

Inkonsistensi Putusan-Putusan Hakim Akibat KUHAP dan UU No. 37 Tahun 2004 Tidak Mengatur Prosedur Pelaksanaan Sita Rangkap = Inconsistency of Judges' Decisions Due to the Criminal Procedure Code and Bankruptcy Code Does not Regulate Procedures for Implementing Multiple Confiscations

Siti Rahmah Sari Ramadhani, author

Deskripsi Lengkap: <https://lib.ui.ac.id/detail?id=9999920555078&lokasi=lokal>

Abstrak

Disharmonisasi ketentuan sita pidana dalam KUHAP dan sita umum dalam UU No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang (UUK-PKPU) telah menimbulkan masalah dalam implementasinya di lapangan. Untuk itu penulisan ini menganalisis 2 (dua) isu terkait dengan ketentuan sita yakni: (1) Disharmonisasi ketentuan KUHAP dan UUK-PKPU mengenai sita pidana dan sita umum; (2) Dampak ketidaklengkapan pengaturan pelaksanaan sita pidana dan sita umum kepailitan terhadap inkonsistensi putusan-putusan hakim. Melalui metode penelitian yuridis normatif dengan pendekatan kasus, pendekatan perundang-undangan, serta menerapkan metode analisis kualitatif, penelitian ini menyimpulkan, bahwa: (1) Kepastian hukum tidak tercapai sebab ketentuan sita yang diatur KUHAP dan UUK-PKPU disharmonis; (2) Inkonsistensi putusan-putusan hakim dalam tiga kasus yang penulis bahas terjadi akibat ketidaklengkapan peraturan terkait prosedur pelaksanaan sita pidana dalam KUHAP dan sita umum dalam UUK-PKPU sehingga masing-masing Majelis Hakim berhak untuk memutus berdasarkan keyakinan dan kewenangan yang dimiliki atas penemuan hukum (*rechtvinding*). Oleh karena itu, pemerintah perlu menyelaraskan ketentuan kedua perundang-undangan ini dengan melakukan revisi ketentuan Pasal 31 ayat (2) UUK-PKPU dan melengkapi mekanisme koordinasi antara kurator dan hakim pengawas dengan kepolisian dan kejaksaan agar mampu memberikan kepastian hukum dan perlindungan hukum yang berkeadilan dan berkemanfaatan bagi masyarakat secara umum dan para kreditor secara khusus.

.....The disharmony of criminal confiscation provisions in the Criminal Procedure Code and general confiscation in Bankruptcy Code has caused problems in its implementation in the field. For this reason, this paper analyzes 2 (two) issues related to confiscation provisions, namely: (1) Disharmony of the provisions of the Criminal Procedure Code and Bankruptcy Code regarding criminal confiscation and general confiscation; (2) The impact of incomplete regulation on the implementation of criminal confiscation and general confiscation of bankruptcy on the inconsistency of judges' decisions. Through a normative juridical research method with a case approach, a statutory approach, and applying qualitative analysis methods, this study concludes that: (1) Legal certainty is not achieved because the confiscation provisions regulated by the Criminal Procedure Code and Bankruptcy Code are disharmony; (2) The inconsistency of the judges' decisions in the three cases that the authors discuss occurs due to incomplete regulations regarding the procedure for implementing criminal confiscations in the Criminal Procedure Code and general confiscations in Bankruptcy Code so that each Panel of Judges has the right to make decisions based on their belief and authority over legal findings (*Rechtvinding*). Therefore, the government needs to harmonize the provisions of these two laws by revising the provisions of Article 31 paragraph (2) of Bankruptcy Code and completing the coordination mechanism between curators and supervisory judges with the police and prosecutors in order to be able to provide legal certainty, justice, and benefit for society

in general and creditors in particular.