

Obstacles in the Execution of BUMN Persero's Bankrupt Assets in Indonesia

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Abstract. This paper explains the obstacles in the implementation of BUMN Persero's execution when bankruptcy occurred in Indonesia. Up to now, no BUMN in the form of Persero has succeeded in carrying out the asset implementation stage by the curator even though it has been declared bankrupt, as in the case of bankruptcy in PT. Kertas Leces (BUMN Persero) in Probolinggo, East Java, Indonesia. This study focuses on curators' efforts in dealing with obstacles in the asset execution, especially at BUMN, using an empirical juridical approach in the case of PT Kertas Leces (Persero). The results found that some obstacles hinder the execution of the assets of PT. Kertas Leces as one of the BUMNs in Indonesia, even though it is bankrupt. Some of the constraints include differences in interpretation of company assets, lack of harmonization of laws and regulations, length of data collection on assets and assessment teams, low interest in asset buyers, and difficulty in obtaining approval from the Office of State Assets and Auction Services (KPKNL) in the BUMN (Persero) asset auctions.

Keywords: Execution, SOE Assets, Curator, Bankruptcy

INTRODUCTION

State-Owned Enterprise (BUMN) is a business entity partly or fully owned by the Republic of Indonesia. BUMN can be a non-profit company aiming to provide goods or services to the community [1]. Based on Article 1 number 1 of Law Number 19 of 2003 concerning State-Owned Enterprises (BUMN Act), SOEs are business entities whose entire or most of the capital is owned by the State through direct investments from separated state assets [2].

The role of the State through BUMN becomes crucial when formulated in a provision as stated in Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, where production branches important for the State and the livelihoods of the people must be controlled by the State [3]. This shows the existence of the State's authority to participate in economic activities through the implementation of production branches, which can be categorized as important to the country and are

considered vital and strategic for the interests of the country [4].

State-Owned Enterprises, in the form of state-owned companies, are inseparable from the problems of the ups and downs of financial conditions. Awareness of the ups and downs of the financial situation was evidenced by the existence of some lawsuits and requests for bankruptcy statements against BUMN Persero that occurred, such as PT. Dirgantara Indonesia (Persero), PT. Djakarta Llyod (Persero), and PT. Iglass (Persero). In many BUMN bankruptcy cases, oftentimes, nothing can be declared bankrupt, even how the execution of the assets of the BUMN assets is questionable because it is not clear how to apply it. In reality, if it can be declared bankrupt at the Commercial Court, it will be canceled at the cassation level, or if granted at the Cassation level, it will be canceled at the Judicial Review level.

The research object is PT. Kertas Leces (Persero), which has reached the stage of executing assets in the auction by the Asset Management Company (PPA). It is interesting to explore the case of how the execution of the assets of PT. Kertas Leces (Persero) carried out by the Curator team. PT. Kertas Leces (Persero) can finally carry out the execution of assets, and it will be the only BUMN that can be carried out the execution of assets to repay debts to all credit. PT. Kertas Leces (Persero) has been homologated through decision 05/PKPU 2014/PN.Niaga.Sby on May 18, 2015 [5].

With regard to previous studies, the writers did not find the same research related to state-owned state bankruptcy. Several previous studies related to bankruptcy were conducted, among others were the work of Nilasari [6] entitled Position of Securities in the Case of a Seller Declared Bankruptcy in Short-Selling Transactions in the Capital Market, Primadhany [7] concerning Legal Protection of Graha Dewata Housing Consumers Due to the Bankruptcy of PT. Dewata Abdi Nusa, Astiti [8] concerning Confiscation of Bankruptcy in Bankrupt, and the Bankruptcy of Transboundary Perspectives in International Law and Comparison with National Instruments in Several Countries by Hadjaloka [9], UUK and PKPU No 37 of 2004 Overriding the Applicability of the Principle of International Law Pacta Sunt Servanda in Settlement of Bankruptcy Disputes [10], Legal

Status of Bank Guarantee on Behalf of Third Parties In Bankruptcy Perspective [11]. Other research related to Persero were previously conducted by Sumawati: Restructuring State-Owned Enterprises (SOEs) as a Strategy to Face Demonopolization Policies [12], Indah Cahyani and Tatik S. [13]: Demarcation of SOEs: Between Private Laws and Public Laws, and Sitepu [14]: State-Owned Enterprises Finance from the Perspective of State Funds.

METHOD

The problems formulated above were solved using an empirical juridical approach. The juridical approach (law is seen as the norm or *das sollen*) was chosen because the discussion of the problems of this study used legal materials, both primary and secondary legal materials (written law and unwritten law). The empirical approach (law as a social, cultural, or *das sein* reality) was also used for the primary legal materials obtained from the field. So, the empirical juridical approaches in this research were used in analyzing the problem by combining secondary materials (e.g., homologation decisions on PT. Kertas Leces (Persero) and primary legal materials obtained in the field, namely the execution of the assets in bankruptcy committed by the curator.

RESULT & DISCUSSION

The obstacles in the Implementation of Assets Execution of PT. Kertas Leces (Persero)

The research result and discussion show that there are various obstacles in the execution of SOE assets in the form of state-owned companies, especially those that occurred in PT. Kertas Leces (Persero) (in bankruptcy).

a. Differences in Interpretation of BUMN Ownership Assets

The constrain in the execution of the assets was caused by the differences in interpretation of bankruptcy requests between judges and curators. The judge referred to Article 2 paragraph 5 of the law on the Judicial Commission and PKPU, which states that if the debtor is a BUMN engaged in the public interest sector, the request for a bankruptcy statement could only be submitted by the Minister of Finance. However, we cannot interpret the intended BUMN to apply to all SOEs in Indonesia. The intended SOEs are only those engaged in the field of public interest. Based on the explanation of Article 2 paragraph (5), BUMN engaged in the public interest sector is a state-owned enterprise whose entire capital is owned by the State and is not divided into shares. Then according to the judge, PT. Kertas Leces (Persero) is a BUMN that engages in the field of public interest. The judge declares that it cannot be bankrupt because all of its

capital is owned by the State and is not divided into shares. On the other hand, the submission of the petition was carried out by its creditors, which in fact, were former employees of PT. Leces.

Meanwhile, according to the curator, if there are concern and inconsistency of judges in determining whether or not the BUMN's assets are owned by the State, this has been clearly stated and can be seen for themselves that the form of BUMN itself is divided into 2: Persero and Perum. According to the curator, BUMN can be declared bankrupt, and execution can be done because the BUMN is not engaged in the public interest. In this case, the authors agree with the curator.

b. Disharmony of Laws and Regulations

There is a disharmony between the Bankruptcy Law and the Delay in Obligation of Debt Payment in particular (UUK and PKPU) and the State Finance Act (KN Law), the State-Owned Enterprises Act BUMN Act, Limited Liability Company Law (PT Law), and the State Treasury Law (PBN Law). It begins with confusion about the concept of "state finance." Whereas, in the KN Law, the term public finance and private finance are still confusing, like the contradictions of other laws related to the above (BUMN, UUK and PKPU Law, PT Law, PBN Law).

BUMN Persero can be declared bankrupt, but in the provisions of the UUK and PKPU, there are exceptions (Article 2 paragraph (5): insurance companies, reinsurance companies, pension funds, and BUMN engaged in the public interest. Moreover, those who can propose SOEs engaged in public interests are only the Minister of Finance.

Based on the provisions of the PT Law, the BUMN Law, and the opinions of scholars, it can be seen that there are differing views on the position of SOE assets associated with state assets. Not to mention related to the PBN Law, where there is a prohibition on confiscation of goods belonging to the state/region or controlled by the state/region. Meanwhile, bankruptcy is essentially a general confiscation of all the assets of bankrupt debtors (Article 1 no. 1 UUK PKPU). So, BUMN Persero cannot go bankrupt, because some or all of the company's assets are the property of the State, if it can be bankrupt then what is possible to be confiscated is assets that are outside of state property. Nevertheless, this is contrary to the nature of bankruptcy because bankruptcy is a common seizure of all debtor assets.

C. The Length of Time for Data Asset Collection

PT. Leces (Persero) is a company in the form of a State-Owned Enterprise located in Leces, Probolinggo, focusing on paper production. It was established during the Dutch colonial period (1939). It began operating in 1940 with a production capacity of 10 tons/day, producing

printed-paper that processes straw raw materials and a sedimentation process. The curator required a long time to collect data on its assets as the data started from 1939 until 2015 (when bankruptcy was terminated by Surabaya Commercial Court), or about 76 years.

d. The Duration of the Appraisal Team Conducting an Asset Assessment

Assessment Team is a team that has the authority to assess the BUMN Persero assets. In doing this, the curator must wait for the assessment team to finish matching the prices of PT. Leces (Persero) assets. It also required a long time to verify the assets. The curator had to write to the creditors of PT. Leces (Persero) in order to dig deeper into what assets they owned.

e. The Difficulty in Obtaining Auction Approval from the Office of State Assets and Auction Services (KPKNL)

To conduct an auction of pallets, one must obtain approval from the relevant agency, namely the auction office (KPKNL). However, PT. Leces (Persero) did not easily obtain such approval from KPKNL Surabaya. When the curator came to the KPKNL in connection with his authority to conduct the acquisition of his assets, the Minutes of Insolvency was requested [15]. A polemic rose because basically, the "minutes of insolvency determination" has no basis in its provisions, but the KPKNL insisted that the curator must meet these requirements. In response, the curator must return to the Commercial Court to ask Hawas (supervising judge). Hawas also rejected the requirements because there were no legal provisions like that.

f. Low Interest in Asset Buyers

The condition of market share, which is currently quiet, also results in constrained execution by curators. It happened after the assets of PT. Leces (Persero) was estimated at an appropriate price to be sold in the market. The curator then brought the data to the Office of State Assets and Auction Services (KPKNL) to conduct the auction. Furthermore, KPKNL would announce the auction of these assets through an announcement board, so if there are buyers who wish to buy, they will be listed by the KPKNL, which is attended by curators and buyers. When an appropriate price for an asset auction is obtained, the buyer's highest price will be agreed by the curator [16].

CONCLUSION

From the results of the discussion and analysis described above, it can be concluded that there are internal and external obstacles in the execution of

the bankrupt assets. The internal constraints include 1) the existence of different interpretations of the own assets of the BUMN, 2) a disharmony of related laws and regulations, namely the Law on State Finance with the Law on SOEs, the Law on PT, UUK and PKPU, Law on PBN, and 3) lengthy duration for data collection in PT. Kertas Leces (Persero) (76 years). On the other hand, external constraints include 1) lengthy duration for Appraisal (Assessment Team), 2) approval from the Office of State Assets and Auction Services (KPKNL), and 3) Quiet market share conditions.

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