


# Legal Protection For Capital Market Investors Regarding Confiscation of Public Company Shares Due to Criminal Acts Committed by the President Director (Case Study of PT Hanson International TBK)

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Article Info	ABSTRACT
<p><b>Keywords:</b> Bankruptcy, Capital Market, General Confiscation, Investor Protection.</p>	<p>This study discusses legal protection for investors for the confiscation of public company shares due to criminal acts committed by the company's president director and legal protection for capital market investors when the public company invested is declared bankrupt. The research method used is normative legal research, which is research that examines document studies, using various secondary data such as legislation, legal theory, books, journals, and other legal sources. The approach method used are a statutory, conceptual, and case approach. This study found that legal protection for investors must be carried out because the confiscation of shares and assets of PT Hanson deviates from the application of the rule of law to Article 39 paragraph (1) of Law Number 8 of 1981 concerning the Criminal Procedure Code because the confiscated shares and assets do not have a direct relationship with criminal acts committed by the president director. Article 31 paragraph (2) of the Law states, all confiscations are stopped when the bankruptcy decision has been pronounced, if necessary the supervisory judge must order the cancellation. Since the bankruptcy decision is pronounced, all confiscations on an object expire and are replaced with general bankruptcy confiscations. Legal protection for investors in public companies that are declared bankrupt can be carried out with preventive and repressive legal protection.</p>
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## INTRODUCTION

Strategy The capital market is one of the national development facilities that has currently grown rapidly and its existence has become one of the alternative financing in national development. The capital market is essentially a market that is not much different from the traditional market which is a facility that brings together the activities of buyers and sellers for a commodity or service. While the products traded in the capital market are the company's ownership rights and the company's debt statement. Capital buyers in the capital market are individuals or organizations or institutions that are willing to set aside their funds to carry out investment activities in the capital market. Investment activities in the capital market by

buying investment products or instruments traded in the capital market such as stocks, mutual funds or bonds in the hope of obtaining income in the future. While capital sellers in the capital market are companies that require capital or additional capital for their business needs.

Business expansion or expansion is an activity carried out by a company or issuer to increase its operational activities. Business expansion or business expansion activities are in the form of increasing production capacity or expansion by adding types of production, and/or both. This expansion activity must of course also be supported by sufficient company capital. If the company in carrying out its expansion activities requires capital by increasing the number of company owners, then the company can issue and sell shares. Meanwhile, if the company increases capital by means of loans, then the company issues debt securities or bonds.

Based on the provisions of Law Number 8 of 1995 concerning Capital Markets (hereinafter referred to as the Capital Market Law), the parties actively involved in capital market activities are Issuers or Public Companies as providers of securities, investors as providers of funds or buyers of securities and the government as supervisor and regulator in the capital market sector, namely Bapepam-LK, which has now been transferred to the Financial Services Authority (OJK) based on Law Number 21 of 2011 concerning the Financial Services Authority (hereinafter referred to as the OJK Law).

Companies that make an initial public offering or IPO ( *initial public offering* ) and are already *listed* on the Stock Exchange can make a public offering to sell their company's securities. The buying and selling of securities from this issuing company is carried out in the Capital Market. Shares in the company are issued in order to establish a company, fulfill authorized capital or increase authorized capital. Every company is always looking for capital to increase its authorized capital, in the capital market the company is looking for investors. With these investors, the company has several shareholders, one of which is a shareholder from the capital market.

Each share issued by a company has one vote unless the Articles of Association specify otherwise. In line with the provisions on shares stating that a company may issue one or more classifications of shares, it is possible to grant or not to grant voting rights on the shares issued, including in this case variations of the voting rights themselves. The quorum vote which is considered important for issuing voting rights is clearly visible in the role of shareholders, especially when a public company goes bankrupt which results in the issuer being *delisted* from the stock exchange.

The consequences of a company going bankrupt are quite worrying for the shareholders of the company, especially those who buy it through the capital market, because the assets owned by the company must be paid off first to creditors and then to investors who invest in the public company or issuer that is going bankrupt if there are still remaining bankrupt assets. Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the Bankruptcy and PKPU Law ) and Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the

UUPT) have not accommodated the rights of shareholders because shareholders are not included in the category of creditors but their status is the owner, so that when bankruptcy occurs, shareholders are the last party to receive a portion of the payment of obligations. The order of distribution of assets of a bankrupt company is separatist creditors, preferred creditors, and concurrent creditors. The principle of investment risk owned by investors is if the issuer they invest their capital in goes bankrupt and its shares are used up to pay debts and there is nothing left, then the last investor or the smallest share in this case the minority shareholder will not get his rights. This is certainly very detrimental to investors, especially structurally, minority shareholder investors who buy their shares in the capital market.

The legal umbrella regarding bankruptcy of public companies generally refers to the Bankruptcy Law and PKPU and specifically in the capital market sector is still limited to Regulation Number XK5/Decree of the Chairman of Bapepam LK Number Kep-46/PM/1998 Concerning Disclosure of Information for Issuers or Public Companies that are filed for Bankruptcy. The principle of transparency that should be provided by issuers to investors in accordance with Bapepam-LK Regulation Number XK5 is not enough to protect investors, this is because there is no regulation that requires issuers or public companies that have been declared bankrupt to implement the principle of transparency. With no reports made by issuers or public companies, investors will find it difficult to obtain information regarding the conditions that occur in the company. and this regulation only regulates the principle of transparency in a public company that is filed for bankruptcy. Regarding the legal impact of the bankruptcy on capital market investors, until now it has not been specifically regulated.

In the Bankruptcy Law and PKPU, the principle of general seizure of debtor's assets has two dual functions. namely, on the one hand freezing the debtor's power over his assets and the second function freezing the creditor's right to directly execute the debtor's assets after the debtor is declared bankrupt by imposing *an automatic stay* on the parate execution rights of the separatist creditors. General seizure of bankruptcy as the main objective of bankruptcy law is to protect creditors from the debtor and other creditors.

The debtor losing his right to manage his property does not cause the debtor to lose his rights over his property. The two authorities must be distinguished. The debtor remains positioned as the owner based on the trust of his creditors until the property is converted into a sum of money to pay the creditors' receivables. This is because only the assets of the bankrupt debtor can be subject to general confiscation and can be used to pay all his receivables. Placing the debtor under the guardianship of the curator does not result in the transfer of rights over the assets of the bankrupt debtor to the curator. The curator is not the owner of the bankrupt property. The curator is only the guardian of the interests of the creditors and debtors who are tasked with managing and settling the bankrupt property for the benefit of the creditors. That is why the Bankruptcy Law and PKPU strictly regulate the consequences of bankruptcy for debtors who are married with a mixture of assets with debtors who are married with a prenuptial agreement.

Criminal law and civil law are two laws that often overlap or intersect, including in bankruptcy law when there is a seizure of assets belonging to the debtor. Curators in carrying

out their duties often come face to face with investigators when it comes to criminal seizure of part of the debtor's bankrupt assets. The conflict between the interests of the Police and the Prosecutor's Office to carry out criminal seizures with the interests of curators to carry out general bankruptcy seizures still often occurs in the field. General seizure is a form of seizure known in the civil law regime, especially private bankruptcy law. In public law, in this case, criminal law also recognizes seizures which in the Criminal Procedure Code (KUHP) are referred to as seizures which in Dutch are known as *inbeslagneming*. Confiscation in the Criminal Procedure Code is regulated separately in two places, most of which are regulated in Chapter V, part four of Articles 38 to Article 46 of the Criminal Procedure Code and a small part is regulated in Chapter XIV.

Confiscation in Article 1 number 16 is defined as a series of actions by investigators to take over and or store under their control movable or immovable, tangible or intangible objects for the purpose of evidence in investigations, prosecutions and trials. Confiscation is an act of "coercive measures" carried out by investigators that contain insults and are contrary to human rights values, but on the other hand for the sake of the public interest in resolving criminal cases, the law exceptionally justifies confiscation. Because confiscation is a form of coercive measures that can be contrary to human rights, confiscation carried out by investigators must be based on a permit from the Head of the District Court as regulated in Article 38 Paragraph (1) of the Criminal Procedure Code, in Paragraph (2) it states that in very necessary and urgent circumstances when investigators must act and it is impossible to obtain a permit first, the Criminal Procedure Code provides an exception.

Article 39 paragraph (1) and paragraph (2) of the Criminal Procedure Code regulates objects that can be confiscated by investigators, including objects that are in confiscation due to civil cases or bankruptcy can also be confiscated for the purposes of investigation, prosecution and trying criminal cases. Article 39 Paragraph (2) of the Criminal Procedure Code provides legitimacy to investigators to confiscate objects that have been under general bankruptcy confiscation, the existence of Article 39 Paragraph (2) of the Criminal Procedure Code conflicts with Article 31 Paragraph (2) of the Bankruptcy and PKPU Law which states that all confiscations that have been carried out are deleted and if necessary the Supervisory Judge must order the deletion. These two articles cause conflicts and problems in their application related to general confiscation which is then confiscated criminally. With the conflict between general confiscation and criminal confiscation, legal uncertainty arises, in order to create legal certainty, it must be determined what the actual position of criminal confiscation is over general bankruptcy confiscation.

In practice, this legal problem has occurred in PT. Hanson International Tbk. With the stock code MYRX (hereinafter referred to as PT Hanson) which was declared bankrupt based on the Decision of the Commercial Court at the Central Jakarta District Court Number 29/Pdt.Sus-PKPU/2020/PN Niaga Jkt. On August 12, 2020. However, on February 18, 2021, the Commercial Court at the Central Jakarta District Court issued a peace homologation decision on the same case. PT. Hanson is a property company owned by Benny Tjokrosaputro who was caught in the Jiwasraya and ASABRI corruption cases. On June 8, 2021, the

Supreme Court of the Republic of Indonesia granted the cassation application in Decision Number 667 K/Pdt.Sus-Pailit/2021 which resulted in PT Hanson International Tbk returning to a bankruptcy decision in accordance with the decision of the Commercial Court in the Central Jakarta District Court in PKPU case number 29/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.P st. dated August 12, 2020. The bankruptcy case of PT Hanson caused investors on the stock exchange to suffer losses, in the information data on PT. Hanson's share ownership listed on the Indonesian stock exchange owned by the public as many as 78.34 billion shares with a percentage of ownership below 5% recorded at 90.35%. Referring to the current MYRX share price in the capital market which is at the level of IDR 50 per share, the total value of public investors has reached IDR 3.92 trillion. On August 31, 2020, it was recorded that the Indonesia Stock Exchange Authority temporarily suspended trading on shares owned by PT. Hanson.

The bankruptcy status of PT Hanson is complicated by the corruption case that ensnared Benny Tjokrosaputro as the President Director of PT Hanson. Because the Attorney General's Office has confiscated a number of PT Hanson shares and assets belonging to the company to replace state losses in the Jiwasraya and ASABRI cases. The confiscation has received permission from the Head of the Cibinong District Court with a Determination Letter Number: 10 / Pen.Pid / 2021 / PN.Cbi. dated April 6, 2021. The confiscation of these shares could harm capital market investors and the seized assets can be used by the company to compensate for default against its creditors, including capital market investors who own MYRX shares if there are still remaining bankrupt assets.

A number of shares and company assets confiscated by the Prosecutor's Office related to the Asabri case and involving Benny Tjokrosaputro, include 2.72 billion shares of PT Hanson, 155 plots of land with an area of 343,461 m<sup>2</sup> · 566 plots of land with an area of 1,929,502 m<sup>2</sup> · and 131 plots of land with an area of 1,838,639 m<sup>2</sup> <sup>all</sup> of which are located in Lebak Regency. The confiscation of hundreds of plots of land caused PT Hanson to lose some of the company's assets. The land was claimed to have been obtained from PT Hanson's internal funds or bank loans or financing. The confiscation is not relevant to the criminal case committed by Benny Tjokro who is the President Director of PT Hanson, because the shares and assets confiscated belong to the company and not Benny Tjokro's personal property, while the company is a public company and some of the confiscated land is in the status of being pledged by PT Hanson to creditors. Then, the transactions that were disputed in the Benny Tjokro case were share buying and selling transactions, REPO and Mutual Funds which were transactions outside the company or should have been the personal responsibility of the company's main director.

## METHOD

### **This Types of research**

The research conducted by the author in this study is by using normative legal research. Normative legal research is a study that examines document studies, namely using various secondary data such as legislation, legal theory, books, journals, and other legal sources. This

normative legal research using qualitative analysis, namely explaining existing data using words or statements.

1. Research Focus

The focus of the research is the things that will be tested by the author to get answers to a problem. The focus of this research is legal protection for investors against the confiscation of shares of a public company due to criminal acts committed by the company's president director and legal protection for capital market investors when the public company invested in is declared bankrupt.

2. Research Approach

Research Approach In principle, in normative legal research, the approach methods used in research are by using legislative, conceptual and case approaches.

3. Data collection technique

This study uses secondary data collection techniques by conducting a literature search, including books, journals, scientific works, the internet, mass media, and other references to answer the problem.

4. Data analysis

Data analysis in this study uses a descriptive evaluative method, where this study only describes facts found in the research . The analysis is expected to describe or provide conclusions in accordance with the problem so that it can answer the existing problems.

## RESULTS AND DISCUSSION

### Legal Protection for Investors Against Confiscation of Public Company Shares Due to Criminal Acts Committed by the Company's President Director

General seizure is a form of confiscation known in the civil law regime, especially bankruptcy law which is private in nature. In public law, in this case criminal law, there is also a confiscation which in the Criminal Procedure Code (KUHAP) is referred to as confiscation which in Dutch is known as "*inbeslagneming*". Article 39 paragraph (1) and paragraph (2) of the Criminal Procedure Code regulates objects that can be confiscated by investigators, including objects that are in confiscation due to civil cases or bankruptcy can also be confiscated for the purposes of investigation, prosecution and trying criminal cases. Article 39 paragraph (2) of the Criminal Procedure Code provides legitimacy to investigators to confiscate objects that have been under general bankruptcy confiscation, the existence of Article 39 paragraph (2) of the Criminal Procedure Code conflicts with Article 31 paragraph (2) of the UUK-PKPU which states that all confiscations that have been carried out are deleted and if necessary the Supervisory Judge must order the deletion.

Both articles cause conflicts and problems in their implementation. One of the cases related to general seizure which was then confiscated criminally is in the bankruptcy case of PT Hanson, Benny Tjokro as the main director of PT Hanson became a defendant in a corruption case, therefore for the criminal evidence process, the Attorney General's Office has confiscated shares and assets belonging to PT Hanson which are not related to the corruption case committed by Benny Tjokro. Bankruptcy Law does not actually make debtors personally

immune from lawsuits, both civil and criminal. However, the Bankruptcy Law and PKPU distinguish the consequences of bankruptcy law on the implementation or fulfillment of criminal demands against debtors *in person* related to bankrupt assets.

Provisions regarding confiscation in criminal cases are regulated in Article 1 number 16 of Law Number 8 of 1981 concerning Criminal Procedure Law as follows:

*"Confiscation is a series of actions by investigators to take over and/or store under their control movable or immovable, tangible or intangible objects for the purposes of evidence in investigations, prosecutions and trials."*

Article 39 paragraph (2) of the Criminal Procedure Law states:

*"Items that are in confiscation, due to civil cases or bankruptcy, can also be confiscated for the purposes of investigation, prosecution and trying criminal cases, as long as they fulfill the provisions of paragraph (1)."*

Thus, criminal confiscation of bankrupt assets is legally permitted to be carried out based on Article 39 paragraph (2) of Law Number 8 of 1981 concerning Criminal Procedure Law. With the condition that the bankrupt debtor's property which can be subject to criminal confiscation is as regulated in Article 39 paragraph (1) of the Criminal Procedure Code as follows:

- a. Objects or claims of a bankrupt debtor which are wholly or partly suspected of being obtained from criminal acts or as the result of criminal acts.
- b. Objects that have been used directly to commit a crime or to prepare for it.
- c. Objects used to prevent criminal acts.
- d. Objects that are specifically made or intended to commit crimes.
- e. Other objects that have a direct relationship to the crime committed.

Although there is not a single article in the Bankruptcy and PKPU Law that states that bankrupt assets under general confiscation cannot be confiscated criminally. On the other hand, if viewed from its form, Law Number 8 of 1981 concerning Criminal Procedure Law is a formal law that is mandatory and cannot be deviated from. However, in the case in question, the confiscation of PT Hanson shares carried out by the Attorney General's Office for the purpose of proving the criminal act of corruption committed by Benny Tjokro has deviated from Article 39 paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Law because the shares and assets seized have no direct relationship to the criminal act committed by Benny Tjokro as the main director. Criminal confiscation of bankrupt assets can only be carried out as long as the action (confiscation) is carried out with the permission of the head of the local district court where the bankruptcy decision was issued and is carried out solely for the purposes of investigation, and the objects seized criminally are relevant to the criminal act suspected of the defendant. That the shares and assets of PT Hanson included in the bankrupt estate are general seizures so that in order to seize the bankrupt estate, the investigator is obliged to submit an application or lawsuit to the Commercial Court at the District Court handling the bankruptcy case to be given the authority to carry out criminal seizures, and vice versa if there is no application or lawsuit, the investigator cannot immediately carry out criminal seizures. Criminal seizures imposed on bankrupt assets do not

cancel general seizures. In other words, even though the debtor's assets have the status of being seized criminally, the assets remain in the status of bankrupt assets when the commercial court declares the debtor bankrupt, unless it is proven that the assets do not belong to the bankrupt debtor or the debtor's bankruptcy is canceled by the Supreme Court.

**Legal Protection for Capital Market Investors When the Public Company They Invest in is Declared Bankrupt**

**a. Legal Protection for Investors in the Limited Liability Company Law**

In UUPT, there is no specific regulation regarding legal protection for investors in public companies declared bankrupt. In the existing regulations that apply to public companies that are bankrupt, both UUPT and Bankruptcy Law and PKPU have not accommodated the rights of shareholders because shareholders are not included in the category of creditors but their status is the owner. In Article 142 UUPT, it is explained that one of the causes of the dissolution of a company is because the bankruptcy assets of the company that has been declared bankrupt are in a state of insolvency, which is then followed by a liquidation process. To guarantee the rights of the company's creditors, UUPT provides certainty in Article 150 UUPT that the assets resulting from the liquidation are distributed first to the creditors.

Article 52 of the UUPT does provide shareholders with the right to receive a portion of the remaining assets of the company resulting from liquidation, however Article 150 paragraph (4) of the UUPT states that if the assets resulting from liquidation have been distributed to shareholders but it turns out that there are still creditors who have not received their portion, then the district court can order the liquidator to withdraw the remaining assets resulting from liquidation that have been distributed to shareholders to be paid to creditors who have not received a portion. Looking back at the regulation, shareholders are not placed as creditors in the bankruptcy process of their own company. A shareholder is positioned as an owner when the bankruptcy process ends in the company's liquidation process and the shareholder only gets a share if all of the company's obligations to all creditors have been fulfilled. So that based on the provisions above, the position of investors as creditors in the bankruptcy process of a public company or issuer is not possible by the UUPT. so that when bankruptcy occurs, shareholders are the last party to receive a portion of the payment of obligations. The order of distribution of assets of a bankrupt company is separatist creditors, preferred creditors, and concurrent creditors. If in the future there is a regulation stating the position of investors as creditors in the bankruptcy process of a public company, this cannot be done considering that the principle in the UUPT is *a statutory mandate* or coercive which is emphasized in Article 154 of the UUPT.

**b. Legal Protection for Investors in Law Number 8 of 1995 concerning Capital Markets**

Article 4 of Law Number 8 of 1995 concerning Capital Markets states that "The guidance, regulation, supervision as referred to in Article 3 shall be carried out by Bapepam with the aim of realizing the creation of orderly, fair, and efficient Capital Market activities and protecting the interests of investors and the public." Law Number 8 of 1995 concerning Capital Markets (hereinafter referred to as UUPM) determines and regulates that the authority in charge of the capital market is Bapepam-LK. This authority is under the Ministry of Finance

to guide, regulate, and supervise the capital market. In its activities, Bapepam-LK is under and responsible to the Minister of Finance. Bapepam-LK has the authority to implement preventive and repressive capital market legal protection. In the UUPM regime, Bapepam-LK is the embodiment of an institution to restore public confidence in the market which has been depressed since the emergence of the financial crisis in a number of Asian countries. In the end, this financial crisis was also one of the factors in the formation of the OJK as a financial services supervisory institution in Indonesia. To protect investors, the issuer who will sell securities in a Public Offering must provide investors with the opportunity to read the prospectus regarding the securities issued, before ordering or when the order is made. Ultimately, after Bapepam-LK considers the completeness and clarity of the issuer's documents to conduct a Public Offering in order to fulfill the principle of openness of the capital market. This is important considering that the prospectus for securities is the initial door and time for investors to consider whether or not to decide to buy a security.

The next preventive measure taken by Bapepam-LK is to regulate that securities prospectuses are prohibited from containing misleading content or incorrect information about Material Facts or presenting information about the advantages and disadvantages of the securities offered. In practice, Bapepam-LK creates standards for preparing prospectuses for securities to be offered. This protective measure begins when Bapepam-LK grants permission to SROs, Mutual Funds, securities companies, and supporting professions to operate in the capital market.

If Bapepam-LK is of the opinion that violations of the capital market law and its implementing regulations have resulted in losses in the capital market services industry and have endangered the interests of investor rights, then Bapepam-LK will determine the commencement of an investigation. This investigation is carried out by certain Civil Servant Officials within Bapepam-LK. Bapepam-LK's actions in the form of examinations and investigations are a process of supervisory activities aimed at providing protection and legal certainty for investors. In terms of providing repressive legal protection, according to UUPM, it has the authority to impose administrative sanctions in the form of written warnings, fines, restrictions on business activities, freezing of business activities, revocation of business licenses, cancellation of approvals, and cancellation of registration. In addition, UUPM also provides criminal sanctions against perpetrators of violations and/or crimes in the field of capital market services.

**c. Legal Protection for Investors in Law Number 21 of 2011 concerning the Financial Services Authority**

The Financial Services Authority (OJK) as an independent institution that supervising the running of the capital market does not only take care of the activities of issuers on the Indonesian Stock Exchange, but also takes care of consumer protection in the capital market, consumer protection is protection for consumers with a scope of Financial Services Business behavior, in article 1 number 3 of the Financial Services Authority (OJK) regulations it is explained that consumers are parties who place their funds and/or utilize the services available at Financial Services Institutions including customers in Banking, investors in the

Capital Market, policyholders in insurance and participants in Pension Funds, based on laws and regulations in the financial services sector

Based on the General Explanation of Financial Services Authority Regulation Number 1/POJK.07/2013, the aim of consumer protection is to create a reliable consumer protection system that can increase consumer empowerment. Consumers, and raise awareness of Financial Service Business Actors regarding the importance of Consumer protection so as to increase public trust in the financial services sector. From this explanation, it can be concluded that the main purpose of creating consumer protection regulations is in addition to protecting financial service consumers, it also aims to increase consumer trust and to create a conducive legal climate so that both financial service business actors and users of financial services can invest safely. The regulatory and supervisory duties carried out by the OJK are also based on Law Number 21 of 2011 concerning the Financial Services Authority.

OJK has one of its duties, namely enforcing the protection of financial service consumers in Indonesia. Consumer protection in the capital market will hereinafter be referred to as capital market investor protection because consumers in the capital market sector are financiers or investors. Therefore, the aspect of protection for capital market investors is the authority of OJK. The matter of consumer protection is stated in Article 28, Article 29, and Article 30 of the OJK Law, which are provisions that explicitly regulate the protection of consumers and the public in the financial services industry.

#### **d. Legal Protection for Investors According to the Principle of Transparency of Information in the Capital Market**

Transparency of information is one of the characteristics of the Capital Market sector. Protection for all parties including investors is a manifestation of the obligation to the principle of transparency. Investors can only make decisions correctly and accurately if the disclosure of information is carried out properly by all parties in the Capital Market. Therefore, Article 1 number 25 of Law No. 8 of 1995 requires issuers, public companies and other parties to inform in a timely manner all Material information regarding their business or its effects that can affect investor decisions.

Negligence in information disclosure creates an inefficient market and creates investor distrust. Therefore, guarantees are needed both in terms of regulation and enforcement against violations of the principle of transparency by any party including public companies. The imposition of sanctions can be carried out by the OJK in the form of criminal sanctions, civil sanctions, and/or administrative sanctions. Violation of the principle of transparency due to a request for a bankruptcy statement by a public company gives the OJK the authority to impose administrative sanctions as regulated in Article 6 of POJK No. 26/POJK.04/2017, namely in the form of written warnings, fines, restrictions or freezing of business activities, revocation of permits, cancellation of approvals, and/or cancellation of registration. This is a form of accountability to parties who commit acts that harm other parties. That in the case in this study, PT Hanson is suspected of violating Article 3 of POJK No.26/POJK.04/2017, In the explanation of Article 3 of POJK No.26/POJK.04/2017 provides an understanding of when to know about the existence of a bankruptcy petition. That what is meant by "knowing" is when

a court summons is received from the court to the Issuer or Public Company. Furthermore, the issuer or public company must also make a report to the OJK containing information on the name of the lender who filed for bankruptcy, a summary of the bankruptcy petition, and the amount of other loans.

On February 10, 2020, PT Hanson was filed for PKPU with case number 29/Pdt.Sus-PKPU/2020/PN Niaga Jkt.Pst and PT Hanson did not fulfill its obligation to submit a report regarding the bankruptcy petition. Moreover, information about the bankruptcy decision of PT Hanson in the Stock Exchange was only known on August 29, 2020 and the IDX has suspended PT Hanson's shares since January 16, 2020. This is a form of violation of non-compliance with the provisions of transparency in the capital market. Therefore, PT Hanson as a public company should be sanctioned by the OJK as a form of responsibility for violating the principle of transparency. However, in fact, PT Hanson was not sanctioned at all by the OJK. PT Hanson only provided an explanation to the IDX after trading in PT Hanson shares was temporarily suspended. Thus, PT Hanson's responsibility for negligence or violation of the submission of reports regarding the bankruptcy petition becomes non-existent.

OJK as a supervisor in the capital market sector based on its authority, can examine the public company suspected of committing a violation. The examination is carried out to determine what sanctions are appropriate to be imposed by the Public Company so that accountability for the violation becomes effective. This is solely intended to be able to provide a deterrent effect for the party committing the violation. Based on the description above, the legal efforts that can be taken by investors are by submitting a report to the OJK, because the OJK has the task of conducting an examination to prove whether or not there is a violation of regulations in the capital market sector. The procedures for examination by the OJK have been regulated in POJK No. 36/POJK.04/2018 concerning Procedures for Examination in the Capital Market Sector. If the OJK has determined and decided that there has been a violation of the principle of transparency, then the next legal effort that can be taken by investors is to file a lawsuit for Unlawful Acts (PMH) against the Public Company.

## CONCLUSION

Legal protection for PT Hanson investors is carried out due to deviations/inconsistencies in the application of legal regulations regarding the seizure of PT Hanson shares and assets, Article 31 paragraph (2) of the Bankruptcy Law essentially states that all seizures are stopped when a bankruptcy decision has been pronounced, if necessary the supervisory judge must order its deletion. Since the bankruptcy decision is pronounced, all seizures on an object end and are replaced with general bankruptcy seizures. This is intended to protect the assets of the bankrupt debtor from possible fraud by creditors or debtors. Meanwhile, Article 39 paragraph (2) of the Criminal Procedure Code states that objects in a bankruptcy case can be seized by investigators for the purposes of investigation, prosecution, and trying criminal cases. There is not a single article in the Bankruptcy and PKPU Laws that states that bankrupt assets under general seizure cannot be seized criminally so that general seizure of the debtor's assets does not prevent criminal seizure. The general seizure status continues to

follow or is attached to objects that are classified as bankrupt assets that are subject to criminal seizure. General seizure of the assets of a bankrupt debtor includes all of the debtor's assets that exist at the time of being declared bankrupt, as well as assets that will come in the future, while criminal seizure is only carried out on certain objects owned by the bankrupt debtor that are directly related to the crime suspected of the debtor. That in this case, the seizure of PT Hanson shares carried out by the Attorney General's Office for the purpose of proving the criminal act of corruption committed by Benny Tjokro has deviated from Article 39 paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Law because the shares and assets that were seized did not have a direct relationship to the crime committed by Benny Tjokro as the main director. That the shares and assets of PT Hanson that are included in the bankrupt assets are a general seizure so that in order to carry out the seizure of the bankrupt assets, the investigator is obliged to submit an application or lawsuit to the Commercial Court at the District Court handling the bankruptcy case to be given the authority to carry out criminal seizure, and vice versa if there is no application or lawsuit, the investigator cannot immediately carry out criminal seizure.

Legal protection for investors in public companies declared bankrupt can be done through preventive and repressive legal protection. Preventive protection can be realized by implementing the principle of transparency. Article 86 of Law No. 8 of 1995 concerning the Capital Market provides the main basis for the obligation for every public company to convey transparency of information that affects the price of securities. The Indonesia Stock Exchange (IDX) and the Financial Services Authority (OJK) as regulators have implemented both principles in several regulations, namely through the Indonesia Stock Exchange Regulation No. Kep-306/BEJ07-2004 concerning Regulation Number IE concerning the Obligation to Submit Information, Financial Services Authority Regulation No. 21/POJK.04/2015 concerning the Implementation of Guidelines for Public Company Governance, and OJK Regulation No.26/POJK.04/2017 concerning the Obligation of Information Disclosure for Issuers or Public Companies that are requested to Declare Bankruptcy. Repressive protection is carried out by the OJK as a supervisor who has the authority to impose administrative sanctions on public companies that commit violations. In the case of this study, investors can report alleged violations to the OJK for further investigation and can be subject to administrative sanctions for alleged violations committed by PT Hanson.

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