



Judicial Review due to Bankruptcy Law on State-Owned Enterprises (Persero) and Workers

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Abstract

Bankruptcy is a general confiscation covering all debtor assets for the benefit of all creditors. In other words, bankruptcy is the time when the debtor is no longer able to pay all debts that are due. State-Owned Enterprises (BUMN) is a company in the form of a limited liability company (Persero) which is wholly, mostly or partly owned or managed by the government and directly controlled by the government. Workers or laborers are people who work and receive wages or other forms of remuneration. The research made in making scientific papers is normative legal research. Normative legal research or it can be called library research is research that says learning in the form of documents, using a variety of secondary data, namely regulations in legislation, court decisions set by judges, and legal theories. The data source used to write scientific papers is secondary data sources. This secondary data source takes data that comes from existing journals, established laws and regulations. Secondary data also logged all documents that were informed.

Keywords : Bankruptcy, BUMN Company (Persero), Workers / Laborel

1. Introduction

The monetary crisis that occurred in mid-July 1997 had a very broad impact on the development of businesses in Indonesia. The very high increase in the exchange rate of the dollar against the rupiah resulted in the Indonesian state being unable to pay all of its debts which were usually carried out in dollars, as a result the Indonesian state went bankrupt.

In the current era of globalization, business travel and all its activities are not free from problems. Companies do not always run well and often experience problems in problematic financial fields and result in debts and are unable to pay these debts. A company can gain and lose, a company that is in a state of profit will continue to develop, on the other hand, a company that is in a state of loss will experience a decline, and so on, the company will experience an up or down state like forming a graphic. One of the legal bases for settling debts and relating to bankruptcy in the business world is the bankruptcy regulation, including regulations regarding postponement of debt payment obligations.

The Dutch, which colonized the Indonesian state for 350 years, left a lot of legal legacy for Indonesia. Bankruptcy law cannot be avoided from the Dutch heritage. The regulations regarding bankruptcy are contained in the Wetboek Van Koophandel or

abbreviated as Kitab of the Commercial Law (KUHD) and Reglement op de Rechtsvoordering (Rv). Bankruptcy rules are specifically regulated in the KUHD, in Chapter III regarding the incapacity regulations for traders. Meanwhile, in the Rv, these rules are contained in Book Three of the Seventh Chapter concerning the real condition of being unable.

Bankruptcy is a general confiscation covering all debtor's assets for the benefit of all creditors. In other words, bankruptcy is the time when the debtor is no longer able to pay all debts that are due. Bankruptcy arises because of a relationship with the protected rights of creditors. If the debtor is unable to restore the creditor's rights, then the debtor will be bankrupt and what guarantees the settlement of all debts is his assets. Bankruptcy can also be useful for disciplining society.

The purpose of the bankruptcy is to distribute the debtor's wealth sharing by the curator to all creditors by observing their respective rights. Through this general confiscation, confiscation and execution by creditors individually ended. Therefore, all creditors must do so together in accordance with the principles described in Article 1132 of the Civil Code.

The key word for bankruptcy is debt. What is meant by utang here is utang whose payment is due. Whether all debts arising from an agreement, law, or obligation by paying an amount that has been determined by the judge and has permanent legal force.

Bankruptcy in Indonesia is described in Law 37 of 2004 concerning Bankruptcy and PKPU.

The legal consequence of bankruptcy is that the debtor loses the right to control and manage all of his assets which are included in the bankruptcy estate. All matters relating to bankruptcy assets are transferred to the curator under direct supervision, thus all matters that may affect bankruptcy assets must be done with the approval of the curator.

2. Research Methods

2.1. Types of research

The research made in making scientific papers is normative legal research. Normative legal research or it can be called library research is research that analyzes learning in the form of documents, using a variety of secondary data, namely regulations in legislation, court decisions set by judges, and legal theories. Research in normative law describes written regulations and the research is related to libraries. Normative research in scientific papers uses qualitative analysis where the explanation is used with existing data.

2.2. Research Approach

In writing this scientific paper using a statutory approach (statute approach), because in conducting this study interpret all the rules that exist in the legislation related to the problem being studied. This statutory approach is carried out by understanding all the existing regulations in the Law and examining the relationship between one Law and another. This Legislative Approach prioritizes legal materials in the form of statutory regulations as basic materials for conducting research.

2.3. Data source

The data source used to make the writing of this scientific paper is a secondary data source. This secondary data source takes data that comes from existing journals, established laws and regulations. Secondary data also includes all documents that are informed.

2.4. Data analysis

Analysis of the data used in making this scientific paper is using qualitative descriptive analysis. Qualitative descriptive analysis is made by conducting research by observing the natural state of the object, describing and summarizing the conditions and time of the collected data relating to the problem being studied and researched.

3. Discussion

3.1 Due to Bankruptcy Law on State-Owned Enterprises (Persero)

a. Definition of BUMN.

State-owned enterprises (BUMN) are companies in the form of a limited liability company (Persero) which are wholly, mostly or partly owned or managed by the government and directly controlled by the government. Broadly speaking, according to Law Number 19 Year 2003, BUMN is a business entity which all or part of the funds are directly owned by the state through direct involvement and its assets come from the country it owns. BUMN is intended to carry out activities to manage the manufacture or products which are very important for the interests of the state by realizing the prosperity of the people and fulfilling the lives of many people.

In carrying out its business activities, SOEs carry out their activities based on the principle of economic democracy, namely democracy in which the formulation of socio-economic activities directs the replacement of provisions from corporations and corporate shareholders to a larger association of public shareholders than before, including workers or laborers, customers, distributors, the surrounding area, wide publication. The existence of economic principles in carrying out BUMN business activities provides enormous benefits for the welfare of the people. Therefore, the role of BUMN is very important in the development of the national economy, so to strengthen the role of BUMN, an optimal management and supervision is required.

b. Bankruptcy regulations against state-owned enterprises (BUMN) and their relationship with the bankruptcy of the company according to Law Number 37 of 2004

Bankruptcy regulations are regulated in Law Number 37 of 2004 and are also included in other statutory regulations. The rules contained in the Law explain material law as well as formal law. However, the rules that explain the formal law are not explained in detail. Bankruptcy between an individual and bankruptcy of a legal entity cannot be differentiated in the bankruptcy law as regulated in Law Number 37 of 2004.

In Law Number 37 of 2004, it is not sufficiently regulated regarding bankruptcy between individuals and bankruptcy of legal entities, therefore other laws and

regulations are used to be used as a legal basis. According to Article 2 paragraph (5) of Law Number 37 Year 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, it is stated that State-Owned Enterprises (BUMN) in this case the Debtor who manages all activities for the public interest that can file bankruptcy can only be carried out by the Minister of Finance. .

From this statement, it is not explained directly, based on Law Number 19 of 2003 states that BUMN is in the form of a Public Corporation and a Persero. Based on the bankruptcy regulations in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, there are no clear rules. Therefore, based on a study or study conducted between Law Number 19 Year 2003 and Law Number 37 Year 2004, namely, based on Law Number 37 Year 2004 Article 2 paragraph (5) states that BUMN is a company in the form of a Public Company or Perum as explained in article 1 point 4, namely "Public Companies called Perum, namely BUMN, which all funds or assets are controlled by the state, and the shares are not divided,

Based on the statement explained that BUMN is a company in the form of a Public Corporation, and bankruptcy applications against public companies can only be submitted or made by the Minister of Finance. Meanwhile, the bankruptcy regulations against BUMN Persero are not clearly spelled out in Law Number 37 of 2004 and Law Number 19 of 2013.

c. Legal consequences for the state-owned company (Persero) which was declared bankrupt.

Bankruptcy declarations issued by BUMN companies have legal consequences for the legal entity itself. The legal consequences for BUMN companies that are declared bankrupt are:

1) BUMN Persero itself as a company.

The legal consequence of being carried out by BUMN Persero as an institution is to carry out restructuring efforts as described in CHAPTER VIII of Law Number 19 of 2003 concerning State-Owned Enterprises which regulates Restructuring and Privatization. The purpose of restructuring is carried out so that BUMN can run efficiently, openly and competently. Meanwhile, privatization was held to improve the work system and additional points to increase the community's role in the ownership of shares in Persero.

2) There is the implementation of general confiscation of all assets of BUMN Persero which are declared bankrupt.

The legal position of the assets of state-owned companies which are declared bankrupt in carrying out general confiscation as a result of the bankruptcy where the assets of the BUMN Persero companies are not state assets because in BUMN Persero contains the rules and principles of limited liability companies described in the PT Law. BUMN Persero has capital originating from state assets and is separated from the State Budget, but in carrying out its activities, there is a direct explanation by purchasing shares which are owned by the state which are shares of BUMN Persero while the assets are transferred to belong to BUMN Persero, based on this explanation, the assets

owned by BUMN Persero can be used as an object of general confiscation in the event of bankruptcy against BUMN Persero.

The general confiscation that occurs as a result of bankruptcy against BUMN Persero can be carried out as in the bankruptcy system in an ordinary legal entity with the realization of the bankruptcy section described in Article 2 paragraph (1) of the Bankruptcy Law and PKPU with simple proof as meant that the assets owned by BUMN Persero originating from separated state assets is the property of BUMN Persero itself.

- 3) The elimination of all rights that are included in the state-owned company Persero.

The loss of all rights belonging to the BUMN Persero as well as the transfer of management of all assets owned by the company and carried out by a curator who is directly supervised by the Supervisory Judge is included in the eradication of the management of debts to creditors.

- 4) Apply by Rule of Reason.

Whereas the legal consequence of the Rule of Reason itself does not apply directly, it will only take effect if it has been enforced by certain parties and has reasonable reasons for its enforcement (by the operation of law).

- 5) For the shareholders.

The government in carrying out economic activities as a channel of capital in BUMN Persero acts as an owner or entrepreneur for and on behalf of the people. BUMN as the implementation of the state's right to control, not to have economic resources to save the lives of many people. While the owner is the people because sovereignty is in the hands of the people.

3.2 The consequences of bankruptcy law on workers.

a. Definition of Worker.

According to article 1 paragraph (3) of Law Number 13 Year 2003 concerning Manpower, workers or laborers are people who work and receive wages or other forms of remuneration. Termination of employment that occurs between the worker and the company, the entrepreneur is obliged to pay severance pay or tenure awards as well as compensation for rights and pension funds that should be obtained, the implementation of this fulfillment is entitled to be carried out by the debtor, in this case a BUMN (Persero) If a company does not pay severance pay / pension or salaries / funds to workers, that includes debt as described in Article 1 point 6 of Law Number 37 Year 2004.

The bankruptcy statement causes legal consequences for all assets owned by the debtor. The wealth is taken over by the curator and the curator takes care of all the assets of the bankruptcy. The bankruptcy statement results in the consequence that a lawsuit arising from the rights and obligations of the bankrupt debtor's assets is filed by the curator.

b. Legal consequences of bankruptcy for workers.

The bankruptcy of a company causes various problems that arise, one of which is for workers or employees, these consequences include:

- 1) Compensation can be done.

According to Articles 51.52 and 53 of Law Number 37 Year 2004, the creditors and debtors can make set-offs in good faith in carrying out

transactions that previously existed prior to the debtor's bankruptcy statement.

2) Reciprocal contracts can be continued.

A reciprocal agreement or contract between the bankrupt debtor and the creditor, which was made before the debtor's bankruptcy, has not been fulfilled in part or in full by both parties, the creditor may ask the curator for assurance regarding the continuation of the contract execution and the timing of its execution.

3) The suspension of execution of debt collateral applies.

In the process of bankruptcy, the holders of the debt guarantee rights are referred to as separatists. According to Article 55 of Law no. 37 of 2004, separatist creditors are not included in the division of bankruptcy and are separated because they can fulfill their own receivables by executing existing debt guarantees as if there was no bankruptcy. Based on Article 56 paragraph (1) of Law no. 37 of 2004, the right of execution of separatist creditors can only be exercised after a grace period since the bankruptcy decision is declared by the Commercial Court. The waiting time is valid by law without having to be agreed by the parties.

4) Against creditor retention rights.

As formulated in Article 61 of Law no. 37 of 2004, namely the creditor has the right or obligation to postpone all objects owned by the debtor for collateral until the debtor's debt is paid off to the creditor. The curator has the obligation to redeem the objects held by creditors by paying creditors' receivables as stated in Article 185 paragraph (4) of Law No. 37 of 2004.

5) Employees or workers can be laid off

Based on Article 39 of Law no. 37 of 2004 an employee who is in the bankruptcy of a business entity or company has a position as a creditor, if the business entity or company is declared bankrupt, both the employee and the curator have the right to terminate the employment relationship. After the debtor is declared bankrupt, the worker's or employee's efforts are considered estate debt.

c. Liability of Limited Liability Companies (BUMN) which are declared bankrupt on employees as preferred creditors.

Broadly speaking, the responsibilities of a Limited Liability Company that has been declared bankrupt to employees as preferred creditors are:

- 1) During the bankruptcy process, the Company has responsibilities that must be fulfilled towards its employees, either before it is declared bankrupt or after the statement of bankruptcy. Prior to the issuance of a bankruptcy declaration, the Company is responsible for paying the wages / funds of workers / laborers owed and other workers' rights thoroughly before the Company loses its policy of managing and transferring its assets to the curator.
- 2) After being sentenced to bankruptcy, the Company, represented by the board of directors, has the duty to assist in clearing all bankruptcy assets at the request of the curator. This was carried out in order to achieve the aims and objectives of the bankruptcy of the Company so that all debts of creditors,

including employees, act as preferred creditors and are carried out properly. In the PKPU process, the Company has the responsibility to offer a peace agenda, which includes offering debt payments to creditors as preferred employees.

- 3) The company must always have good faith to pay wages / funds for its employees because employees are an important component in carrying out the operations of a company. With no employees, the company will not be able to run. The absence of employees means that the company cannot achieve the aims and objectives of the establishment of the Company.

d. Responsibilities of Curator to Employees as Preferred Creditors in Bankruptcy.

Broadly speaking, the curator's responsibilities to employees as preferred creditors in bankruptcy are:

- 1) The curator is the party who carries out all management and clears up all bankruptcy assets and is responsible for the payment of all debts that can be realized to creditors, who are specifically for employees as right-holding creditors who are privileged by law. As the regulations described in Article 95 paragraph (4) of the Manpower Law, companies that are declared bankrupt or are liquidated based on the laws contained in the law, wages or remuneration and other rights of workers / laborers are debts that must be carried out in advance *dahulum* payment.

As stated in the decision of the Constitutional Court No. 67 / PUU-XI / 2013, namely the payment of wages for indebted workers / laborers must first be made on all types of creditors, including separatist creditors, state rights claims, auction offices, and public bodies made by the government. Payment for other workers / laborers' rights is made first which includes claims for state rights, auction offices, and public bodies made by the government, except for claims on separatist creditors. the workers / laborers whose payment must be prioritized by taking action in accordance with the prevailing laws and regulations in connection with the process of managing and clearing bankruptcy assets.

- 2) The curator must work and have responsibilities in accordance with the mandate of the applicable law. The curator must pay attention to other laws relating to his duties, not only paying attention to the Bankruptcy Law. This is useful so that there is equality in relation to what the curator can do, so that protection and justice for the law can be achieved, especially in this case the employees.

4. Conclusion

Based on the explanation that has been described, the consequences of bankruptcy law for a company are:

- a. BUMN Persero itself as a company.
- b. There is the implementation of general confiscation of all assets of BUMN Persero which are declared bankrupt.

- c. The elimination of all rights that are included in the state-owned company Persero.
- d. Apply by Rule of Reason.
- e. For the shareholders.
The consequences of bankruptcy law for workers / laborers are:
 - a. Compensation can be done.
 - b. Reciprocal contracts can be continued.
 - c. The suspension of execution of debt collateral applies.
 - d. Against creditor retention rights.
 - e. Employees or workers can be laid off

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