PERSPEKTIF
P-ISSN 1410-3648 E-ISSN 2406-7385
Kajian Masalah Hukum dan Pembangunan

Volume 31 Nomor 3 (2026): Edisi September

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The State's Stance on The Payment of Restitution by Corruption Convicts Using Bankruptcy Legal Instrumens to Recover State Losses

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Submitted: May 19th, 2026 | *Accepted: August 12th, 2026* | *Published: September 9th, 2026*

ABSTRACT
Combating corruption in Indonesia faces significant challenges, particularly regarding the effectiveness of recovering state financial losses through the imposition of "restitution money" as an additional criminal penalty. This study aims to analyze the legal status of unpaid restitution money owed by a convicted corruptor specifically whether it constitutes a debt subject to bankruptcy proceedings and to examine the legitimacy and legal standing of the State Attorney in this context. The findings indicate that an obligation to pay restitution money once the court ruling has become final and binding (*inkracht*) is essentially a financial obligation with economic value that can be categorized as a debt. If a convicted individual has two or more creditors (including the state) and fails to pay a due debt, the criteria for bankruptcy under Article 2, paragraph (1) of Law No. 37/2004 may be met. Applying bankruptcy legal instruments (mutatis mutandis) could serve as an effective legal breakthrough for the state to recover financial losses caused by bankrupt convicted corruptors. To optimize the role of the Prosecutor's Office as a bankruptcy petitioner acting in the public interest, it is required to enhance the capacity of prosecutorial personnel regarding bankruptcy law and to conduct broader public outreach.
Keywords: corruption; replacement money; bankruptcy; state attorney; public interest.

INTRODUCTION

The prevalence of criminal acts of corruption (abbreviated as act of corruption) is striking in Indonesia. Act of corruption has become a very serious problem, as it has damaged the pillars of social, national, and state life. This has given rise to negative perceptions of Indonesia in international relations, making efforts to eradicate it a paramount strategy for all elements of the Indonesian nation.

The regulation on compensatory fines as an additional penalty is stipulated in Law Number 31 of 1999 concerning Corruption Crimes, as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Corruption Crimes (abbreviated as Act of corruption Law). The implementation of compensatory fines has not been effective because efforts to optimally recover state financial losses have not met the legal objectives. Knowing the complexity of the problem of corruption, it is mandatory to eradicate it in a firm manner by involving all the capabilities available in society, especially law enforcement officers.

Corruption eradication is an element of the criminal justice system that relies solely on repressive measures, as it is impossible to minimize the spread of corruption by simply bringing corruptors to justice. Corruption eradication aims not only to punish perpetrators, but more importantly, to encourage officials to refrain from deviant, fraudulent, and dishonest behavior, and to reimburse state financial losses through state funds, confiscated assets, and fines.[1]

[1] Teguh Sulistia dan Aria Zurnetti, *Hukum Pidana, Horizon Baru Pasca Reformasi* (Jakarta: Raja Grafindo Persada, 2011), p. 210.

The concept of Payment of Payment of Replacement money as payment for state losses is to create a deterrent effect on corruption perpetrators so that they cannot enjoy the proceeds of their crimes and the state receives a refund of the money suffered. The definition above is based on the reality in practice that in many corruption cases handled by law enforcement officials, it is very difficult to trace the proceeds of criminal acts from corruption perpetrators in the form of money because with various efforts, corruptors have hidden and even spent the proceeds of corruption and transferred them to people who are very difficult for law enforcement officials to track.[2] Corruption cases can be uncovered after a long period of time, so during the corruption trial process, the value of the assets decreases or even becomes worthless. This makes it extremely difficult to trace the proceeds of corruption.[3]

The level of effectiveness of substitute money is still being considered, its position is very worthy to be maintained or even eliminated and more focused on the punishment of imprisonment. Because the prosecutor's office has repeatedly confiscated the assets of convicts who have been proven to have committed corruption in accordance with the provisions in Article 18 paragraph (2) and paragraph (3) of the Corruption Law which regulates that if the convict does not make the payment of substitute money required of him within a maximum period of 1 (one) month after the court decision that has obtained permanent legal force, then the assets he owns will be confiscated by the prosecutor's office and auctioned to pay the substitute money, but if the assets he owns are not enough to pay the money, then the punishment with a substitute sentence whose duration does not exceed the maximum threat of the main sentence determined in the decision.[4]

The implication for convicts who do not pay compensation is that their assets can be confiscated by the prosecutor's office and then auctioned off.[5] The reason for the additional criminal sentence is due to the lack of sufficient assets to reimburse the state for the losses, as the assets from the corruption have already been diverted. This additional penalty in the form of restitution seems futile if prosecuted by the prosecutor's office because convicts rarely reimburse the state by voluntarily paying restitution, but their assets are also insufficient to pay the full amount of restitution as stipulated in the verdict.[6]

The Prosecutor's Office has a very large role and is a pioneer in efforts to recover state financial losses, however, in fact, the prosecutor as the public prosecutor carrying out the task of executing compensation for state financial losses experiences several obstacles in carrying out the task of saving state finances, convicts after the case has permanent legal force no longer have assets to be confiscated by the state.

The collection of restitution payments in corruption cases constitutes a source of Non-Tax State Revenue for the Indonesian Attorney General's Office, governed by Article 18 of the Corruption Eradication Law and Government Regulation Number 37 of 2024. In situations where a convicted person lacks cash assets but possesses wealth in the form of corporate holdings or transferred assets, bankruptcy proceedings may be utilized by State Attorney Lawyers as a progressive measure for state asset recovery.[7]

The state can position itself as a preferred creditor, particularly regarding the settlement of state receivables such as tax debts or non-tax state revenue. This is based on the state's right of priority, whereby debts owed to the state must be settled before debts owed to other creditors, especially in cases of bankruptcy.

There are benefits to the enforcement of corruption law carried out by a corporation realized by optimizing the return of state losses as a legal

[2] Sutan Remy Sjahdeni, *Sejarah, Asas, dan Teori Hukum Kepailitan: Memahami Undang-Undang No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang*, Cetakan ke (Jakarta: Pranada Media Group, 2018), p. 193–94.

[3] Harahap Erisna, *Pemberantasan Korupsi Jalan Tiada Ujung* (Bandung: Grafiti, 2006), p. 7.

[4] Ridwan Zachrie Wijayanto, *Korupsi Mengorupsi Indonesia: Sebab, Akibat, dan Prospek Pemberantasan* (Jakarta: Gramedia, 2010), p. 87.

[5] Muhammad Dzakir Gusti Mahardika, "Tinjauan Penerapan Sita Jaminan (Conservatoir Beslag) Dalam Tindak Pidana Korupsi," *Jurist-Diction* 3, no. 2 (2020): 499–518, https://doi.org/10.20473/jd.v3i2.18201.

[6] Efi Laila Kholis, *Pembayaran Uang Pengganti Dalam Perkara Korupsi* (Jakarta: Solusi Publishing, 2010), p. 38.

[7] Kukuh Leksono Suminaring Aditya, "Kepailitan Sebagai Alternatif Instrumen Penagihan Penerimaan Negara Bukan Pajak" (Universitas Airlangga, 2024), p. 298.

consequence of fulfilling the element of "state financial loss" as stipulated in Article 2 paragraph (1) and Article 3 of the Corruption Law. In the event that there is no possibility of executing corporate assets as a form of payment of compensation, another legal instrument is needed that is more optimally useful by using the bankruptcy legal instrument.

A bankruptcy decision can be executed immediately, even if further legal action is still pending. Consequently, a bankruptcy decision is mutis mutandis, meaning it remains in effect even if legal action is still underway.[8] The application of bankruptcy legal remedies can be described as the state's effective means of recovering from convicts who fail to pay fines or compensation. Based on the background outlined above, several conclusions can be drawn.

The bankruptcy mechanism is worth considering as an alternative method for enforcing the criminal sanction of restitution payments. To implement this mechanism effectively, a revision or a new Supreme Court Regulation is required to specifically harmonize asset seizure under criminal procedural law with civil bankruptcy procedures, thereby avoiding overlapping general seizures.[9]

Bankruptcy proceedings are worth considering as an alternative method for enforcing restitution orders, as the bankruptcy legal framework possesses far more effective instruments for tracing, seizing, and liquidating the assets of convicted corruptors compared to standard criminal enforcement procedures.

The Dualism of Criminal vs. Civil Characteristics: Criminal law doctrine views restitution as a retributive and restorative penal instrument, whereas bankruptcy doctrine views asset execution as the proportional distribution of property rights.

The Limits of Executor Authority (Jurisdictional Dispute): There is doctrinal ambiguity regarding the boundaries of authority between the Executing Prosecutor (who possesses the right to confiscate based on a legally binding/inkracht criminal verdict) and the Curator/Receiver (who holds the right to manage all assets of the bankrupt debtor based on a Commercial Court decision). Legal doctrine has not yet conclusively answered: does a criminal confiscation override a general bankruptcy attachment, or vice versa?

This study examines the reconstruction of the legal relationship between the Executing Prosecutor and the Bankruptcy Receiver through the harmonization of criminal and civil law principles, while offering an integration model of bankruptcy instruments as a complementary remedy to close the loophole of substitute imprisonment in optimizing state financial loss recovery.

How does the Payment of Replacement money in a criminal verdict that is not paid by the convict constitute a debt that can be filed for bankruptcy against the convict and who has the legal standing to file a request for the Payment of Replacement money bill of a convict who has been declared bankrupt?

RESEARCH METHODS

This legal research is normative legal research, namely research by examining, testing and applying legal concepts to applicable laws and regulations to the phenomena that occur,[10] and also explains how the concepts of state losses, state financial losses, compensation, and bankruptcy relate to state financial recovery. Soerjono Soekanto defines normative legal research as legal research conducted by examining library materials that constitute secondary data.

The problem-solving approach used in discussing the issues in this thesis utilizes the statute approach, conceptual approach, and case study methods. The statute approach is implemented by examining the inherent material contained in the law and studying the ontological basis, philosophical principles, and ratio legis of the law.[11] However, the conceptual approach is implemented by reviewing the views and doctrines of scholars who have created understandings, concepts and legal principles that are very significant to the legal problem to be studied.

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[8] M. Hadi Subhan, *Prinsip, Norma, dan Praktik di Peradilan*, Cetakan ke (Jakarta: Kencana, 2008), p. 162–63.

[9] Yudi Kosasih, "Tumpang Tindih Sita Umum Kepailitan Dan Sita Pidana Terhadap Objek Boedel Pailit Yang Juga Menjadi Barang Bukti Dalam Sebuah Peristiwa Tindak Pidana Dalam Perspektif Asas Lex Specialis Derogat Legi Generali" (Universitas Pakuan Bogor, 2021).

[10] Sri Mamudji, *Metode Penelitian dan Penulisan Hukum* (Depok: Badan Penerbit Fakultas Hukum Uiversitas Indonesia, 2005), p. 9-10.

[11] Mamudji, *Metode Penelitian dan Penulisan Hukum.*

Substitute Money in a Criminal Verdict That is Not Paid by The Convicted Corruption Offender is a Debt for Which The Convicted Corruption Offender can be Declared Bankruptcy

The historical roots of restitution liabilities in Indonesia's anti-graft framework date back to 1960 through Article 16 paragraph (3) of Emergency Regulation (Perpu) No. 24/1960. This statutory rule authorized courts to mandate offenders to reimburse the state in an amount equivalent to their illicit financial gains. Although Perpu 24/1960 was subsequently superseded by Law No. 3/1971, the identical legal principle was preserved under Article 34 paragraph (3). Today, this fundamental mechanism remains firmly embedded and reinforced within Article 18 paragraph (1) letter b of the contemporary Anti-Corruption Law.

In imposing financial restitution, judicial authorities refer to the statutory mandates of Article 18 paragraph (1) letter b of the Anti-Corruption Law, which dictates that the penalty value must precisely match the illicit wealth generated by the offense. As an accessory sanction, this financial recovery mechanism is inherently tied to the primary criminal conviction; once state losses are verified, all illegally acquired assets are confiscated to reinstate public funds to the victimized state. Furthermore, scholarly perspectives from Fontian Munzil et al. emphasize that evaluating these financial deficits requires a meticulous calculation that factors in the temporal duration before the offender fully reimburses the state.[12]

The application of Payment of Replacement money if applied as demanded by the Public Prosecutor is linked to the objectives of the rule of law and the protection of human rights to justice, then the imposition of state losses as Payment of Replacement money is contrary to the opinion of Budiono Kusumohamidjojo who stated that if the implementation of law is inconsistent, it will have an impact on society no longer relying on law as a set of rules that provide rules for living together. On the other hand, if consistency in the implementation of law, then that is where legal certainty will occur.[13]

Resolving bankruptcy issues will be very helpful in addressing uncertain economic conditions, as the goal of bankruptcy is to maximize the return on the debtor's assets. This represents the rights of creditors by increasing the value of the assets to be collected and distributed to creditors.

The consistent application of substitute prison sentences to monetary penalties across convicts is a form of legal certainty, and considerations for replacing high monetary penalties can be limited and maximized to provide a deterrent effect while simultaneously preventing the convict from returning state funds. Corruption involves high-risk legal violations, given that the economic benefits and losses are the primary considerations for committing corruption. Determining the minimum and maximum substitute monetary penalties, namely additional prison sentences, must use measurable parameters with a shared understanding among law enforcement officials, such as considering the convict's position, standing, and contribution to the corruption.

Reclaiming financial losses also requires integrating the time value of money concept, ensuring that the final restitution aligns with the diminished economic value of missed state development opportunities over that specific timeframe. From a theoretical lens, while retributive justice justifies penal sanctions based on past transgressions, it stands in stark contrast to utilitarian theories focused on forward-looking prevention and rehabilitation. Preventive measures function indirectly by establishing deterrence, which successfully targets individuals with criminal inclinations. Scholarly views on the nature of sanctions vary: Wright and Walgrave define them as intentional suffering inflicted by authorities, Daly and Duff conceptualize them as an inherent burden perceived by the offender, and Barton and Dignan offer a broader interpretation, framing them simply as an enforced action directed at the wrongdoer.[14]

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[12] Fontian Munzil, Imas Rosidawati Wr dan Sukendar, "Kesebandingan Pidana Uang Pengganti dan Pengganti Pidana Uang Pengganti Dalam Rangka Melindungi Hak Ekonomis Negara dan Kepastian Hukum," *Jurnal Hukum IUS QUIA IUSTUM* 22, no. 1 (2015): 25–53.

[13] Budiono Kusumohamidjojo, *Filsafat Hukum: Problematik Ketertiban Yang Adil* (Bandung: Yrama Widya, 2022), p. 28.

[14] Ted Honderich, *Punishment, The Supposed Justifications* (USA: Cambridge, 1989), p. 52.

Payment of monetary penalty is an additional penalty under statutory regulations. Additional penalties cannot stand alone because they must be combined with the principal penalty. Payment of monetary penalties is an effort to restore the state's financial condition to its original condition in response to state/economic losses arising from corruption. Payment of monetary penalties is an additional penalty imposed on convicts of corruption, as specified in Article 18 paragraph (1) letter b of the Corruption Eradication Law.

Law 37/2004 grants the prosecutor's office the authority to file bankruptcy petitions in the public interest. Public prosecutors enforce criminal law, but Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia (referred to as Law 16/2004) authorizes prosecutors to carry out their duties and authorities in the areas of civil and state administrative law, thus becoming known as State Attorneys. State Attorneys are attorneys with special powers who act for and on behalf of the state/government in carrying out duties and authorities in the areas of civil and state administrative law (referred to as datun).

In exercising its authority, the prosecutor's office, as the bankruptcy applicant, emphasizes the applicable legal system, with the prosecutor's authority as State Attorney in filing a bankruptcy petition based on social values enshrined in Pancasila. In the practice of state administration, the principle of social justice encompasses the definition of the public interest as the state, individual, family, ethnicity, nation, and citizen.[15]

In applying for bankruptcy, the prosecutor's office has a broad understanding of the term "public loss", such as losses resulting from the collection of funds from the wider community so that there is a public interest as stipulated in Article 2 paragraph (2) of Law 37/2004, which is a loss to the wider community and is not a loss representing an individual.

The authority of the prosecutor as a state attorney is stipulated in Article 30 paragraph 2 of Law 16/2004 which states that in the field of datun, prosecutors with special powers can act both inside and outside the court for and on behalf of the State/government. The provisions of Article 30 paragraph (2) of Law 16/2004 are used as the basis for carrying out the duties and authority of the prosecutor as a representative or attorney in the field of datun. This includes cases as applications for bankruptcy in the public interest. The prosecutor as a State Attorney from the nature of the public interest must be social and aim to improve the welfare of the general public, not seek profit, concerning the interests of the nation/state, the wider community or public services. As stipulated in Article 2 paragraph (2) of Government Regulation Number 17 of 2000 concerning Applications for Declaration of Bankruptcy in the Public Interest (referred to as PP 17/2000) which states that the prosecutor can submit a bankruptcy application in the public interest, if he has 2 (two) or more creditors and does not pay at least one creditor whose debt is due and payable, and there is no party filing for bankruptcy.

The process of applying to the prosecutor in this bankruptcy application to the Commercial Court is by means of: 1) Obtaining information on their own initiative or based on input from the public, institutions, government agencies, and other bodies established by the government, such as financial sector policy committees; 2) Based on these sources, the Chief Prosecutor then issues an order to seek and obtain information; 3) The information is then compiled and submitted to the Chief Prosecutor; 4) The Chief Prosecutor then issues a special power of attorney for the Prosecutor, acting as State Attorney, who will process the bankruptcy petition; 5) The Prosecutor files the bankruptcy petition; 6) The Prosecutor files the bankruptcy petition through the Commercial Court clerk's office.[16]

Legal Standing to Submit an Application for a Requirement for Payment of Replacement Money for a Convictionist Declared Bankruptcy

In existing practice, the state, through the prosecutor's office, has filed for bankruptcy against entities deemed dangerous to the economy and/or causing significant losses to the public, particularly large businesses involving public funds. To conduct

[15] Kaelan, *Filsafat Pancasila Pandangan Hidup Bangsa Indonesia* (Yogyakarta: Paradigma, 2009), p. 223.

[16] Yenny Febrianty, "Implementasi Kewenangan Kejaksaan Sebagai Pemohon Dalam Mengajukan Kepailitan Demi Kepentingan Umum Berbasis Nilai Keadilan Sosial," *Jurnal Hukum Sehasen* 2, no. 1 (2019): 1–25.

a more thorough analysis of these conditions, a theoretical approach is required, deemed legally capable not only as a normative rule but also as a means to achieve basic legal values.[17] A particularly relevant theory is Gustav Radbruch's theory of the purpose of law, which states that law must contain three primary values: justice, legal certainty, and utility. This balance must be maintained for law to function optimally in society.[18]

Insolvency proceedings entail a comprehensive attachment of a defaulting party's entire estate, where an independent receiver administers and liquidates the properties under the strict oversight of a supervisory magistrate as mandated by legislation. Within this framework, an obligated party refers to any individual or entity saddled with financial commitments arising from contractual ties or statutory mandates that require judicial settlement. Once a formal court decree is issued, such an individual is legally designated as an insolvent party. The legal thresholds required to initiate this process are governed by national regulations, which dictate that an action can only be pursued if the individual maintains multiple active claimants, defaults on at least one commitment, and the outstanding balance has reached maturity.

In principle, prosecutors have a mission that must be completed for the continuation of the development of the nation and state, namely to secure and maintain the values of Pancasila as a philosophy of national life against efforts that can shake the foundations of social, national and state life and carry out a mission in realizing legal certainty, legal order, protection, justice and truth according to law and morality in society.[19]

The effectiveness of prosecutors' authority in bankruptcy cases is hampered by the public's limited or insufficient knowledge of the prosecutor's authority in handling bankruptcy cases. Prosecutors rarely file bankruptcy petitions, as interests such as banks and financial institutions, and the public are less aware of the prosecutor's authority as state attorneys in bankruptcy. Prosecutors, in this case, are less popular with the public in resolving bankruptcy petitions compared to general or special criminal cases, due to various perspectives on the conditions that influence them. These obstacles include:

1) Internal Obstacles within the Prosecutor's Office. There are internal Prosecutor's Office staff who do not fully understand their duties and functions, particularly in the field of datun (law enforcement), resulting in their ineffectiveness. The Prosecutor's Office's human resources must be better prepared to handle their roles as public prosecutors and state attorneys.
2) External Obstacles. There are obstacles stemming from laws and regulations that do not support the exercise of prosecutorial authority in the field of datun, particularly in bankruptcy cases.[20]

A bankruptcy petition for public interest is filed by the prosecutor through the chief justice of the court with jurisdiction over the bankrupt debtor and must be registered through the clerk's office of the Commercial Court. The petition must be signed by an authorized official and dated. Similar to general civil cases, the bankruptcy petition must also include a written petition, complete identity, the basis for the lawsuit, and the matters requested.

Procedural non-compliance mandates the court registry to decline the filing of an insolvency application. Once successfully logged, the administrative staff has a maximum of two days to forward the dossier to the head of the commercial tribunal. Subsequently, the judicial body is granted a three-day window post-registration to evaluate the submission and schedule the initial proceedings. Statutory timelines dictate that the formal trial must commence within twenty days following the initial filing date. Nevertheless, insolvency regulations allow judicial discretion to delay the proceedings up to twenty-five days from the registration date, provided the obligated party formally petitions for an extension supported by justifiable grounds.

[17] Riska Wijayanti dan Siti Malikhatun Bariyah, "Implementasi Pengaturan Jaksa Pengacara Negara Dalam Penanganan Perkara Kepailitan di Kejaksaan Negeri Banjarmasin," *Law Reform* 16, no. 2 (2020): h. 192.

[18] Fatmah Afifah dan Sri Warjiyati, "Tujuan, Fungsi dan Kedudukan Hukum," *Jurnal Ilmu Hukum Wijaya Putra* 2, no. 2 (2024): 142–52.

[19] M. Yuhdi, "Tugas dan Wewenang Kejaksaan Dalam Pelaksanaan Pemilihan Umum," *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 27, no. 2 (2014): 93–102.

[20] Febrianty, "Implementasi Kewenangan Kejaksaan Sebagai Pemohon Dalam Mengajukan Kepailitan Demi Kepentingan Umum Berbasis Nilai Keadilan Sosial."

Bankruptcy petitions filed by the prosecutor's office in the public interest, as stipulated in Article 7 paragraph (1) of Law 37/2004, require that bankruptcy petitions filed by advocates be void. Therefore, Article 7 paragraph (1) of Law 37/2004 will not apply to bankruptcy petitions filed by the prosecutor's office. Instead, the prosecutor's office is required to bring a letter of appointment of the prosecutor as state attorney in court proceedings. Article 7 paragraph (2) of Law 37/2004 states that the court is required to summon the debtor in cases of bankruptcy petitions filed by creditors, the prosecutor's office, Bank Indonesia (BI), the Capital Market Supervisory Agency (BPPM), and/or the Minister of Finance. If the bankruptcy petition filed by the debtor contains irregularities and the requirements for a declaration are met, the court will summon the creditor.

The legal basis for the prosecutor's authority to detain debtors during bankruptcy proceedings is provided under Article 93 of Law Number 37 of 2004. According to this provision, a prosecutor appointed by the supervisory judge is authorized to execute the detention of a bankrupt debtor. Specifically, the article stipulates that the court, either in its bankruptcy declaration or at any time thereafter, may order the detention of the bankrupt debtor upon the recommendation of the supervisory judge, the request of the curator, or the application of one or more creditors, after first hearing the supervisory judge. Such detention may take place either in a State Detention Center or at the debtor's residence under the supervision of the appointed prosecutor, as provided in paragraph (1). Furthermore, paragraph (2) specifies that the detention must be carried out by the prosecutor designated by the supervisory judge. Paragraph (3) limits the initial detention period to a maximum of 30 (thirty) days from the date of detention, while paragraph (4) allows for a single extension of up to an additional 30 days upon the request of one or more creditors or based on the recommendation of the supervisory judge.

Limitations of The Public Interest Objectivity of The Prosecutor's Office in Filing for Bankruptcy

It is impossible for a debtor filing for bankruptcy to conceal that their assets are not included in the bankruptcy estate. This is a consequence of the requirements for a bankruptcy petition stipulated in Article 2 paragraph (1) of Law 37/2004, namely: 1) The existence of a debtor; 2) The existence of 2 (two) or more creditors; 3) The existence of debts that are due and collectible and have not been paid in full.

These requirements are simplified by Article 8 paragraph (4) of Law 37/2004, which stipulates that a petition for a declaration of bankruptcy must be granted if there are facts or conditions that can be simply proven that the requirements for filing for bankruptcy, as stipulated in Article 2 paragraph (1), have been met. This creates problems in the implementation of bankruptcy law, which is essentially a tool for liquidating a debtor's assets if the debtor is unable to make payments.

In practice, in an agreement that results in performance and counter-performance for both parties, particularly one that results in an obligation of economic value, there are two possibilities: unwillingness to make payments or inability to make payments.

A person who has bound himself to another person to fulfill an obligation of an economic nature, if there is an element of unwillingness, the creditors (not excluding the possibility of being unaware of each other) will compete to file a lawsuit based on Article 1238 Juncto 1243 BW.

A lawsuit for default in practice is always accompanied by a request for a security seizure (conservatoir beslag) against the debtor's assets so that the creditor not only obtains legal certainty for the creditor to obtain repayment according to a decision that has permanent legal force, but also avoids the debtor's bad faith in disguising assets that serve as collateral for the fulfillment of the obligation, where such actions violate the provisions of Article 227 HIR Juncto 1131 BW. The problem that results from this "competition" to file a lawsuit is when the creditor filing the lawsuit is a concurrent creditor who does not have the right to priority fulfillment and does not have a material security right over the debtor's assets. It can be estimated that if the object subject to confiscation in the visualization has been previously secured, then a conflict will arise between concurrent creditors and creditors holding collateral rights to the object.

When linked to the provisions of Article 8 (4) of Law 37/2004, the simple requirement that a commercial court judge must issue a bankruptcy decision if the bankruptcy requirements have been met, on the one hand, results in a fundamental issue: the debtor's actual situation is completely ignored. In other words, a debtor who is actually solvent, with assets exceeding liabilities, can be declared bankrupt.

Bankruptcy law aims to protect stakeholders, namely creditors. Stakeholder protection has an imperative objective: business must be conducted in such a way that the rights and interests of stakeholders are guaranteed, considered, and respected within a business environment. This is because these various parties are influenced by and can influence business decisions and actions.

In the context of civil procedural law, general confiscation in bankruptcy can be classified as genus and Consevatoir Beslag or collateral confiscation, this is based on the provisions of Article 1131 BW, which is the parent of the principle of paritas creditorium, where all of the debtor's assets are the responsibility to make payments to the creditors.

Under Law Number 16 of 2004, the Public Prosecutor's Office is required to exercise state authority independently in performing its prosecutorial functions. This principle is expressly established in Article 2 paragraph (2), which recognizes the Prosecutor's Office as a government institution vested with independent state power in the field of prosecution. Consequently, the institution is expected to perform its functions, duties, and statutory authority free from interference or influence by the executive branch or any other external authority. The purpose of this provision is to safeguard the independence and professionalism of prosecutors in the discharge of their official responsibilities.

As State Attorneys, prosecutors are expected to act purely in the public interest their work should be social rather than commercial in nature, aimed at protecting the welfare of the nation, the state, the broader community, and public services rather than generating profit. The scope of the Prosecutor's Office is actually quite extensive, covering criminal law as well as civil and state administrative matters. Its functions can be grouped into two categories: judicial duties and non-judicial duties. Notably, the Prosecutor's judicial role has expanded further under Law No. 5 of 1991, as amended by Law No. 16 of 2004, which grants the Attorney General authority to represent the government or state as its legal counsel. This is reflected in Article 30, paragraph (2) of Law 16/2004, which provides that in civil and state administrative matters, the Prosecutor's Office, when given special authorization may represent the state or government both in and out of court.

The authority to file a bankruptcy petition given to the Prosecutor's Office is for the public interest. In general, there are no standard and fixed regulations regarding the public interest that underlies the Prosecutor's Office's authority in filing a bankruptcy petition. In its explanation of Article 2 paragraph (2), Law Number 37 of 2004 provides a limitation regarding public interest, namely the interest of the nation and state and/or the interest of the wider community. The definition of public interest is formulated abstractly, namely the interest of the nation and state and/or the interest of the wider community, the interest of the people, and the interest of development. Public interest is thus formulated as the interest of all levels of society.[21]

Consequently, the author conducted research utilizing a normative-juridical method supplemented by an empirical-juridical approach focusing on the Central Jakarta Commercial Court ruling in Case No. 23/Pdt.Sus/Pailit/2013/PN.Niaga/Jkt.Pst. In this case, a public prosecutor, acting as State Attorney in the public interest, filed a bankruptcy petition against PT Qurnia Subur Alam Raya and HM Ramli Araby, SE (in both his personal capacity and as President Director). The action was prompted by a violation of the public interest involving outstanding debts arising from PT QSAR's business model, which entailed soliciting public funds through agribusiness cooperation proposals. Approximately 6,480 investors participated, with total investments amounting to Rp467,000,000,000 (four hundred sixty-seven billion rupiah).

Citing the public interest, the Cibadak District Attorney's Office filed a bankruptcy petition with the Central Jakarta Commercial Court, invoking Article 2 paragraph (2) of the Bankruptcy Law and Regulation of the Attorney General of the

[21] Andrian Sutedi, *Aspek Hukum Otoritas Jasa Keuangan* (Jakarta: Raih Asa Sukses, 2014), p. 41.

Republic of Indonesia Number 040/A/JA/12/2010. Which authorizes the Prosecutor's Office to file for bankruptcy in the public interest. Through this bankruptcy process, all assets of PT QSAR would be seized and valued by a receiver (curator) to ensure that all creditors receive payment in accordance with their respective creditor standings; this action effectively enables the Prosecutor's Office to execute the Supreme Court of the Republic of Indonesia Decision Number 308 K/Pid/2004, as the Prosecutor's Office lacks the capacity to calculate and assess creditor standings itself, and filing for bankruptcy is expected to secure the rights of the aggrieved creditors.

Article 2 paragraph (2) of the Bankruptcy Law authorizes the Prosecutor's Office to file a bankruptcy petition on the grounds of public interest, provided that the requirements stipulated in Article 2 paragraph (1) have been satisfied and no eligible party has initiated the bankruptcy proceedings. This authority is further regulated in Article 1 of Government Regulation Number 17 of 2000 concerning Bankruptcy Petitions in the Public Interest, which provides that the Prosecutor's Office is empowered to submit such petitions on behalf of and in the interest of the public. The explanatory notes to Article 1 further clarify that whenever the Prosecutor's Office files a bankruptcy petition, it is deemed to be acting as the legal representative of the public interest throughout the bankruptcy process.

To examine the guidelines governing the Attorney General's Office in submitting a bankruptcy application, the Author employed normative legal research methods, supplemented by empirical legal research on the ruling of the Central Jakarta Commercial Court in Case Number: 23/Pdt.Sus/Pailit/2013/PN.Niaga/Jkt.Pst. In this case, the prosecutor, acting as State Attorney for the public interest, filed a bankruptcy petition against PT. Qurnia Subur Alam Raya and HM. Ramli Araby, SE, both in his individual capacity and as President Director, on the grounds of harming the public interest through overdue debts arising from PT. QSAR's business practice of soliciting public funds (investors) via cooperation schemes in the agribusiness sector. Approximately 6,480 (six thousand four hundred eighty) investors participated, with total investments reaching Rp. 467,000,000,000 (four hundred sixty-seven billion rupiah).

Acting in the public interest, the Cibadak District Prosecutor's Office submitted a bankruptcy petition to the Central Jakarta Commercial Court, based on Article 2 paragraph (2) of the Bankruptcy Law along with Attorney General Regulation No. 040/A/JA/12/2010, which authorizes the Attorney General to file such petitions on public interest grounds. Through this bankruptcy proceeding, all assets belonging to PT. QSAR would be seized and assessed by the Curator, enabling creditors to receive payment according to their respective priority positions. This approach allowed the Attorney General to enforce Supreme Court Decision No. 308 K/Pid/2004, given that the Attorney General's Office lacks the capacity to independently calculate and evaluate creditor claims making the bankruptcy petition a means of securing the rights of the aggrieved creditors.

CLOSING

Conclusions

The Effectiveness of the Law Regarding the Prosecutor's Authority as Applicant in Filing Bankruptcy Cases in the Public Interest requires the performance of Prosecutors in building the national legal system. Fundamentally, Prosecutors are a part of the legal structure that influences the functioning of the law. Therefore, the good or bad performance of Prosecutors in the field of public prosecution and as State Attorneys will significantly impact the national legal system. Obstacles encountered in the effective implementation of the Prosecutor's role or authority as applicants in bankruptcy cases include: Lack of public knowledge about the Prosecutor's Office as a State Attorney, whose duties and authority also include handling bankruptcy cases in the public interest, and limited understanding and knowledge of bankruptcy among the Prosecutor's Office's human resources. This is due to the lower number of incoming bankruptcy cases compared to the number of cases in the General Criminal or Special Criminal Divisions within each Prosecutor's Office unit in Indonesia. Therefore, Prosecutors are allocated to resolve these General Criminal and Special Criminal cases.

Recommendations

It is expected that the government will establish regulations whether in the form of implementing rules or statutory legislation governing the use of bankruptcy legal mechanisms regarding state claims for restitution from corruption offenders; this would enable the government, acting through the Attorney General's Office as the state's legal counsel to position itself as a preferred creditor, particularly in the context of recovering state receivables.

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