

## The Urgency of Regulations Concerning the Bankruptcy of State-Owned Enterprises

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Article Info	ABSTRACT
<p><b>Keywords:</b> Bankruptcy, State-Owned Enterprises, Persero, State Assets.</p>	<p>Bankruptcy of State-Owned Enterprises (BUMN Persero) The chosen theme is motivated by the absence of regulations regarding limitations on bankruptcy petitions for BUMN Persero, which has caused differences in opinion leading to legal deviations in practice. Regulations on bankruptcy petitions for BUMN Persero can serve as a reference, but they must still be adjusted considering the fundamental special characteristics of BUMN. The legal materials obtained by the author will be analyzed using descriptive and evaluative analysis techniques. In this regard, the author collects legal materials such as legislation and also conducts source searches on the internet by accessing official sites like e-books, e-journals, or official articles published online. Based on the research using the above methods, the author finds that there are philosophical, juridical, and sociological urgencies that make regulations regarding bankruptcy petitions for BUMN Persero necessary. These regulations aim to prevent misinterpretations concerning the parameters of limitations on BUMN operating in the public interest sector, and banking regulations for BUMN Persero can prevent differences of opinion that result in legal deviations in practice. Law No. 37 of 2004 regulates bankruptcy of BUMN but does not clearly regulate bankruptcy petitions specifically for BUMN Persero, so it requires revision or additions. However, this law can be used as a reference in analyzing bankruptcy regulations for BUMN Persero. There are two models of bankruptcy petitions depending on the legal subject or the status of the company being petitioned for bankruptcy. It can be understood that bankruptcy petitions for BUMN Perum are filed by the Minister of Finance, whereas for BUMN Persero, if 100% or the entire share ownership is held by the State, the Minister of Finance can file the bankruptcy petition. However, if this is not applicable, the Bankruptcy Law does not apply because the Minister of Finance acts as the manager of State Assets.</p>
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### INTRODOCTION

The companies in Indonesia each have their strategic roles in building the national economy, especially State-Owned Enterprises (BUMN) which often face issues in their economic activities (Setyanto, 2021). The origin of BUMN was the nationalization of

foreign companies, mainly Dutch companies, which were then converted into State-Owned Enterprises. Under UU Nomor 1 Prp 1969, three types of BUMN were established: Perjan, Perum, and Persero. The formation of these three types was based on the suitability of their tasks, functions, and missions. Over time, changes occurred, resulting in only two forms of BUMN, namely Perusahaan Umum (Perum) and Perusahaan Perseroan (Persero). Persero is defined as a State-Owned Limited Liability Company where at least 51% of the shares are owned by the State, with the main goal of generating maximum profit. Meanwhile, Perum is defined as a State-Owned Enterprise aimed at providing public benefits through high-quality products and services while still pursuing profit, adhering to good company management principles (Abdulkadir, 2010).

State-Owned Enterprises are clearly regulated in Article 1 Number 1 of Law No. 19 of 2003 concerning State-Owned Enterprises, which states: “A business entity whose capital ownership is wholly or majority-owned by the State and directly managed through separated State assets.” The UU BUMN also stipulates that Persero must comply with all provisions and principles governing Limited Liability Companies (PT) as set forth in Law No. 40 of 2007 concerning Limited Liability Companies, with the main difference being that the shareholder is the Government.

In this context, a company is a legal entity separate from its individual shareholders or founders, consistent with the doctrine of corporate separate legal personality. Companies, especially limited liability companies, cooperatives, and others, maintain separate ownership of assets from their shareholders. A BUMN company, once established and operated, is not immune to loss risks that could lead to bankruptcy if it is run unprofessionally and without sound corporate governance principles. A bankrupt company impacts productivity of goods and services, distribution channels, state tax revenues, and national unemployment rates, affecting consumers with lower purchasing power. Therefore, BUMN companies, which hold strategic positions, significantly influence the real sector’s activities.

Bankruptcy itself is defined as the general seizure of all assets owned by a debtor for the benefit of creditors, aiming to distribute the debtor’s wealth under the curator’s authority prioritizing the rights of involved parties (Tumbuan, 1998). Bankruptcy of BUMN is not as straightforward as private companies because BUMN are businesses with all or most of their capital owned by the State. The requirements to file a bankruptcy petition include having two

or more creditors with due and collectible debts, as regulated in Article 2 Paragraph (1) and Article 8 Paragraph (4) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU). Considering there are two forms of BUMN, Persero and Perum, they differ significantly. BUMN Persero is a legal entity and shares functions and organs similar to limited liability companies, such as conducting General Meetings of Shareholders (RUPS), having a board of directors, and receiving no special government facilities. Thus, BUMN Persero has rights and obligations like other companies. Shares can be released to government institutions or non-government

parties, with the expectation that BUMN Persero becomes a professional business entity aimed at maximizing profit in line with government expectations.

However, because BUMN Persero maintains its status as a State-Owned Enterprise, avoiding bankruptcy risks is unavoidable. BUMN Persero can file for bankruptcy, a situation that has occurred as evidenced by the bankruptcy case of PT Dirgantara Indonesia (Persero) in the Commercial Court of Central Jakarta under case number 41/Pailit/2007/PN.Niaga/Jkt.Pst. Factors causing bankruptcy in BUMN Persero include: 1) Internal company causes due to mismanagement by directors and management teams; 2) External causes originating from changes in the business environment. According to expert Fred BG. Tumbuan, a Persero as an independent legal subject has the authority to act on its own behalf and engage in legal activities related to its assets to achieve its intended purposes (Rahayu, 2021).

The legal consequences of a BUMN bankruptcy involve both the debtor and creditors but also affect State assets, whether in the form of Perum or Persero, since their capital mostly comes from separated State assets. Bankruptcy petitions for BUMN are possible but complicated by asset seizure issues, as State assets are included under State Finance and are protected from seizure according to Article 2 letter g of the State Finance Law. Furthermore, Article 2 Paragraph (5) of UU KPKPU explains that bankruptcy and suspension of debt payment obligations have cumulative effects. Therefore, the Minister of Finance is not the only party authorized to file bankruptcy petitions; others may also do so. Exceptions include Persero engaged in fundraising, insurance, and banking.

Based on this background, more detailed regulations need to be added to Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations specifically addressing bankruptcy of BUMN Persero. The reasons and urgency for these regulations will be further examined in this thesis entitled "THE URGENCY OF REGULATIONS ON THE BANKRUPTCY OF BUMN PERSERO."

## METHODS

This research uses a normative juridical approach, which involves studying legal materials by examining secondary legal sources supported by primary legal materials. In this legal research, the author employs two research approaches: the Statute Approach and the Analytical Approach. The technique used for collecting legal materials in this study is library research. This technique involves sourcing materials from legislation, literature, publications, and officially issued documents. The research results are obtained by reading, quoting, and noting matters or discussions related to the issues studied. The legal material analysis technique is carried out by describing and synthesizing the collected legal materials, which are then organized systematically in writing to answer the research questions posed by the author.

## RESULTS AND DISCUSSION

### The Urgency of Regulation on the Bankruptcy of BUMN Persero

The role of the State is closely related to the purpose of establishing State-Owned

Enterprises (BUMN) in developing the national economy, both for the broader society and individuals. Arnold Heertje stated that an individual's economic life improves within a community because it depends on the role of the state. Thus, it is not solely reliant on the market and the existence of private organizations (J.M. Keynes, 2012). BUMN also play an important role as pioneers in corporate sectors less favored by private enterprises. Additionally, BUMN have a strategic role in providing public services by balancing the power of large private sectors and supporting the development of small businesses or cooperatives.

Therefore, BUMN have two main functions: the commercial function, which seeks profit like typical corporations, and the social function, serving as a channel through which the state realizes public welfare (R. Harun, 2019). The government's role in the national economy through BUMN is acting as owner (*eigenaar*) or possessor (*bezitter*) on behalf of the people. BUMN safeguard the state's right to control (*bezitter*) critical economic resources and ownership related to public welfare, while the owner (*eigenaar*) is the people, since sovereignty resides with the people (Ibrahim, 1997). There are two forms of BUMN: State-Owned General Companies (*Perum*) and State-Owned Limited Liability Companies (*Persero*). The capital ownership of BUMN is wholly or partly owned by the state, with capital sourced from separated State assets. According to Article 4 of Law No. 19 of 2003, "separated" refers to the separation of State-Owned Assets from the State Budget (APBN) to be used as capital investment for BUMN. Establishing BUMN or limited liability companies with capital from the APBN requires government regulation for any changes in state capital participation, including increases, reductions, or changes in state ownership of shares. However, additional capital from reserve capitalization or other sources is exempt and only requires reporting through the General Meeting of Shareholders (RUPS) or the Minister of State-Owned Enterprises to the Minister of Finance, since State assets remain separated from the APBN (Refly).

Regarding the authority to file bankruptcy petitions for BUMN, legal gaps remain due to differences between BUMN *Perum* and BUMN *Persero*. The unclear parameters in defining limitations for BUMN that serve public interests create ambiguity and varying interpretations in laws, causing differing judicial opinions on bankruptcy petitions filed against BUMN. For BUMN without shares, such as *Perum*, only the Minister of Finance can file a bankruptcy petition. In contrast, for BUMN divided into shares, like *Persero*, anyone, including creditors and debtors, can file, not just the Minister of Finance. This situation poses risks, especially if BUMN *Persero* becomes bankrupt, potentially harming the State, society, and the company itself.

Therefore, there is an urgent need to regulate bankruptcy for BUMN *Persero* by supplementing and completing existing regulations. This urgency aims to provide preventive measures and establish follow-up rules should BUMN *Persero* file for bankruptcy. The regulation of legal procedures in positive law is fundamentally a basic rule governing the creation of various other regulations. It is the starting point of lawmaking and has a dynamic character overall (Hans Kelsen, 1961). The law must be

dynamic, evolving with societal behaviors and developments, aligning with the mandate of Law No. 12 of 2011 based on the 1945 Constitution, where Indonesia as a state of law is obliged to develop national law to protect the rights and obligations of its people.

The legal urgency can be founded on three bases: philosophical, juridical, and sociological. Good legislation should be based on these three foundations: juridical basis (juridische gelding), sociological basis (sociologische gelding), and philosophical basis, meaning every society has a legal ideal (rechtsidee) (Manan, 1992). These three foundations form the background for the urgency studied in this research, namely the urgency of regulating bankruptcy of BUMN Persero.

### **Legal Framework for the Regulation of Bankruptcy of BUMN Persero.**

The management of State-Owned Enterprises (BUMN) is directly handled by the government under Law No. 19 of 2003. As we know, BUMN take two forms: Perum and Persero, but the UU BUMN does not explicitly regulate the bankruptcy of BUMN. The differences between these two forms can be found in the definitions outlined in Article 1 Number 2 and Article 1 Number 4 of Law No. 19 of 2003, while the parties authorized to file for bankruptcy are established in Article 2 of Law No. 37 of 2004. From these articles, the parties who can file bankruptcy petitions for BUMN are:

1. The Minister of Finance, if the debtor is a Perum or a Persero whose capital ownership is 100% owned by the State.
2. Creditors, if the bankrupt entity is a BUMN Persero whose capital ownership is not 100% or wholly owned by the State.
3. The debtor itself, if the debtor files for bankruptcy against itself or the BUMN Persero whose capital ownership is not 100% owned by the State (meaning the creditor and debtor both have less than 100% state ownership).

However, as stated in Article 2 Paragraph (5) of Law No. 37 of 2004, BUMN whose entire capital is owned by the State and that are not divided into shares (i.e., Perum) can only be declared bankrupt by the Minister of Finance. Legal experts, such as Hadi Subhan from the Faculty of Law at Airlangga University, confirm that only BUMN Perum can be declared bankrupt by the Minister of Finance, while BUMN Persero are subject to general bankruptcy regulations. Therefore, bankruptcy petitions for BUMN Persero can be filed by anyone, whether debtors or creditors.

The essential bankruptcy criteria are contained in Article 2(1) of Law No. 37 of 2004. According to expert Sutan Remy, the requirements for filing bankruptcy under Article 2A(1) of Law No. 37 of 2004 include:

1. The debtor must have at least two creditors;
2. The debtor has failed to pay at least one debt to any of its creditors;
3. The debt is unpaid, due, and collectible (Sutan, 2022).

The Bankruptcy Law itself does not distinguish bankruptcy based on ownership status. It states that the debtor eligible for bankruptcy can be either an individual or a legal entity, meaning both individuals and legal entities—including BUMN—can be declared bankrupt. The concept of bankruptcy for BUMN should not differentiate

between private legal entities and public legal entities like BUMN. Both BUMN Persero and BUMN Perum can face bankruptcy as private legal entities do. The law does not distinguish between the legal capacities of public and private entities.

Despite the possibility of bankruptcy for BUMN Persero, many issues persist about the notion that BUMN are immune to bankruptcy. This is evidenced by cases where bankruptcy petitions were initially granted by district courts but later overturned by the Supreme Court. One example involves PT Dirgantara Indonesia, a strategic industry regulated by Law No. 16 of 2012 on the Defense Industry. Article 52 paragraph 1 of that law states that capital ownership of the main defense industry must be fully owned by the state.

The basic principle of bankruptcy is that any company with at least two debts where one has matured and is collectible can be petitioned for bankruptcy. Analyzing Law No. 19/2003 and Law No. 37/2004 clarifies that Article 2 Paragraph (5) of Law No. 37/2004 defines Badan Usaha Milik Negara operating in the public interest as a business entity whose entire capital is owned by the state and is not divided into shares. This refers to Perum, as mandated by Article 1 Number 4.

Thus, the only BUMN specifically regulated as subject to bankruptcy petitions by the Minister of Finance are Perum. For BUMN Persero, there is no clear regulation on bankruptcy petitions in either Law No. 37 of 2004 or Law No. 19 of 2003. In practice, several BUMN declared bankrupt never reached asset liquidation; for example, PT Dirgantara Indonesia (Persero), PT Iglas (Persero), and PT Istaka Karya (Persero) were declared bankrupt but had their status revoked at the supreme or judicial review levels. The option for cassation and bankruptcy annulment is open under Law No. 37 of 2004 to challenge commercial court decisions.

More specific regulations further govern both BUMN Perum and BUMN Persero under Government Regulation No. 13 of 1998 on Perum, which manages these public companies wholly funded by the State. Perum has two main purposes: to serve the public and to maximize profits. Its capital belongs to the State as separated assets and is not divided into shares. Currently, only the Minister of Finance can file bankruptcy petitions for Perum, while for Persero, any party—debtor or creditor—can file. This differentiation is stated in Article 25 of Government Regulation No. 13 of 1998.

By contrast, Government Regulation No. 12 of 1998 as amended by Regulation No. 45 of 2001 does not explicitly grant authority to the Minister of Finance to petition bankruptcy for BUMN Persero. Therefore, the regulations for Perum clearly and firmly regulate bankruptcy authority, ensuring legal enforcement and judicial clarity. In comparison, bankruptcy regulations for Persero remain unclear or ambiguous, although several of these companies have faced bankruptcy.

Article 2 Paragraph (5) of Law No. 37 of 2004 states that for debtors who are insurance companies, reinsurance companies, pension funds, or BUMN operating in the public interest, bankruptcy petitions can only be filed by the Minister of Finance. This refers to BUMN whose capital is 100% state-owned and not divided into shares—i.e., Perum. Permission for bankruptcy petitions for BUMN Persero using simple evidence

procedures is outlined in Article 2 Paragraph (5) and Article 8 Paragraph (4) of Law No. 37 of 2004.

Furthermore, Article 25 Paragraph (1) of Government Regulation No. 13 of 1998 clearly states that the board of directors can only file a bankruptcy petition for Perum with the approval of the Minister of Finance. This confirms that the Minister of Finance has the sole authority to approve bankruptcy petitions for Perum. Meanwhile, for BUMN Persero whose capital is 100% state-owned, bankruptcy petitions are regulated by Article 2 Paragraph (5) of the Bankruptcy Law. For BUMN Persero with at least 51% state ownership, no clear explicit regulation exists in the Bankruptcy Law. Hence, the bankruptcy petition authority for Perum is very explicit and firm, while the authority for Persero has a missing point regarding who can file the petition. Regarding bankruptcy cases, no Perum have been declared bankrupt so far, while many BUMN Persero have faced bankruptcy petitions, but none were fully executed. This shows clear regulation for Perum but inconsistent or unclear rules for Persero. Another key characteristic involves who is responsible for managing and liquidating assets after bankruptcy. Asset execution for bankrupt BUMN follows Law No. 37/2004, which assigns responsibility to the curator as stated in Article 1 Number 1 of Law No. 37/2004.

Both BUMN Perum and BUMN Persero, once declared bankrupt, lose the rights to transfer or sell their assets, which then become the curator's rights. The curator's main duties include managing and settling the debtor's assets while collaborating with the supervisory judge to approve repayment amounts to creditors. After approval, attendance lists and documents are signed. If assets are insufficient to cover debts, for BUMN Persero, the shareholders are held accountable, while for BUMN Perum, State assets are used. Debt repayment is made by selling or auctioning assets based on share ownership. For BUMN Perum, the State owns all shares; for BUMN Persero, 100% state ownership means the State bears full responsibility, while 51% ownership means the State is responsible proportionally, with the remainder borne by other shareholders.

Thus, for BUMN Perum and BUMN Persero with full state ownership, only the Minister of Finance may file bankruptcy petitions because the Minister understands the highest and lowest financial burdens and risks involved. Despite the differences, both forms can impact State losses.

## CONCLUSION

The urgency of regulating the authority of the Minister to file bankruptcy petitions for BUMN Persero can be seen in several laws and regulations discussed in the context of bankruptcy regulation for BUMN Persero. Although the authority to file bankruptcy petitions for bankrupt BUMN is governed by Law No. 37 of 2004, it does not explicitly cover the authority regarding bankruptcy petitions for BUMN Persero. Thus, the Law on Bankruptcy and Suspension of Debt Payment Obligations (UU KPKPU) only regulates and does not specify whether the entity is a Perum or a Persero fully owned by the State (100%), or majority-owned (at least 51%) by the State. This leads to the interpretation that it refers only to Perum, as it mentions BUMN serving the public interest. The

regulation of bankruptcy for BUMN Persero causes varying opinions, which may result in legal deviations in practice. The legal framework for regulating the bankruptcy of BUMN Persero can be analyzed by referring to the previous law, Law No. 37 of 2004, which serves as a reference for analyzing bankruptcy regulations concerning BUMN Persero. There are two models of bankruptcy petitions based on the legal subject or the status of the company being petitioned as the bankruptcy object. Based on your analysis of the legal gap and varying interpretations, here are several research suggestions focused on regulating the Minister's authority and addressing the broader legal framework for BUMN Persero bankruptcy: Comparative Analysis of Bankruptcy Models, Juridical Reconstruction of the Minister's Authority, The Concept of "Public Interest" vs. "Separate Legal Entity", Impact of Legal Ambiguity on Financial Stability

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