conflict of confiscation authority in the case of PT Mount Dreams Indonesia (MDI) is a logical consequence of the insynchronization of the legal arrangements between the legal regimes that regulate taxes, corruption, and bankruptcy.<sup>32</sup> Each law enforcement agency involved claims exclusive authority to control debtors' assets based on applicable

---

<sup>32</sup> Mahkamah Agung Republik Indonesia. Putusan Putusan Pengadilan Niaga terkait Kepailitan PT Mount Dreams Indonesia (Putusan Fiktif Simulatif sebagai Kerangka Studi Kasus).

sectoral norms, without a standard coordination system at the regulatory level.

#### 1. Forms of Conflict of Authority

In this case, there are at least three types of foreclosure claims that run simultaneously:

- a. Tax Criminal Confiscation by the Directorate General of Taxes (DGT): The DGT carries out confiscation based on the provisions of the KUP Law and the HPP Law. The DGT believes that taxes are priority state receivables (preferred) so that the state has the right to directly confiscate the assets of tax delinquents, regardless of the bankruptcy forum.
- b. Criminal Confiscation by the Prosecutor's Office: The Prosecutor's Office confiscated assets that were suspected to be the result of a corruption crime, with the legal basis of the Criminal Code and the Corruption Crimes Law. Criminal confiscation is repressive, not solely for the collection of receivables, but to secure evidence as well as recover state losses.
- c. Public Confiscation by the Curator: After PT MDI is declared bankrupt, the Curator gets the exclusive right to control the bankruptcy property based on the Bankruptcy Law. All the debtor's assets that have not been excluded under the law (e.g. judgment of legally binding decision of state forfeiture) in principle become part of the bankruptcy bond.

The three claims of authority run in parallel, and each institution feels that it has a strong legal justification.

#### 2. Roots of Authority Conflicts

The main root of this conflict of authority lies in two things:

- a. Overlapping Lex Specialis: Each institution adheres to the provisions of sectoral lex specialis. The DGT feels that the tax lex specialis regulates the state's priority rights over tax receivables.

The prosecutor's office adheres to the *lex specialis tipikor*. The curator holds the principle of *lex specialis* bankruptcy in the form of public confiscation. The absence of harmonization rules between *lex specialis* causes each to feel that they have priority authority.

- b. **Absence of Cross-Institutional Coordination Mechanism:** There is no statutory provision that explicitly regulates how to settle priority between tax criminal confiscation, criminal confiscation, and bankruptcy confiscation if all three occur simultaneously on the same asset.

### 3. Impact of Authority Conflict

This conflict resulted in a number of serious problems in practice:

- a. The occurrence of double claims for the same property object;
- b. Inhibition of the bankruptcy settlement process;
- c. The emergence of legal uncertainty for creditors, both concurrent, separatist, and other preferential;
- d. Hindering the recovery of state losses because each institution insists on maintaining its own right of execution;
- e. The potential for a prolonged dispute of authority between state institutions even leads to a lawsuit in court.

### 4. Absence of a Conflict Resolution Forum

To date, there is no normative regulatory mechanism that expressly establishes:

- a. Who is the institution authorized to resolve this confiscation conflict;
- b. Inter-agency dispute resolution coordination forum;
- c. Arrangements on the order of priority between enforcement rights across legal regimes.

As a result, conflicts such as those that occurred in the PT MDI case will continue to recur in the future if there is no legal reform that reorganizes the coordination arrangements between institutions.

#### **D. Analysis of Conflict of Authority in the Perspective of the Lex Specialis**

The concept of *lex specialis derogat legi generali* is an important principle in resolving the conflict of norms when there are overlapping arrangements of the same object.<sup>33</sup> However, in the case of PT Mount Dreams Indonesia (MDI), the principle of *lex specialis* is actually a source of attraction between state institutions, because each claims to be the holder of *lex specialis* that applies to the object of confiscation.

##### **1. Application of Lex Specialis in Every Legal Regime**

In the case of PT MDI, there are at least three sectoral laws, each of which contains *lex specialis norms*, namely:

- a. **Lex Specialis Pajak (KUP Law and HPP Law):** The Directorate General of Taxes (DGT) adheres to the provisions in the KUP Law which specifically gives the authority to confiscate to the state without having to go through the courts. On the other hand, the HPP Law emphasizes that taxes are state receivables that have a preferential position.
- b. **Lex Specialis Corruption Crime (Corruption Law):** The Prosecutor's Office adheres to the Corruption Law which gives the authority to confiscate the proceeds of corruption crimes in order to recover state financial losses. Confiscation in a criminal context has the characteristics of repressive state control over the proceeds of crime.
- c. **Bankruptcy Lex Specialis (Bankruptcy Law and PKPU):** Curator refers to the Bankruptcy Law which stipulates the principle of

---

<sup>33</sup> Lindroos, A. (2005). Addressing norm conflicts in a fragmented legal system: the doctrine of *lex specialis*. *Nordic Journal of International Law*, 74(1), 27-66.

*general confiscation*, namely that all assets of bankruptcy debtors are included in the bankruptcy bond and become the object of settlement by the curator under the supervision of the commercial court.

## 2. Conflicts between parallel *lex specialis*

In *the theory of lex specialis*, the norms that govern more specifically should prevail and override the general norms. However, in the case of PT MDI, the three *lex specialis* norms stand in parallel, because:

- a. All three are specialized in their respective fields (tax crimes, bankruptcy, and corruption crimes);
- b. There is no higher hierarchy of norms between the three;
- c. The object of regulation is the same, namely the control of the debtor's assets.

This is what creates a legal impasse because Indonesia's sectoral arrangements have not provided a synchronization mechanism between *lex specialis* across regimes.

## 3. The Principle of *Lex Specialis* in the Practice of Insolvency

If referring to the logic of the bankruptcy legal system, once the debtor is declared bankrupt, all settlements of receivables including tax receivables and the return of state losses should be subject to the bankruptcy settlement mechanism under the supervision of the curator and the commercial court.<sup>34</sup> This is in accordance with the characteristics of *general confiscation* in bankruptcy law which is collective and comprehensive against all the debtor's assets.<sup>35</sup> The principle of tax *lex specialis* and *lex specialis tipikor* should operate in

---

<sup>34</sup> Zorzetto, S. (2012). The *lex specialis* principle and its uses in legal argumentation. An analytical inquire. *EUNOMÍA. Revista en Cultura de la Legalidad*, (3), 61-87.

<sup>35</sup> Prud'homme, N. (2007). *Lex specialis: oversimplifying a more complex and multifaceted relationship?*. *Israel Law Review*, 40(2), 356-395.

a bankruptcy forum, not run unilaterally outside the supervision of the curator. Thus, sectoral *lex specialis* remains valid, but must be procedurally placed in the bankruptcy *renvoi* system.

#### 4. Lack of Inter-Agency Harmonization Arrangements

The absence of a cross-agency *lex specialis harmonization* arrangement is what causes the DGT, the Prosecutor's Office, and the Curator to carry out executions in parallel and compete with each other. Supposedly, a positive legal arrangement provides:

- a. Affirmation of the order of execution priorities between agencies;
- b. Cross-sectoral confiscation coordination mechanism;
- c. Settlement forum in the event of a clash of confiscation.

The absence of this coordination arrangement increases the chance of conflicts of authority, as happened in the case of PT MDI.

#### 5. Implications of Lex Specialis Asynchronization

The inconsistency of the *lex specialis* not only raises procedural problems, but also interferes with substantive fairness for other creditors in bankruptcy. Concurrent creditors, separatist creditors, and even the state as preferred creditors, all have the potential to suffer losses due to the uncertainty of asset positions that are unilaterally contested by each state institution.<sup>36</sup> If this *lex specialis* conflict continues to be left unchecked, law enforcement will no longer operate within the framework of legal certainty, but will create structural uncertainty between state institutions themselves.

### E. The Role of Renvoi in Resolving Conflicts of Authority

In Indonesian bankruptcy law, *the renvoi-procedure* principle plays a central role as an administrative mechanism to ensure orderly verification

---

<sup>36</sup> Marcos, H. (2025). *Lex Specialis as a Reason-Giving Norm: Balancing Norm Specificity and Individual Rights in Times of Crisis*. *International Community Law Review*, 27(3), 218-253.

of receivables and equitable distribution of bankruptcy assets to all creditors.<sup>37</sup> The existence of renvoi is not only an administrative procedure, but also a key instrument in preventing conflicts of interest between state institutions and between creditors.

### 1. Renvoi as a Central Principle in General Confiscation

Renvoi is a mechanism for registering bills by all creditors to the curator after a bankruptcy decision.<sup>38</sup> Through this mechanism, each creditor:

- a. Submit the bill along with supporting documents;
- b. Through a verification process by curators and supervisory judges;
- c. It is determined whether or not it is included in the list of bankruptcy receivables.

The basic principle of renvoi is that no creditor can unilaterally execute his rights outside the bankruptcy forum. All billing rights including state-owned (both DGT and Prosecutor's Office) must be registered through renvoi.

### 2. DGT's Position in Renvoi

Although tax receivables are preferred creditors as stipulated in Articles 21 and 36 of the Bankruptcy Law, the DGT is still obliged to follow the renvoi. The DGT's priority rights only take effect after the receivables are verified and recognized in the bankruptcy receivables list.<sup>39</sup> If the DGT is negligent or deliberately does not register its receivables, then the DGT loses the right to collect the receivables through the bankruptcy bank. Thus, the DGT's confiscation outside

---

<sup>37</sup> Lorenzen, E. G. (1917). Renvoi Doctrine in the Conflict of Laws Meaning of the Law of a Country. *Yale LJ*, 27, 509.

<sup>38</sup> Tewary, C. (2018). *Renvoi in Commercial Matters: A Comparative Analysis of International, Supranational and Regional Conflicts Instruments*. University of Johannesburg (South Africa).

<sup>39</sup> Salman, M., Allah, B., & Ullah, M. (2025). Principles of Conflicting Personal Laws in Common Law: Jurisdiction, Adjudication, and Enforcement. *Competitive Research Journal Archive*, 3(01), 243-255.

the bankruptcy forum has become illegal since the bankruptcy bankruptcy forum was formed.

### 3. Position of the Prosecutor's Office in Renvoi

Unlike the DGT, the Prosecutor's Office confiscation is related to the proceeds of corruption crimes.<sup>40</sup> If the confiscation of the Prosecutor's Office was carried out before bankruptcy and has permanent legal force, then the assets of the proceeds of corruption confiscated for the state are removed from the bankruptcy estate because they have become state property. However, if the confiscation status of the Prosecutor's Office is still temporary when bankruptcy occurs, then the principle of general confiscation requires that the assets be subject to the management of the curator until a final criminal verdict is made.

### 4. Renvoi as a Conflict Resolution Filter

With the existence of a renvo mechanism, confiscation conflicts between state institutions can actually be minimized.<sup>41</sup> Some of the functions of renvoi in conflict resolution include:

- a. Maintain the principle of *creditorum parity*: All creditors are treated equally in the filing of bills, according to their class and priority.
- b. Preventing unilateral execution: Both the DGT, the Prosecutor's Office, and other creditors must be subject to a settlement mechanism under curatorial supervision.
- c. Providing legal certainty: Receivables that have been verified by renvo acquire formal legitimacy in the distribution of bankruptcy accounts.

---

<sup>40</sup> Murjiyanto; Suci, Ivida Dewi Amrih; Poesoko, Herowati; Harianto, Aries. (2022). Renvoi Procedure for Justiabelens' Justice in the Bankruptcy Law. *JL Pol'y & Globalization*, 122, 1.

<sup>41</sup> Raden, M., Suci, I. D. A., Poesoko, H., & Harianto, A. (2022). Renvoi Procedure for Justiabelens' Justice in the Bankruptcy Law. *Journal of Law, Policy and Globalization*, 122.

- d. Minimizes interagency dispute lawsuits: With centralized management by curators, the potential for jurisdictional conflicts is reduced.

#### 5. Disadvantages of Renvoi in Practice

Although theoretically renvoi is able to be an instrument of harmonization of authority, in practice:

- a. There is still a tendency for state institutions to avoid renvoi on the grounds of sectoral *lex specialis*;
- b. Not all state institutions view renvoi as a mandatory mechanism;
- c. There has been no strict regulation of sanctions for violations of the renvoi principle by state institutions;
- d. The ambiguity of the *lex specialis* arrangement causes renvoi to be often ignored in confiscation conflicts.

#### 6. The Importance of Strengthening Renvoi in the Future

The case of PT Mount Dreams Indonesia proves that strengthening renvoi norms is not just an administrative procedure, but an *instrument of authority management between state institutions* in bankruptcy forums. Future reform of renvoi arrangements needs to provide clarity that:

- a. Renvoi is mandatory for all creditors, including the state;
- b. The curator as the manager of the bankruptcy debtors becomes the sole forum for debt settlement;
- c. The sectoral *lex specialis* arrangement remains in effect, but enforcement of execution is channeled through the bankruptcy renvoi system.

With this strengthening, conflicts of confiscation authority can be prevented from an early stage, as well as restore Indonesia's bankruptcy system to its main principle: collective, fair, and coordinated debt settlement.

## **F. The Role of Asset Recovery in Asset Control Disputes**

The concept *of asset recovery* in the modern tax system is an increasingly complex strengthening of collection instruments,<sup>42</sup> especially since the enactment of the Law on Harmonization of Tax Regulations (UU HPP). Although in principle asset recovery functions to optimize state revenue, in the context of bankruptcy, this instrument has the potential to cause new complications to the debtor's control of assets when the bankruptcy process runs at the same time as the enforcement of asset recovery.

### **1. Asset Recovery as a Special Instrument in Tax Collection**

The Directorate General of Taxes, in addition to being given administrative confiscation authority as stipulated in the KUP Law, also obtains additional authority through strengthening asset recovery in the HPP Law. These asset recovery instruments include:

- a. Asset tracking;
- b. Asset freezing;
- c. Freezing of financial transactions;
- d. Revocation of business license or investment license;
- e. Cross-border exchange of financial information (Automatic Exchange of Information (AEOI)).

With this expansion of authority, the DGT can proactively detect, control, and secure the assets of tax delinquents, even before the formal execution process takes place.

### **2. Potential Asset Recovery Conflict with Public Confiscation of Bankruptcy**

Although asset recovery strengthens the DGT's ability to guarantee state revenue, in bankruptcy cases such as the case of PT

---

<sup>42</sup> Stephenson, K., Gray, L., & Power, R. (2011). *Barriers to asset recovery: An analysis of the key barriers and recommendations for action*. World Bank Publications.

Mount Dreams Indonesia, the use of asset recovery instruments can cause a conflict with the principle of general confiscation. After the debtor is declared bankrupt, all of the debtor's assets, including assets that are in a tracing, blocking, or freezing status, basically become part of the bankruptcy estate that must be managed by the curator.<sup>43</sup> The implementation of unilateral asset recovery by the DGT after the bankruptcy decision has the potential:

- a. Ignoring the principle of collectivity of debt settlement in bankruptcy;
- b. Raising a dispute over the control of assets between the DGT and the curator;
- c. Detrimental to the rights of other creditors who have the right to claim against the bankrupt bankrupt.

### 3. Asset Recovery as Part of a Conflict of Confiscation Authority

Asset recovery is substantially a follow-up variant of tax administrative confiscation that falls within the scope of the conflict of confiscation authority as previously described.<sup>44</sup> The existence of asset recovery enlarges the scope of the DGT's control over the debtor's assets, thereby expanding the space for overlapping execution with the curator's authority in the management of bankruptcy bankruptcy.

In some cases, it is even found situations where:

- a. The DGT has carried out asset tracing abroad, but these assets are included in the bankruptcy bank;
- b. The DGT continues to block bankrupt assets in the name of fulfilling asset recovery, even though the curator is authorized to manage the asset;
- c. The absence of a coordination forum between institutions increases the tension of asset execution.

---

<sup>43</sup> Omondi, M. (2021). *Asset Recovery in Corruption Cases: Towards a More Efficient Legal Framework for Recovering Assets* (Doctoral dissertation, University of Nairobi).

<sup>44</sup> Tickner, J., & Gabriel, S. (2014). *Asset Recovery*.

#### 4. Absence of Asset Recovery Harmonization Arrangements in Bankruptcy

To date, there has been no positive legal arrangement that explicitly regulates the boundaries between the implementation of asset recovery<sup>45</sup> and the implementation of public confiscation in bankruptcy. Consequently:

- a. The DGT feels authorized to carry out asset recovery without being subject to bankruptcy forums;
- b. The curator feels fully authorized to control all bankruptcy assets, including those that are being blocked by the DGT;
- c. There is no forum for synchronization of asset management between state institutions in the bankruptcy settlement phase.

#### 5. The Importance of Asset Recovery Placement in the Renvoi Mechanism

In order not to violate the principle of collectivity in the settlement of bankruptcy proceedings, asset recovery should:

- a. Run optimally before the bankruptcy decision;
- b. After bankruptcy, the DGT is still obliged to submit its receivables through *the renvoi-procedure* mechanism;
- c. All traceability, blocking, or freezing results carried out by the DGT must be consolidated into the curator's control as part of the bankruptcy bond.

Thus, asset recovery continues to act as a preliminary asset safeguard, but its execution is still subject to the principle of renvoi and the management of bankruptcy assets by the curator after bankruptcy status is determined.

---

<sup>45</sup> Ermaida, M., Arie, M., & Syarief, L. M. (2024). Regulation of Asset Recovery in the Judicial System in Indonesia. *Journal of Hunan University Natural Sciences*, 51(5).

## **G. Evaluation of substantive justice based on Radbruch's theory**

After mapping all the conflicts of authority that occurred in the PT Mount Dreams Indonesia case, it is important to assess whether the legal conditions that ran during the confiscation process have met the principle of substantive justice as referred to by Gustav Radbruch. Radbruch views that law is not merely a normative certainty (*Rechtssicherheit*), but must also always take into account the value of justice (*Gerechtigkeit*) and the usefulness of law (*Zweckmäßigkeit*).<sup>46</sup> The three must go hand in hand and correct each other if there is an extreme imbalance in the practice of law application.

### **1. Legal Certainty**

In the case of PT MDI, each state institution has actually exercised its authority based on the applicable laws and regulations. Normatively:

- a. The Directorate General of Taxes acts based on the KUP Law and the HPP Law;
- b. The Prosecutor's Office carried out confiscation based on the Criminal Code and the Corruption Law;
- c. The curator carries out the control of the bankruptcy debtors based on the Bankruptcy Law and PKPU.

This means that from the perspective of sectoral legal certainty, each institution works according to a valid positive legal basis.<sup>47</sup> However, precisely because each of them runs independently with different sectoral legalities, there are clashes and uncertainties at the level of the legal system as a whole. In this context, sectoral legal certainty turns out to create systemic legal uncertainty.

---

<sup>46</sup> Bix, B. H. (2013). Radbruch's formula, conceptual analysis, and the rule of law. In *Law, liberty, and the rule of law* (pp. 65-75). Dordrecht: Springer Netherlands.

<sup>47</sup> Borowski, M. (2021). Gustav Radbruch's critique of legal positivism. *Dalam The Cambridge Companion to Legal Positivism, diedit oleh Torben Spaak dan Patricia Mundus*, 627-51.

## 2. Justice

Substantive justice demands that all interested parties obtain proportionate protection of rights.<sup>48</sup> In bankruptcy, all creditors whether state, banks, or general creditors must be treated fairly in the order of their rights. However, in the case of PT MDI, unilateral control of the debtor's assets by the DGT and the Prosecutor's Office prior to the bankruptcy process resulted in:

- a. The general creditor loses access to the part of the bankruptcy debtors that has been confiscated in advance;
- b. The potential for *overlapping claims* on the same asset object;
- c. The state through two different institutions actually competes with each other for control of assets, which ultimately harms the principle of debt settlement collectivity.

In Radbruch's perspective, if the certainty of sectoral law actually creates substantive injustice for the other party, then substantive justice must take precedence over formal sectoral legality.

## 3. Legal Expediency

In terms of benefits, the legal system should produce an effective, efficient settlement, and provide practical legal certainty for all parties.<sup>49</sup> However, in the case of PT MDI, the unresolved confiscation conflict:

- a. Prolong the bankruptcy settlement process;
- b. Hinder refunds for all creditors;
- c. Opening up the potential for prolonged lawsuits between state institutions and by private parties.

---

<sup>48</sup> Chroust, A. H. (1944). The philosophy of law of Gustav Radbruch. *The Philosophical Review*, 53(1), 23-45.

<sup>49</sup> Ashari, Z. S. (2024). Exceptio Dilatoria in the Indonesian Context: Implementation of Justice and Legal Certainty from Radbruch's Perspective. *Peradaban Journal of Law and Society*, 3(1), 31-47.

From Radbruch's perspective, a legal system that is too rigid normatively, but fails to provide effective solutions, will ultimately lose its social benefits.

#### 4. Evaluative Conclusions

If all of these issues of confiscation conflict are assessed through the lens of *Radbruchsche Formel*, then the legal system that applies in the case of PT MDI can be said:

- a. It has sectoral legal certainty, but fails to produce substantive justice as a whole;
- b. Ignoring the principle of *parity creditorum* that characterizes bankruptcy law;
- c. It is less effective in regulating coordination mechanisms across agencies, thus creating systemic legal uncertainty.

Thus, academically, the legal condition in the PT MDI case does not fully meet the principle of substantive justice according to Radbruch's theory, and requires strengthening the norms of cross-sectoral harmonization as an effort to correct the system.

#### **H. Direction of Improvement of Legal Arrangements**

The problem of conflict of confiscation authority in the case of PT Mount Dreams Indonesia reflects a fundamental weakness in the national legal system, especially in the aspect of harmonization of norms between tax law regimes, corruption crimes, and bankruptcy. Therefore, a more comprehensive and synchronous legal policy formulation is needed as a form of correction to the current conflict of confiscation authority. Here are some recommendations for improving the settings that can be proposed:

## 1. Establishment of Norms for Coordinating Cross-Agency Confiscation

There is a need for special normative arrangements that explicitly regulate the coordination mechanism for the implementation of seizures across state institutions, especially between:<sup>50</sup>

- a. Directorate General of Taxes;
- b. the Prosecutor's Office (and/or other criminal law enforcement officials);
- c. Curator in bankruptcy proceedings.

This coordination arrangement is necessary so that there are no claims for unilateral execution of the same property objects, as well as ensuring orderly control of assets based on the principle of *general confiscation* in bankruptcy.

## 2. Harmonization of Lex Specialis Between the KUP Law, the Corruption Law, and the Bankruptcy Law

It is necessary to amend or harmonize norms between:

- a. KUP Law and HPP Law: Expressly regulates that tax confiscation is subject to a bankruptcy forum if the debtor is declared bankrupt.
- b. Corruption Law: Affirms the status of assets resulting from corruption crimes that are still in the process of investigation/before legally binding decision to be subject to the general confiscation system.
- c. Bankruptcy Law and PKPU: Strengthen the position of the Curator as the center for the management of all bankruptcy assets, including assets that are in confiscation disputes between state institutions.

---

<sup>50</sup> Saputra, K. E. D. (2019). Tata Cara Penyitaan Dan Pelelangan Serta Perlindungan Barang Milik Wajib Pajak. *Jurnal Ilmiah Raad Kertha*, 2(2), 31-47.

### 3. Strengthening the Renvoi Principle as an Integrated Verification Mechanism

Renvoi should be defined as:

- a. Universal liability: All creditors, both state and private, are obliged to register their receivables in the bankruptcy receivables list.
- b. Single verification forum: All foreclosure claims (tax, criminal, or civil) are verified under curators and supervising judges.
- c. Normative sanctions: Creditors or state institutions that do not participate in renvoi are considered to have lost the right to claim against the bankruptcy bank.

By strengthening the renvoi, disputes over confiscation authority can be minimized from the beginning.

### 4. Establishment of Inter-Agency Authority Dispute Resolution Forum

It is necessary to establish a special and rapid inter-agency authority dispute resolution forum to handle the conflict of authority between state institutions in controlling debtors' assets. This forum can be formed in the form of:

- a. Inter-agency coordination council (DGT, Prosecutor's Office, Commercial Court);
- b. A special administrative court for cross-sector execution disputes.

The existence of this forum is expected to be able to resolve authority disputes objectively, quickly, and not delay the bankruptcy settlement process.

### 5. Revision of the Concept of State Asset Recovery in Bankruptcy

It is necessary to rearrange the concept of national asset recovery in bankruptcy cases in order to:

- a. The confiscation and return of state assets still respects the principle of collectivity of debt settlement in bankruptcy;
  - b. Avoid the unilateral dominance of state institutions over the rights of other creditors;
  - c. Ensure that the recovery of state losses runs within the framework of a fair, coordinated, and accountable legal system.
6. Affirmation of the Principle of Substantive Justice in Policy Formulation

Any new establishment of the arrangement should explicitly incorporate the principle of substantive justice as put forward by Gustav Radbruch, namely:

- a. Maintaining a balance between legal certainty, justice, and utility;
- b. Avoid the dominance of formal legality at the expense of the rights of other creditors;
- c. Ensuring that the settlement of bankruptcy debts runs fairly for all parties.

With the reformulation of the regulation as described above, it is hoped that Indonesia's national legal system will be able to prevent the recurrence of conflicts of confiscation authority as in the case of PT Mount Dreams Indonesia, as well as realize the principle of legal certainty that is balanced with substantive justice and the effectiveness of collective resolution of bankrupt debtors' assets.

## **I. Critical Notes on the Bankruptcy and PKPU Bill**

The government through the Ministry of Law and Human Rights (Kemenkumham), especially through the National Legal Development Agency (BPHN), has prepared an Academic Manuscript of the Bankruptcy and Postponement of Debt Payment Obligations (PKPU) Bill which is still

in the process of being discussed in the House of Representatives (DPR). In the process of drafting it, the Directorate General of General Legal Administration (Ditjen AHU) of the Ministry of Law and Human Rights also made a material contribution to the substance of the bill.

The 2018 version of the Academic Manuscript of the Bankruptcy and PKPU Bill contains several legal reform agendas, including: improving PKPU procedures, limiting trial periods, strengthening curatorial professionalism, supervision of commercial courts, and strengthening aspects of transparency in the debt settlement process. These efforts show that there is awareness to modernize the debt and receivables settlement system in Indonesia.

However, based on the results of the review of the Academic Manuscript, it was found that most of the fundamental problems related to the conflict of authority over the confiscation of assets between state institutions have not received adequate attention. The main problem that is the focus of this research namely the conflict of confiscation authority involving the Directorate General of Taxes, the Prosecutor's Office, and the Curator in the bankruptcy debt settlement process has not been substantially touched in the formulation of the bill.

The main source of the conflict is the overlapping normative regulation of *lex specialis* in the fields of taxation, corruption, and bankruptcy, each of which runs in a sectoral manner without an effective cross-agency coordination mechanism. In addition, the regulation regarding the integration of asset recovery proceeds into bankruptcy has also not been expressly regulated in the bill, even though this issue is one of the crucial factors in the collective and fair settlement of debt.

All normative recommendations that have been comprehensively described in Chapter of the Direction for the Improvement of Legal Regulation are important parts that should be considered in improving the substance of the Bankruptcy Bill and PKPU in the future. By accommodating these recommendations, it is hoped that the Bankruptcy

Bill will not only make procedural improvements, but also be able to solve the root of the conflict of asset confiscation authority that has been causing legal uncertainty in the practice of bankruptcy debt settlement in Indonesia.

## CONCLUSION

Based on the results of the discussion and analysis in this study, it can be concluded as follows:

1. The regulation of confiscation authority by the Directorate General of Taxes, the Prosecutor's Office, and the Curator is still sectoral, each running on its own *lex specialis* basis without any cross-agency coordination arrangements.
2. Normatively, all assets of a bankruptcy debtor that have not been legally removed from the debtor's control through a court decision with permanent legal force, including assets that are being confiscated by the DGT and the Prosecutor's Office, are still included in the bankruptcy portfolio that must be managed by the curator through the principle of general confiscation.
3. The application of *lex specialis* by each institution does not automatically resolve conflicts of authority. On the contrary, the existence of several parallel *lex specialis* actually increases the space for conflicts of confiscation authority.
4. The *renvoi-procedure mechanism* in the bankruptcy legal system should be able to function as a single verification forum that prevents execution conflicts between state institutions, including the state as the preferred creditor.
5. From the perspective of substantive justice according to Radbruch's theory, the current legal system still fails to fully meet substantive justice, because it creates systemic legal uncertainty and losses for some parties, especially other creditors outside the state.
6. The strengthening of asset recovery authority by the Directorate General of Taxes as stipulated in the HPP Law, through asset tracing,

freezing, blocking, and AEOI instruments, enlarges the space for asset control conflicts with curators in bankruptcy. The absence of the arrangement for the integration of asset recovery proceeds into bankruptcy bankruptcy creates additional legal uncertainty in collective debt settlement.

## REFERENCES

- Alfajri, M. S. 2025. *Peran Kurator Dalam Proses Penanganan Perkara Kepailitan Perseroan Terbatas*. Disertasi, Universitas Islam Sultan Agung Semarang.
- Andrian, A. 2023. "Sengketa Kewenangan dalam Proses Likuidasi Boedel Pailit antara Kurator dengan Kejaksaan Republik Indonesia". *Justisi*, 9(3): 389–401.
- Apriyanita, T. 2024. "Penyitaan Harta Kekayaan Milik Wajib Pajak atau Tersangka dalam Tindak Pidana di Bidang Perpajakan di Indonesia". *Journal of Tax Law and Policy*, 3(2): 85–93.
- Arianto, A. F. 2024. "Peran Lembaga Penegak Hukum Dalam Proses Perampasan Aset". *USM Law Review*, 7(3): 1601–1615.
- Ashari, Z. S. 2024. "Exceptio Dilatoria in the Indonesian Context: Implementation of Justice and Legal Certainty from Radbruch's Perspective". *Peradaban Journal of Law and Society*, 3(1): 31–47.
- Asshiddiqie, Jimly. 2010. *Perilah Undang-Undang*. Jakarta: Rajawali Pers.
- Bix, B. H. 2013. "Radbruch's Formula, Conceptual Analysis, and the Rule of Law". Dalam *Law, Liberty, and the Rule of Law*, 65–75. Dordrecht: Springer Netherlands.
- Borowski, M. 2021. "Gustav Radbruch's Critique of Legal Positivism". Dalam *The Cambridge Companion to Legal Positivism*, disunting oleh Torben Spaak & Patricia Mundus, 627–651. Cambridge: Cambridge University Press.
- Burhan, A. U. A., & Gunadi, G. 2022. "Optimalisasi Wewenang PPNS DJP dalam Penyitaan dan Pemblokiran Aset untuk Pemulihan Kerugian Pendapatan Negara". *Owner: Riset Dan Jurnal Akuntansi*, 6(4): 4199–4209.
- Chroust, A. H. 1944. "The Philosophy of Law of Gustav Radbruch". *The Philosophical Review*, 53(1): 23–45.

- Ermaida, M., Arie, M., & Syarief, L. M. 2024. "Regulation of Asset Recovery in the Judicial System in Indonesia". *Journal of Hunan University Natural Sciences*, 51(5).
- Fhadillah, Z., Ayu Astiti, N. M. Y., Cholil, M., Alfian, M. A., & Aliefia, M. 2023. "Problematika Kepailitan Transnasional Terhadap Pengurusan dan Pemberesan Aset Debitur Pailit". *Notaire*, 6(2).
- Fitrah, F. A., Takariawan, A., & Muttaqin, Z. 2021. "Kedudukan Penyidik Pegawai Negeri Sipil Direktorat Jenderal Pajak dalam Kerangka Penegakan Hukum Pidana Perpajakan di Indonesia". *SIGN Jurnal Hukum*, 3(1): 1–25.
- Gustav Radbruch. 2006. *Filsafat Hukum: Masalah-Masalah Pokok dalam Teori Hukum*. Terjemahan B. Arief Sidharta. Bandung: Citra Aditya Bakti.
- Hans Kelsen. 2007. *Teori Hukum Murni (Pure Theory of Law)*. Terjemahan Raisul Muttaqien. Bandung: Nusa Media.
- Indonesia. 1945. *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*.
- Indonesia. 2004. *Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang (PKPU)*.
- Isfardiyana, S. H. 2016. "Sita Umum Kepailitan Mendahului Sita Pidana dalam Pemberesan Harta Pailit". *Padjadjaran Jurnal Ilmu Hukum*, 3(3): 2.
- Laia, C. A., SH, M., SH, M., & SH, M. 2024. *Rekonstruksi Peran Kejaksaan terhadap Pelaku Tindak Pidana Korupsi dalam Upaya Penyitaan dan Perampasan Aset*. Sukabumi: CV Jejak (Jejak Publisher).
- Lienaldy, D. N., Freddy, F., Gading, M. R. I., Farhan, M., & Laia, A. 2024. "Pembuatan UU Perampasan Aset Ditinjau dari Parameter Ahli". *Almufi Jurnal Sosial dan Humaniora*, 1(3): 398–409.
- Lindroos, A. 2005. "Addressing Norm Conflicts in a Fragmented Legal System: The Doctrine of Lex Specialis". *Nordic Journal of International Law*, 74(1): 27–66.
- Lorenzen, E. G. 1917. "Renvoi Doctrine in the Conflict of Laws Meaning of the Law of a Country". *Yale Law Journal*, 27: 509.
- Lumbanraja, B. Y., Badriyah, S. M., & Cahyaningtyas, I. 2024. "Analisis Yuridis Kepailitan Harta yang Ditinggalkan". *Notarius*, 14(1): 147–161.

- Mahkamah Agung Republik Indonesia. *Putusan Pengadilan Niaga terkait Kepailitan PT Mount Dreams Indonesia* (Putusan Fiktif Simulatif sebagai Kerangka Studi Kasus).
- Marcos, H. 2025. "Lex Specialis as a Reason-Giving Norm: Balancing Norm Specificity and Individual Rights in Times of Crisis". *International Community Law Review*, 27(3): 218–253.
- Murjiyanto, Suci, I. D. A., Poesoko, H., & Harianto, A. 2022. "Renvoi Procedure for Justielabelens' Justice in the Bankruptcy Law". *Journal of Law, Policy and Globalization*, 122.
- Nola, L. F. 2019. "Kedudukan Sita Umum Terhadap Sita Lainnya Dalam Proses Kepailitan". *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, 9(2): 217–234.
- OECD. 2014. *The OECD International VAT/GST Guidelines*. Paris: OECD Publishing.
- OECD. 2017. *Effective Asset Recovery in Practice: Mutual Legal Assistance in Criminal Matters*. Paris: OECD Publishing.
- Pardede, M. 2020. "Aspek Hukum Pemberantasan Tindak Pidana Korupsi oleh Korporasi dalam Bidang Perpajakan". *Jurnal Penelitian Hukum De Jure*, 20(3): 335–362.
- Peter Mahmud Marzuki. 2017. *Penelitian Hukum: Edisi Revisi*. Jakarta: Kencana.
- Prud'homme, N. 2007. "Lex Specialis: Oversimplifying a More Complex and Multifaceted Relationship?". *Israel Law Review*, 40(2): 356–395.
- Raden, M., Suci, I. D. A., Poesoko, H., & Harianto, A. 2022. "Renvoi Procedure for Justielabelens' Justice in the Bankruptcy Law". *Journal of Law, Policy and Globalization*, 122.
- Rahmani, I. 2020. "Konflik Kewenangan Sita Umum Kepailitan dan Sita Pidana (Studi Kasus Kepailitan PT. Meranti Maritime dan Henry Djuhari serta PT. Sinar Central Rejeki)". Disertasi, Universitas Airlangga.
- Ridwan Khairandy. 2011. *Hukum Kepailitan di Indonesia*. Yogyakarta: FH UII Press.
- Salman, M., Allah, B., & Ullah, M. 2025. "Principles of Conflicting Personal Laws in Common Law: Jurisdiction, Adjudication, and Enforcement". *Competitive Research Journal Archive*, 3(1): 243–255.

- Santoso, B. T. 2015. "Upaya Hukum Bagi Kreditor Separatis terhadap Tindakan Penyitaan dalam Perkara Pidana Korupsi dan/atau Pencucian Uang dalam Kepailitan". Disertasi, Universitas Airlangga.
- Saputra, K. E. D. 2019. "Tata Cara Penyitaan dan Pelelangan serta Perlindungan Barang Milik Wajib Pajak". *Jurnal Ilmiah Raad Kertha*, 2(2): 31-47.
- Sentosa, S. 2006. *Hukum Kepailitan dan Peraturan Perundang-Undangan yang Terkait dengan Kepailitan*. Jakarta.
- Sihombing, S. E. 2025. "Legal Analysis of the Exclusion of a Creditor from the Final Creditor's List".
- Stephenson, K., Gray, L., & Power, R. 2011. *Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action*. Washington DC: World Bank Publications.
- Sudikno Mertokusumo. 2014. *Penemuan Hukum: Sebuah Pengantar*. Yogyakarta: Liberty.
- Syarif, M., Sunarmi, S., & Yunara, E. 2023. "Kedudukan Sita Pidana Harta Benda Tindak Pidana Pencucian Uang dengan Kedudukan Sita Umum Kepailitan". *Locus Journal of Academic Literature Review*, 757-768.
- Tewary, C. 2018. "Renvoi in Commercial Matters: A Comparative Analysis of International, Supranational and Regional Conflicts Instruments". Tesis, University of Johannesburg.
- Tickner, J., & Gabriel, S. 2014. *Asset Recovery*. London.
- Wibowo, A. S. 2024. "Pendekatan Keadilan Restoratif dalam Penghentian Penyidikan Tindak Pidana Perpajakan di Indonesia". *Jurnal Ilmu Hukum, Humaniora dan Politik (JIHHP)*, 5(2).
- Zorzetto, S. 2012. "The Lex Specialis Principle and Its Uses in Legal Argumentation: An Analytical Inquire". *EUNOMÍA. Revista en Cultura de la Legalidad*, (3): 61-87.