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Written by:

MELVA JULITA SIMANJORANG
SUNARMI
SAIDIN
DETANIA SUKARJA



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LEGAL ANALYSIS OF STATE-OWNED ENTERPRISES AS THE RESPONDENT IN THE SUSPENSION OF DEBT PAYMENT OBLIGATIONS

MELVA JULITA SIMANJORANG*
SUNARMI**
SAIDIN***
DETANIA SUKARJA****

ABSTRACT: The legal certainty regarding the filing of a petition for a debt payment postponement against state-owned enterprises in Indonesia remains unclear. Article 2 of the Bankruptcy and Suspension of Debt Payment Obligations Act concerning "public interest" is still open to multiple interpretations. The legal certainty regarding whether subsidiaries of state-owned enterprises are classified as state-owned enterprises is also still debated. This research analyzes the decision 22/PDT.SUS-PKPU/2019/PN Niaga Medan, which rejected the petition for a debt payment postponement against PTPN I by its creditor, on the grounds that only the Minister of Finance is authorized to file such a petition. The research problems include: 1) The legal status of state-owned enterprise subsidiaries within the regulatory framework, 2) The authority to file a petition for a debt payment postponement against state-owned enterprises, and 3) The legal certainty of filing a debt payment postponement petition against state-owned enterprises as the respondent in the decision Number 22/Pdt.Sus-PKPU/2019/PN Niaga Medan. The research method used is normative legal research. The results show that a petition for a debt payment postponement by a creditor is in accordance with Article 2 of the Bankruptcy and Suspension of Debt Payment Obligations Act. For state-owned enterprises other than public corporations, a debt payment postponement can be filed by creditors other than the Minister of Finance. PTPN I, as a subsidiary of a state-owned enterprise, should be treated the same as other companies because it is a limited liability company, even though all its shares are state-owned.

KEYWORDS: Minister of Finance, State-Owned Enterprises, Subsidiaries of State-Owned Enterprises, Suspension of Debt Payment Obligations.

I. INTRODUCTION

Suspension of Debt Payment Obligations (SDPO/ PKPU in Indonesian) is an offer for a settlement plan proposed by the debtor, which provides an opportunity for the debtor to restructure their debts to creditors. This may include the partial or full payment of debts to creditors. The PKPU process will inevitably have legal consequences on all of the debtor's assets. During the PKPU process, the debtor cannot be compelled to pay part or all of their

*Law Student, Faculty of Law, University of North Sumatera. | melvajsimanJORANG@gmail.com (CA)

** Lecturer, Faculty of Law, University of North Sumatera.

***Lecturer, Faculty of Law, University of North Sumatera.

****Lecturer, Faculty of Law, University of North Sumatera.

debts, and any enforcement actions that have been initiated to obtain debt repayment must be suspended.¹

During the PKPU process in the Commercial Court, the debtor or company cannot undertake any actions or perform any management or ownership over part or all of their assets. The company will request the judge to appoint a PKPU administrator to assist the company in resolving its debt payments. The selected PKPU administrator must have no conflicts of interest between the debtor and creditors and must be independent. Following the enactment of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, there has been a shift in the perspective towards PKPU. The submission of PKPU is no longer oriented towards bankrupting the debtor. An application for PKPU can now be submitted not only by the debtor but also by creditors of the debtor who have debts, enabling the possibility of reaching a settlement.²

PKPU is essentially a mechanism that can be used to improve the business conditions of the debtor, at least for a certain period, without being "disturbed" by claims from creditors. The legal policy behind this arrangement is that business actors (who usually also become debtors) can concentrate more on improving their business conditions. The assumption is that when the debtor can recover their business activities, they will be more capable of fulfilling their obligations to pay their debts to creditors. Generally, the relationship between debtors and creditors in the business world should be mutualistic, meaning a mutually beneficial relationship. When the debtor's business grows, it enhances their ability to meet their obligations to creditors. At this point, the mutualistic connection can be understood by all parties.³

Even though PKPU offers advantageous options for debtors, it does not mean that PKPU is without weaknesses. PKPU will only result in three possible outcomes: settlement, full debt payment, or bankruptcy. In the strategy of choosing a dispute resolution model, PKPU is often used as a way to avoid bankruptcy. This strategy can sometimes be successful, but it can also fail, leading the debtor into the trap of bankruptcy. This is because PKPU is a mechanism that is closely linked to bankruptcy.⁴

The provisions regarding bankruptcy and PKPU for State-Owned Enterprises (BUMN) are essentially the same as for general companies, including asset liquidation. However, several BUMN that have been declared bankrupt have never reached the asset liquidation process. Bankruptcy law expert Ricardo Simanjuntak stated that the same treatment for BUMN refers to Law No. 37 of 2004 concerning Bankruptcy and PKPU, but there is an exception for BUMN with the status of Perum (Public Corporation) because their shares are wholly owned by the state. Meanwhile, for BUMN with the status of Persero (Limited Liability Company), the provisions are the same as for private companies. This is because the state's capital participation is divided into shares. The provisions regarding asset liquidation are similar. This means that when a BUMN is bankrupt, the management of the company's operations is the authority of the curator. Directors, Commissioners, and even the government no longer have rights, so all actions that can be taken by the company must be with the curator's permission. This is because

¹ Kheriah, "Independensi Pengurus Penundaan Kewajiban Pembayaran Utang (Pkpu) Dalam Hukum Kepailitan," *Jurnal Ilmu Hukum Riau* 3, no. 2 (n.d.), p 240.

² Manahan M P Sitompul, *Hukum Penyelesaian Sengketa Utang Piutang Perusahaan Di Dalam Dan Di Luar Proses Pengadilan* (Malang: Setara Press, 2017), p 17.

³ Tri Budiyo, "Penundaan Kewajiban Pembayaran Utang (Pkpu) Dalam Masa Pandemi Covid-19: Antara Solusi Dan Jebakan," *Masalah-Masalah Hukum* 50, no. 3 (2021), p 236.

⁴ *Id.*, p 239.

the state's capital participation in BUMN and their subsidiaries is limited to the provided capital, so the losses of BUMN Persero and their subsidiaries are not considered state losses.⁵

The decision No. 22/Pdt.Sus-PKPU/2019/PN Niaga Mdn to be analyzed reveals that PTPN I, which operates in the plantation sector, has two creditors who filed a PKPU petition concerning debts that have matured and remain unpaid. The requirements for filing a PKPU have been met. However, the authority to file a PKPU petition rests with the Minister of Finance. According to the Bankruptcy and PKPU Law, the Minister of Finance has the authority to file for Bankruptcy and PKPU only for BUMN involved in public interests. PTPN I is also a subsidiary of PTPN III, which is the holding company for plantations. In the judge's considerations in this decision, the status of PTPN I is regarded as equivalent to that of a BUMN because its capital originates from the state, even though it is channeled through PTPN III.

This research aims to analyze the authority to file a Suspension of Debt Payment Obligations (PKPU) petition for State-Owned Enterprises (BUMN). Although the filing process for PKPU petitions is regulated by the Bankruptcy and PKPU Law, there remains uncertainty regarding the authority responsible for initiating Bankruptcy or PKPU proceedings against BUMN.

II. RESEARCH METHOD

This research is a normative and descriptive-analytical study, employing a statutory approach and a case law approach. The research data is obtained from secondary sources, including primary, secondary, and tertiary legal materials, which are gathered through library research and document study techniques. After the data is inventoried, it is analyzed qualitatively.

III. RESULT & DISCUSSION

A. *Position of State-Owned Enterprise Subsidiaries in Indonesian Legislation*

The legal status of subsidiaries of State-Owned Enterprises (SOE/ BUMN in Indonesian) is treated the same as that of BUMN as stipulated in Article 2A paragraph (7) of the Government Regulation. This treatment applies provided that the subsidiaries receive a government assignment or perform public services, and they receive special policies from the state and/or government, including specific treatment in the management of natural resources, similar to that applied to BUMN.

The distinction between State-Owned Enterprises (BUMN) and their subsidiaries fundamentally lies in the definition of BUMN as stipulated in Article 1 number 1 of the BUMN Law. This law defines a BUMN as a business entity in which all or most of the capital is owned by the state through direct participation using state assets that have been separated.

Thus, the difference between a BUMN and its subsidiary is that a BUMN is characterized by the majority of its capital being directly owned by the state, while a BUMN subsidiary is established through the state's investment in shares of another BUMN, resulting in the majority

⁵ Agnest Elga Margareth et al., "Badan Usaha Milik Negara (BUMN) Sebagai Termohon Pailit Dalam Kaitan Dengan Undang Undang Republik Indonesia Nomor 1 Tahun 2004 Tentang Perbendaharaan Negara," *Usu Law Journal* 7, no. 4 (2019), p 163.

of shares being held by another BUMN (indirect state capital participation). From a grammatical and teleological interpretation, it can be stated that BUMN and their subsidiaries are distinct legal entities. However, a BUMN subsidiary may be treated similarly to a BUMN if it receives a government assignment or performs public services, and/or if it receives special policies from the state and/or government, including specific treatment in the management of natural resources, akin to the treatment applied to BUMN.

Supreme Court Circular No. 10 of 2022 is a Circular from the Supreme Court regarding the Implementation of the Formulation of the 2020 Plenary Meeting Results of the Supreme Court as a guideline for the performance of duties by the courts. One of the goals of implementing the chamber system within the Supreme Court is to maintain the unity of legal application and consistency in rulings. The Formulation of the Criminal Chamber Results states in point 4 that “losses incurred by subsidiaries of BUMN/BUMD whose capital is not sourced from the State Budget (APBN)/Regional Budget (APBD) or not from the capital participation of BUMN/BUMDs and do not receive/use state facilities are not considered state losses.”

A parent company, as a separate legal entity distinct from other legal entities, means that its subsidiaries, which are also limited liability companies, have their own legal status. As a legal entity, a subsidiary possesses its own rights and obligations and holds its own assets, which are legally distinct from the assets of its shareholders. This applies whether the shareholders are the parent company or not. In principle, the parent company does not have legal authority to interfere in the management and policies of the subsidiary. Therefore, the involvement of the parent company in the subsidiary's business is only permissible through the appointment of Debtors and Commissioners by the shareholder company, provided it does not conflict with the company's articles of association, and through contractual relationships as long as they do not conflict with the company's articles of association.⁶

B. Authority to Submit a Suspension of Debt Payment Obligations Petition Against State-Owned Enterprises

Article 2 paragraph (5) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations states that a “State-Owned Enterprise engaged in public interest” refers to a state-owned enterprise whose entire capital is owned by the state and is not divided into shares. The authority of the Minister of Finance to file for bankruptcy applies to institutions under its supervision, similar to the authority of Bank Indonesia as mentioned in paragraph (3) and the Capital Market Supervisory Agency as mentioned in paragraph (4). Based on this, when related to Article 1 number 4 of Law No. 19 of 2003 concerning BUMN, a BUMN whose entire capital is state-owned and not divided into shares, and which aims to provide high-quality goods and/or services for public benefit while pursuing profit based on corporate management principles, is a BUMN in the form of a Public Corporation (Perum).

Regarding the accountability of the Minister, Article 39 of the BUMN Law states that the Minister is not responsible for any legal consequences resulting from actions taken by the Public Corporation and is not liable for losses of the Public Corporation exceeding the value of state assets that have been allocated to the Public Corporation. The Minister is only held accountable if, either directly or indirectly, they act in bad faith by using the Public Corporation solely for personal interests; are involved in unlawful acts committed by the Public Corporation; or unlawfully use the Public Corporation's assets, either directly or indirectly.

⁶ Munir Fuady, *Hukum Perusahaan: Dalam Paradigma Hukum Bisnis* (Citra Aditya Bakti, 2011), p 130.

Based on this, a State-Owned Enterprise (BUMN) in the form of a limited liability company (Persero) no longer falls under the category described in Article 2 paragraph (5) of the Bankruptcy and Suspension of Debt Payment Obligations Law, in conjunction with Article 1 number 4 of the BUMN Law. This is because the entire capital of a Persero is divided into shares, which are wholly or predominantly owned by the state. If a BUMN's capital is "divided into shares," it means that the BUMN is a Persero and is governed by Article 2 paragraph (1) of the Bankruptcy and PKPU Law. Therefore, a bankruptcy or PKPU petition can be filed by creditors or the debtor itself, without the need for it to be filed by the Minister of Finance.⁷

The Minister of Finance, acting on behalf of the state, can file for bankruptcy or a Suspension of Debt Payment Obligations (PKPU) for a State-Owned Enterprise (BUMN) engaged in public interest, specifically a Public Corporation (Perum), for the sake of the national economy. This role is crucial as the Minister of Finance has comprehensive knowledge of the overall economic situation of the country. The role of the Minister of Finance in bankruptcy and PKPU matters for BUMN, according to Law No. 37 of 2004 concerning Bankruptcy and PKPU, is to act as the petitioner for BUMN engaged in public interest or Perums.⁸

If a creditor of a State-Owned Enterprise (BUMN) wishes to file for bankruptcy or Suspension of Debt Payment Obligations (PKPU), they must first request the Minister of Finance to submit the petition for bankruptcy and PKPU against the BUMN. The role of the Minister of Finance in filing for bankruptcy and PKPU for a BUMN is closely linked with the stages or processes involved in the bankruptcy proceedings of a BUMN.⁹

C. *Analysis of Decision Number 22/Pdt.Sus-PKPU/2019/PN Niaga Mdn*

Article 223 in conjunction with Article 2 paragraph (5) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations states that "in cases where the debtor is an Insurance Company, Reinsurance Company, Pension Fund, or State-Owned Enterprise engaged in public interest, the petition for bankruptcy can only be submitted by the Minister of Finance," which creates ambiguity in interpretation. In the considerations of the court in this case, PT Perkebunan Nusantara I, as a member of a BUMN holding company engaged in the plantation sector, is deemed to serve public interest. However, this interpretation conflicts with the explanation of Article 2 paragraph (5), which clarifies that a "State-Owned Enterprise engaged in public interest" is an enterprise where the entire capital is owned by the state and is not divided into shares—specifically referring to BUMN in the form of a Public Corporation (Perum) according to Article 1 number 4 of the BUMN Law.

In this case, PTPN I does not yet have a direct assignment to perform public service obligations, so its status should be equivalent to that of other companies rather than being equated with a BUMN. Therefore, PTPN I, as the respondent in the PKPU proceedings, should be subject to PKPU petitions by its creditors in the same manner as other limited liability companies, provided the conditions for filing a PKPU petition for such companies are met.

According to Lord Lloyd's Theory of Legal Certainty, which states: "...law seems to require a certain minimum degree of regularity and certainty, for without that it would be impossible to assert that what was operating in a given territory amounted to a legal system," it can be understood that without legal certainty, individuals would not know what actions to take,

⁷ Id, p 166..

⁸ Moraya Hutajulu, "Tinjauan Yuridis Peranan Menteri Keuangan Dalam Pengajuan Permohonan Pernyataan Pailit Terhadap Debitor BUMN," *Lex et Societatis* 8, no. 4 (2020), p 138.

⁹ *Id.*

leading to uncertainty and, eventually, chaos due to the lack of clarity in the legal system. Legal certainty implies the application of clear, stable, and consistent laws, where enforcement is not influenced by subjective circumstances. In the case of PTPN I, the lack of legal certainty regarding whether it qualifies as a BUMN and the interpretation of BUMN engaged in public interest creates confusion for creditors about how to proceed. Although PTPN I, as the respondent in the PKPU proceedings, is fully state-owned, its shares are still divided and do not align with the explanation of Article 2 paragraph (5) of the Bankruptcy and PKPU Law. Therefore, the PKPU petition for PTPN I should be treated similarly to that of other companies.

IV. CONCLUSION

The legal status of BUMN subsidiaries, as outlined in Government Regulation No. 72 of 2016 and Constitutional Court Decision No. 01/PHPU-PRES/XVII/2019, establishes that BUMN subsidiaries are distinct entities from BUMN and are equivalent to private companies. However, Supreme Court Circular Letter No. 10 of 2022 stipulates that if a BUMN subsidiary's capital comes from the State Budget (APBN/APBD) or another BUMN/BUMD, it is considered equivalent to a BUMN. BUMN subsidiaries require clear legal protection because BUMN play a vital role in generating profits for the state and society. To date, there is no clear legal framework regarding the status of BUMN subsidiaries. The process for filing a PKPU petition for a BUMN depends on the form and sector of the business: for Perum, the petition is submitted by the Minister of Finance; for BUMN banks, by Bank Indonesia; and for BUMN Persero, the petition is in accordance with the Limited Liability Company Law. The case of PTPN I highlights the lack of legal certainty regarding BUMN engaged in public interest. According to Article 2 of the Bankruptcy and PKPU Law, BUMN whose shares are not divided are Perum. Although PTPN I's shares are owned by the state, its status as a Persero requires that PKPU petitions be treated the same as those for other companies.

It is recommended that clearer regulations be established regarding the position and status of BUMN subsidiaries to protect their business activities involving state capital. Additionally, there should be explicit regulations defining BUMN that operate in the public interest, ensuring there is no dual authority in submitting PKPU petitions for these BUMN, whether their shares are entirely state-owned or divided. By achieving uniformity in perspective and legal certainty in the submission of PKPU petitions for BUMN and the status of BUMN subsidiaries, it is hoped that the process will no longer be subject to multiple interpretations.

V. REFERENCES

- Budiyono, Tri. "Penundaan Kewajiban Pembayaran Utang (Pkpu) Dalam Masa Pandemi Covid-19: Antara Solusi Dan Jebakan." *Masalah-Masalah Hukum* 50, no. 3 (2021): 232–243.
- Fuady, Munir. *Hukum Perusahaan: Dalam Paradigma Hukum Bisnis*. Citra Aditya Bakti, 2011.
- Kheriah. "Independensi Pengurus Penundaan Kewajiban Pembayaran Utang (Pkpu) Dalam Hukum Kepailitan." *Jurnal Ilmu Hukum Riau* 3, no. 2 (n.d.): 9081.
- Margareth, Agnest Elga, Bismar Nasution, Mahmud Siregar Sunarmi, and Mahmud Siregar. "Badan Usaha Milik Negara (BUMN) Sebagai Termohon Pailit Dalam Kaitan Dengan Undang Undang Republik Indonesia Nomor 1 Tahun 2004 Tentang Perbendaharaan

- Negara.” *Usu Law Journal* 7, no. 4 (2019).
- Moraya Hutajulu. “Tinjauan Yuridis Peranan Menteri Keuangan Dalam Pengajuan Permohonan Pernyataan Pailit Terhadap Debitor BUMN.” *Lex et Societatis* 8, no. 4 (2020): 133–142.
- Sitompul, Manahan M P. *Hukum Penyelesaian Sengketa Utang Piutang Perusahaan Di Dalam Dan Di Luar Proses Pengadilan*. Malang: Setara Press, 2017.