

**PROBLEMATIC OF REFUSAL THE APPLICATIONS FOR
SUSPENSION OF DEBT PAYMENT OBLIGATIONS FOR
SUBSIDIARIES OF STATE OWNED ENTERPRISES**

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ABSTRACT

The legal position of SOE subsidiaries does not have legal certainty, giving rise to multiple interpretations. There are multiple interpretations in statutory regulations and jurisprudential decisions, namely the decisions of the Supreme Court Number: 21P/HUM/2017 and the decision of the Constitutional Court Number 01/PHPU-PRES/XVII/2019. The approach used is the law approach, and the case approach. Source of data used in the form of secondary data. Data collection techniques and tools used were library research, field research, document studies and interview guides. Data analysis was carried out qualitatively. The results showed that the BUMN subsidiary, namely PTPN I, was a holding structure of PTPN III, which declared the status of a BUMN, due to direct state capital participation in the form of 1 Series A Dwi Warna share. In accordance with PP No. 72 of 2016 that a subsidiary in the holding structure, namely PTPN I, receives a special assignment from the government in the form of a Public Service Obligation (PSO), Management Rights (HPL) and the Partnership and Community Development Program (PKBL), Based on Article 2A Paragraph (7)) a BUMN subsidiary in a holding structure, namely PTPN I, is treated the same as a BUMN. As a result, creditors are not authorized to apply for bankruptcy and PKPU, but are the Minister of Finance in accordance with Article 223 in conjunction with Article 2 paragraph (5) of Law Number 37 Years.

Keywords: *Refusal, Holding, Suspension.*

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INTRODUCTION

Postponement of Debt Payment Obligations (hereinafter abbreviated as PKPU, *Sursence van Betaling*, *Suspension of Payment*) is an institution in Bankruptcy Law that provides legal protection for debtors who have the will to pay their debts and have good faith, through PKPU submissions the debtor can avoid carrying out the liquidation of assets in the event that the debtor is in an insolvent state.¹

PKPU itself can be submitted by the debtor or by the creditor. Provisions for creditors to submit PKPU are new provisions in the Bankruptcy Law. This is in accordance with Article 222 Paragraph (3) of Law no. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, namely:

Creditors who estimate that the debtor cannot continue paying his debts that are due and collectible, can request that the debtor be given a postponement of debt payment obligations, to enable the debtor to submit a reconciliation plan which includes an offer to pay part or all of his debt to his creditors. 1998 and *Faillissement Verordening*, only debtors can apply for PKPU.²

The purpose of implementing PKPU is in the form of an agreement between the debtor and creditors in which the debtor offers to pay off his debt on the condition that after making full or partial payments, the debtor has implemented a peace agreement, so that the debtor does not have debt again.³, and justified according to UUK and PKPU in Article 222 which gives the debtor the right to offer a settlement to all creditors.⁴

In the Study of Decision Number 15/Pdt.Sus-PKPU/2019/PN Niaga Mdn, there are creditors applying for PKPU against BUMN subsidiaries because there is no implementation of payment of debts that are due and the company is unable to pay so it is not in accordance with what was agreed. so that the creditor in order to get repayment can be billed in court, then this can be used as one of the conditions for the debtor to apply for a postponement of debt payment obligations (PKPU).

The decision on the PKPU application was rejected by the Medan Commercial Court Panel of Judges on the basis that PTPN I is a subsidiary of PTPN III, so based on the provisions of Article 2A Paragraph (7) jo. Paragraph (2)

¹ Sutan Remy Syahdeini, *Hukum Kepailitan, Memahami Faillissements verordening Juncto Undang-Undang No. 4 Tahun 1998*, (Jakarta: PT. Pustaka Utama Grafiti, 2002), p. 321

² M. Hadi Shubhan, *Hukum Kepailitan, Prinsip, Norma, dan Praktik di Pengadilan*, (Jakarta: Kencana, 2009), p.147.

³Rahayu Hartini, *Hukum Kepailitan*, UMM Press, Malang, 2007, p., 175.

⁴ Pasal 222 Ayat 2 Undang-Undang No. 37 Tahun 2004 Tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang.

Government Regulation Number 72 of 2016, it can be seen that there are privileges for BUMN subsidiaries to be treated the same as BUMN with the condition that the State is required to own shares with special rights as regulated in the articles of association. So that the authority to submit PKPU and/or Bankruptcy Applications to SOEs rests with the Minister of Finance.

Concerning how the position of a BUMN subsidiary is the same as a BUMN, there is no clear certainty, which has led to multiple interpretations. The BUMN Law does not explain the definition of a BUMN subsidiary. The definition of a BUMN subsidiary is in the Regulation of the State Minister for State-Owned Enterprises Number PER-04/MBU/06/2020 concerning Amendments to the Regulation of the State Minister for State-Owned Enterprises Number: PER-03/MBU/2012 concerning Guidelines for the Appointment of Members of the Board of Directors and Board Members Commissioners of Subsidiaries of State-Owned Enterprises in Article 1 Paragraph (2) states BUMN Subsidiaries, hereinafter referred to as Subsidiaries, are limited liability companies in which the majority of shares are owned by BUMN or limited liability companies controlled by BUMN.

Multiple interpretations occur in the decisions of the Constitutional Court, because the Constitutional Court applies two different concepts, the first draft is found in the decisions of the Constitutional Court Number 48/PUU-XI/2013 and Number 62/PUU-XI/2013 stating "The status of state assets originating from state finances and separated from the APBN which is used as capital participation in BUMN remains part of the state finances "so that the Constitutional Court rejected the existence of a separation of the legal status of state finances between state finance and BUMN finance which causes BUMN subsidiaries to be treated the same as BUMN, while the second concept is contained in the Court Decision Constitution No. 01/PHPU-PRES/XVII/2019 regarding the presidential election dispute states "Shareholders of BUMN subsidiaries are not the state" , in other words BUMN subsidiaries are not part of BUMN.

The Supreme Court's decision has a different opinion regarding the status of a BUMN subsidiary, the Supreme Court in the judicial review case against PP No. 72 of 2016 concerning Amendments to PP No. 44 of 2005 concerning Procedures for Participation and Management of State Capital in BUMN says that " BUMN subsidiaries that become subsidiaries of the parent BUMN change into Limited Liability Companies, because state ownership through the holding company is still recognized by giving special rights so that control (supervision) over BUMN subsidiaries can still be carried out by the state through the parent BUMN, in other words, BUMN subsidiaries remain BUMN " ⁵,

⁵Decision of the Supreme Court of the Republic of Indonesia, Number 21 P/HUM/2017.

Based on this description, on this occasion I am interested in reviewing and reviewing the Medan Commercial Court's decision. The title of this thesis is: " An Analysis of the Medan Commercial Court's Decision on the Rejection of Requests for Postponement of Debt Payment Obligations for BUMN Subsidiaries (Study of Decision Number 15/Pdt.Sus-PKPU/2019/PN Niaga Mdn)"

METHOD

The type of research used is normative juridical. Normative juridical research refers to "legal norms contained in laws and regulations and court decisions as well as legal norms that exist in society ".⁶This type of normative juridical research is used to analyze the Medan Commercial Court Decision on the Rejection of Requests for Postponement of Debt Payment Obligations against Subsidiaries of State-Owned Enterprises (Study of Decision Number 15/Pdt.Sus-PKPU/2019/PN Niaga Mdn. The decision used is a decision that has permanent legal force. This research is descriptive analysis in nature, which reveals laws and regulations related to legal theories that are the object of research.⁷

DISCUSSION

Legal Certainty Concerning the Status of Subsidiaries of State-Owned Enterprises in Relation to Authorized Parties Filed for Bankruptcy and Suspension of Obligations for Payment of Debt

The formulation of laws, it is certainly bound by the principles of the formation of good laws and regulations, the principles of the material content of statutory regulations, and the principles of good general governance.⁸

Article 2 Paragraph (1) through Paragraph (5) of the Bankruptcy and PKPU Laws, it is determined that parties who can apply for a declaration of bankruptcy are Debtors on the basis of their own application, the presence of two or more creditors, the Public Prosecutor's Office, Bank Indonesia, Capital Market Supervisory Agency and the Minister of Finance⁹. Based on these provisions, the Bankruptcy Act and PKPU has determined the parties who can become bankruptcy applicants. And to the party authorized to apply for PKPU based on the provisions of the Bankruptcy Law and PKPU, namely:

⁶Zainuddin Ali, *Metode Penelitian Hukum*, (Jakarta: Sinar Grafika, 2009), p. 105.

⁷Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, (Jakarta: Ghalia Indonesia, 1994), p. 9.

⁸Eka N.A.M. Sihombing and Cynthia Hadita, "Administrative Measures Problems in Medan Mayor Regulation Number 11 of 2020 Concerning Health Quarantine in the Accelerated Handling of Covid-19," *Proceedings of the 1st International Conference on Law and Human Rights 2020 (ICLHR 2020)* 549, no. 11 (2021): 444–452.

⁹Article 2 Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Obligations for Debt Payment

- a. Debtors who have more than 1 (one) creditor; or a debtor who cannot or predicts that he will not be billed, may apply for PKPU, with the intention of submitting a settlement plan which includes an offer to pay in part or in full to creditors¹⁰.
- b. Creditors who estimate that the debtor is unable to continue paying his debts which are due and collectible, may request that the debtor be granted a postponement of debt payment obligations to allow the debtor to submit a settlement plan which includes an offer to pay part or all of the debt to his creditors.¹¹
- c. In the event that the Debtor is a bank, then the PKPU application can only be submitted by Bank Indonesia but after the enactment of Law Number 21 of 2011 concerning the Financial Services Authority in Article 55 Paragraph (2) “Since 31 December 2013 the functions, duties and regulatory authorities and supervision of financial services activities in the banking sector has shifted from Bank Indonesia to OJK”, so the function of filing for bankruptcy as stated in Article 2 Paragraph (3) of the Bankruptcy Law and PKPU is no longer carried out by Bank Indonesia but by the Financial Services Authority.¹²
- d. In the event that the debtor is a State-Owned Enterprise, a declaration of bankruptcy can only be submitted by the Minister of Finance.¹³
- e. In the event that the debtor is a Securities Company, a request for a declaration of bankruptcy against a Securities Company can only be submitted by the Financial Services Authority on the basis of:
 - 1) There is a request submitted by at least 2 creditors who have at least 1 debt that has matured and can be collected from a securities company, to the Financial Services Authority.
 - 2) There is a request submitted by the Securities Company itself which is experiencing financial inability to pay Debt, to the Financial Services Authority.

¹⁰Article 222 Paragraph (1) and Paragraph (2) of Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Obligations for Payment of Debt

¹¹ Article 222 Paragraph (3) of Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Obligations for Payment of Debt

¹²Sutan Remy Sjahdeini, Sejarah, Asas, dan Teori Hukum Kepailitanm (Jakarta: Prenada media Group,2016), p.227.

¹³Article 2 Paragraph (5) Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Obligations for Payment of Debt.

- 3) Implementation of the functions, duties and authorities of the Financial Services Authority.¹⁴
- f. In the event that the debtor is an Insurance Company, Sharia Insurance Company, reinsurance company, or sharia reinsurance company Requests for bankruptcy and PKPU statements based on this Law can only be submitted by the Financial Services Authority¹⁵.

The holding company as a BUMN and a subsidiary company does not necessarily have the status of a BUMN. However, the status of a subsidiary company with a non-Persero status, both organizationally and the procedure for its establishment remains subject to the Limited Liability Company Law¹⁶. Based on the legal entity BUMN is a private legal entity whose actions and management are private¹⁷. Therefore, separated state assets are used as capital participation (in this case money) in BUMN, then the finances of BUMN Companies whose guidance and management are based on the principles of a healthy company¹⁸. SOE as a Legal Entity if form a BUMN subsidiary whose share ownership in the subsidiary comes from wealthBUMN can be said that the subsidiary BUMN no BUMN, so that No submit on Constitution BUMN, but subject to UUPT¹⁹, even though the SOE holding company and BUMN subsidiary are two different legal entity entities, this does not eliminate the relationship between BUMN subsidiaries and the State, because the State has ownership of series A Dwiwarna shares in the BUMN subsidiary.

In Appendix S-BUMN 163/2017 it is stated that Series A Dwiwarna shares are shares owned specifically by the Republic of Indonesia which give their holders

¹⁴Article 3 Paragraph (1) Regulation of the Financial Services Authority of the Republic of Indonesia Number 21 of 2022 concerning Procedures for Submitting an Application for a Bankruptcy Declaration and Suspension of Obligations for Payment of Securities Companies' Debt

¹⁵Article 50 Paragraph (1) Law Number 40 of 2014 Concerning Insurance

¹⁶Chintya Dewi Restyana S, Nikmah Mentari and Sri Eka Wulandari, *Kepailitan Terhadap Anak Perusahaan dalam Holding Company Badan Usaha Milik Negara*, Jurnal Hukum Ius Quia Iustum, Volume 26 Number 2 May 2019, p. 357.

¹⁷ Isis Ikhwansyah, An-an Chandrawulan and Prita Amalia, *Optimalisasi Peran Badan Usaha Milik Negara (BUMN) pada Era Masyarakat Ekonomi Asean (MEA)*, Media Hukum, Vol. 25, no. 2, December 2018, p. 152.

¹⁸ Debby, *Status Hukum Keuangan Perseroan Terbatas (PERSERO) Berdasarkan Teori Badan Hukum dan Tori Transformasi keuangan*, Justitia Et Pax Volume 37 Number 2, December 2021, p.202

¹⁹Alvian Syahri, Thesis, *Analisis Hukum Kontrol Pemerintah Terhadap Perseroan Anak Dalam Perusahaan Houlding Badan Usaha Milik Negara (BUMN)*, (Medan :Universitas Sumatera Utara,2020), Pg.99.

special rights as holders of Series A Dwiwarna shares²⁰, these shares are also known as *golden shares* which only amounted to one share. However, through these shares, the government has a large veto over control and company business plans, such as being able to propose a Board of Directors and Board of Commissioners²¹.

The party authorized to apply for Bankruptcy or PKPU against a BUMN subsidiary still raises a dualism of understanding, which is due to differences in interpretation regarding the application for Bankruptcy and PKPU. This dualism arises due to the disharmony of laws and regulations and also the disharmony of Jurisprudence Decisions between the Supreme Court and the Constitutional Court which have different opinions or decisions, which creates legal uncertainty.

However, after being parsed one by one, starting from the laws and regulations until the Jurisprudence decision, it was found that the BUMN Subsidiaries were divided into 2 categories, namely ordinary BUMN subsidiaries and BUMN subsidiaries. specifically in this way legal certainty is formed by looking at the composition of the shares in the BUMN subsidiary . The difference lies in the stock Which owned in a manner direct by country If in ordinary BUMN subsidiaries, there are no shares directly owned by the state, be it ordinary shares or Series A shares. However, if a BUMN subsidiary specifically has shares country inside it And formed through inclusion capital Which arranged in Regulation Government²².

Ordinary BUMN subsidiaries can be said to be non-BUMN BUMN subsidiaries and special BUMN subsidiaries can be said to be BUMN, ordinary BUMN subsidiaries can be seen from the absence of direct capital or shares from the state, the majority of which are owned by the state, so their status is not BUMN according to the Ruling of the Constitutional Court Number: 01/PHPU-PRES/XVII/2019.

Subsidiaries of BUMN are BUMN where there is direct state capital participation by having special shares, namely Series A Dwiwarna shares. Privileges through Series A Dwiwarna shares can be delegated to *holding management* with a special power of attorney from the Minister of BUMN to exercise control rights, so that *Holding SOEs* can still consolidate financial statements and make strategic decisions on ex-BUMN *holding members*²³.

²⁰ SOE Ministry Letter No. S-163/MBU/03/2017 dated 10 March 2017 concerning Submission of the Draft Standard Articles of Association of BUMN Tbk in the Non-Banking Sector

²¹ <https://www.hukumonline.com/klinik/a/program-standarisasi-anggaran-dasar-bumn--lt595ca7d8aee70> accessed on 16 December 2022, 10:00

²² *Ibid*, pp. 97-98.

²³ <https://www.djkn.kemenkeu.go.id/kanwil-suluttenggomalu/baca-artikel/15317/Getting-to-Know-Holding-BUMN-Sectoral-di-Indonesia.htm> accessed on 30 September 2022 At :09:17 .

SOE Subsidiaries From a legal perspective, SOE subsidiaries are independent legal entities that run their business independently based on the principles of a healthy company. If there is a loss to a BUMN subsidiary that goes bankrupt, the legal consequence is that the subsidiary company can be bankrupted by its creditors as it is for a private company, so it does not have to go through the Minister of Finance²⁴.

Based on Government Regulation of the Republic of Indonesia Number 72 of 2016 concerning Amendments to Government Regulation Number 44 of 2005 concerning Methods of Participation and Management of State Capital in State-Owned Enterprises and Limited Liability Companies contained in Article 2A Paragraph (7) states that SOE Subsidiaries as referred to in Paragraph (2) are treated the same as BUMN for the following matters:

- a. Get a government assignment or carry out public services; and/or
- b. Obtain specific state and/or Government policies, including in the management of natural resources with certain treatment as applied to BUMN;

As a result of the provisions of Article 2A Paragraph (7) that state-owned enterprises' subsidiaries are treated the same as BUMNs, thus these BUMN subsidiaries have a responsibility to the state as the owner of capital²⁵. So that the person authorized to apply for Bankruptcy and PKPU is the Minister of Finance in accordance with Article 2 Paragraph (5) of the Bankruptcy and PKPU Law. Because the Minister of Finance acts on behalf of the State and can apply for Bankruptcy and PKPU of a BUMN engaged in the field of public and public interest²⁶.

Analysis of Judgments and Decisions of Judges Regarding the Rejection of Requests for Suspension of Obligations for Payment of Debt of Subsidiaries of State-Owned Enterprises Based on Decree Number 15/Pdt.Sus-PKPU/2019/PN Niaga Mdn

The judge in hearing and deciding on the PKPU application case No. 15/Pdt.Sus-PKPU/2019/PN.Niaga Mdn decided to reject the PKPU application submitted by CV. Tunas Pelita Jaya Against PT. Perkebunan Nusantara I, where the judge stated in his consideration that a BUMN subsidiary, namely PT. Perkebunan Nusantara I is a BUMN, so those who have the right to apply for Bankruptcy and Suspension of Debt Payment Obligations (PKPU) are the Minister of Finance

²⁴M. Syarif Widjaja, Thesis, *Sita Aset Anak Perusahaan BUMN Dalam Holding BUMN*, (Yogyakarta:Universitas Islam Indonesia,2018). p.83.

²⁵://www. Hukumonline.com/klinik/a/status- Hukum-keuangan-anak-enterprise-bumn-lt5889607369e72#_ftn9, , accessed on July 21, 2022, 17.00

²⁶Moraya Hutajulu, Flora Pricilla Kalalo, and Roosje Lasut, Tinjauan Yuridis Peranan Menteri Keuangan Dalam Pengajuan Permohonan Pernyataan Pailit Terhadap Debitor BUMN, *Lex Et Societatis* VIII Number. 4,Oct-Dec 2020 p.138

which is in accordance with the Supreme Court Decision Number 21 P/HUM/2017 which results of the decision that the status of a BUMN subsidiary is BUMN, The Supreme Court's decision contradicts the Constitutional Court's decision 01/HPU-PRES/XVII/2019 which states that BUMN subsidiaries cannot be defined as BUMN, because there is no direct capital or shares from the state, the majority of which are owned by the state. So that jurisprudential decisions create legal uncertainty because the decisions are contradictory.

The Panel of Judges in their considerations in Decision Number: 15/Pdt.Sus-PKPU/2019/PN Niaga Mdn gave a response to the decision of the Constitutional Court Number: 01/HPU-PRES/XVII/2019 which stated that the Constitutional Court Decision Number: 01/HPU-PRES/XVII/2019 was only for the financial services sector so that PTPN I is not a business entity in the financial sector. financial services as referred to in Article 223 but PTPN I is a business entity in the field of plantation business.

Decision of the Constitutional Court Number: 01/HPU-PRES/XVII/2019 covers all BUMN subsidiaries both in the financial sector and in other fields where there is no direct capital or shares from the State, the majority of which are owned by the State, both Series A Dwi Shares Color or Series B Dwi Warna shares, if you see that there is no direct ownership of shares by the state, they cannot be defined as SOEs. The Panel of Judges in deciding case Number: 15/Pdt.Sus-PKPU/2019/PN Niaga Mdn to provide legal certainty must consider based on Supreme Court Decision Number 21 P/HUM/2017 and Constitutional Court Decision Number: 01/HPU-PRES/XVII /2019.

In the Judge's Consideration, the panel of judges in determining the BUMN subsidiary PTPN I as a BUMN can be seen from the composition of the investment in shares owned by PTPN I, where the composition of the shares is based on the Deed of Statement of Decision of the Shareholders of PT Perkebunan Nusantara I Number: S-445/Mt311/06/ 2019 Number: DSPN/KPPS/41/VI/2019 dated 5 July 2019, Republic of Indonesia totaling 38,641 shares or IDR 38,641,000,000 (thirty eight billion six hundred and forty one million rupiah), consisting of:

1. 1 (one) Series A share or a total of IDR 1,000,000 (one million rupiah);
And
2. 38,640 (thirty eight thousand six hundred and forty) Series B shares or a total of Rp. 38,640,000,000.- (thirty eight billion six hundred and forty million rupiah) or a total of 24% (twenty four percent);
- b. The Government of Indonesia through PT. Perkebunan Nusantara III in the amount of 122,356 shares or Rp. 122,356,000,000 (one hundred twenty two billion three hundred fifty six million rupiah) or the equivalent of 76% (seventy six percent);

Based on the composition of these shares, the State is directly only a minority shareholder. With this minority share, the state actually owns Series A Dwi Warna shares, indicating that PTPN III as the majority shareholder is controlled by the Republic of Indonesia, in which PTPN III is also controlled by the Republic of Indonesia.²⁷, due to the fact that the majority shares in these BUMN subsidiaries are basically owned by the State which are controlled by the State indirectly through the Parent BUMN.

The Indonesian government has planned to form several *holding companies* in BUMN business fields, one type of BUMN business in the form of a *holding company* that has been realized is a plantation company, in 2014 PT. Perkebunan Nusantara (PTPN III) officially became *the holding company* for plantation companies in Indonesia with the issuance of Government Regulation Number 72 of 2016 concerning the Addition of the Capital of the Republic of Indonesia to the Share Capital of the Limited Liability Company (Persero) PT. Nusantara Plantation III. PT. Perkebunan Nusantara III has the status as the holding company for PTPN I, PTPN II, PTPN IV to PTPN XIV (as a subsidiary)²⁸. If you look at the *holding construction* at PTPN III which is the parent company and PTPN I as a subsidiary, it is clear that there is a transfer of shares (inbreng) from one BUMN to another, namely PTPN I to PTPN III and forming a BUMN group with one of the BUMNs, namely PTPN III. This is common in corporate restructuring efforts. The said transfer of shares is not a privatization (namely the sale of part or all of BUMN shares to other parties)²⁹.

Government Regulation Number 72 of 2016 concerning the Addition of the Republic of Indonesia's Equity Participation into the Share Capital of Limited Liability Company (Persero) legal basis in the holding structure at PTPN I to PTPN III so that there is legal certainty in the BUMN subsidiary, namely PTPN I because there is a transfer (inbreng) of shares and becomes the authority of the Government without going through the APBN mechanism, because at first the Government included capital for SOEs into shares, it has gone through the APBN mechanism, so that the status becomes separated state property. In the elucidation of Article 4 of the BUMN Law, it is stated that state assets are separated no longer following the APBN mechanism. In addition, the transfer (inbreng)

²⁷Interview results with the Medan Commercial Court Judge, Mr. Nelson Panjaitan, on March 31, 2022

²⁸Juliana Br Hutasoit, Thesis *Tinjauan Yuridis Atas Pembentukan Holding Company BUMN (Studi PT. Perkebunan Nusantara III Medan)*, (Medan: USU, 2017), p. 9.

²⁹<http://ptpn1.co.id/artikel/isu-isu-strategis-terkait-pp-722016> accessed on 15 December 2022 at 10:17

of shares does not cause the total number of state shares to decrease in *absolute* terms in the Central Government's balance sheet ³⁰.

Government Regulation Number 72 of 2014 regarding the transfer (in-breng) of PTPN I shares to PTPN III In Article 2A Paragraph (3) that after being made state capital participation in BUMN or Limited Liability Company, the state assets are transformed into shares/capital of BUMN or Limited Liability Company which owned by the state, so that the status of state assets changes from state assets that are not separated into capital or shares which are separated state assets, even though the state assets change to state owned assets or limited liability companies as a result of this transformation, they still have a relationship with the state because of the state status. as a shareholder/capital owner ³¹.

Provisions in Article 2A Paragraph (2) Government Regulation Number 72 of 2016 that state assets in the form of state-owned shares in BUMN as referred to in Article 2 Paragraph (2) Letter d are used as state capital participation in other BUMN so that the majority of shares are owned by other BUMN, then the BUMN becomes a subsidiary of BUMN with the condition that the state is obliged to own shares with special rights as regulated in the articles of association. ³²

Shares with special rights regulated in the articles of association are Series A Dwiwarna Shares, the State owns shares with direct equity participation in BUMN subsidiaries, namely PTPN I which is a minority, but with the existence of the State owns Series A Dwiwarna shares. Ownership of Series A Dwi Warna shares allows the State to exercise control and control over matters or strategic decisions in BUMN subsidiaries even though the state has a minority position in these subsidiary BUMNs ³³. Series A Dwi Warna shares give rights to the owner, namely the state, to approve or reject (*veto*) strategic decisions even though the decision is not approved by the majority shareholder ³⁴.

³⁰ <http://ptpn1.co.id/artikel/isu-isu-strategis-terkait-pp-722016> accessed on 14 December 2022 Time : 12:47

³¹Explanation of Article 2A Paragraph (3) Government Regulation Number 72 of 2016 concerning Addition of the Republic of Indonesia State Equity Participation into the Share Capital of Limited Liability Companies (Persero)

³² Interview results with the Medan Commercial Court Judge, Mr. Nelson Panjaitan, on March 31, 2022

³³ Interview results with Medan Commercial Court Judge Mr. Nelson Panjaitan on March 31, 2022

³⁴<https://bismarnasution.com/pentingnya-change-undang-undang-kepailitan-dalam-usaha-increasing-iklim-berusaha-pengaturan-reorganization-dan-kepailitan-bumn-dalam-kerangka-holding-company/> accessed on 16 June 2022 Time: 20:29

The provisions of Article 2A Paragraph (7) PP 72 of 2016 that SOE subsidiaries are treated the same as BUMN for the following matters:³⁵

1. Obtaining Government Assignments or performing public services;
2. Obtain special state and/or Government policies including in the management of natural resources with certain treatment as applied to BUMN.

Based on the provisions of Article 2A Paragraph (7) the BUMN subsidiary, namely PTPN I, does not lose its character as a state company, the state still allows it to give assignments to it to carry out *Public Service Obligations*, (PSO) or manage natural resources.³⁶, both in the form of Management Rights (HPL) and the Partnership and Community Development Program (PKBL), so that the characteristics of a state company formed to carry out economic functions and public benefits are not lost from PTPN I. The provisions of Article 2A Paragraph (7) are also contained in Article 66 Paragraph (1) of the Law on State-Owned Enterprises which states that "The government can give special assignments to BUMNs to carry out functions for public benefit while still taking into account the aims and objectives of BUMN activities"³⁷. This special assignment can only be given to State Companies, namely BUMN, so that BUMN subsidiaries, especially in the holding structure, namely PTPN I as a BUMN subsidiary and PTPN III as the parent company are state companies, so their status is BUMN.

Public Service Obligation (PSO) is a public service activity that burdens the government's budget because it must be professionally organized and accounted for so that it can meet the demands of transparency, fairness and accountability³⁸, this PSO can only be carried out by SOEs. Based on PP No. 72 of 2016 In Article 2A Paragraph (7) BUMN subsidiaries in the structure have the right to run PSO so that from this provision PTPN I is a BUMN.

The Partnership and Community Development Program (PKBL) is a BUMN corporate social responsibility program which embodies the goal of the establishment of BUMN to actively participate in providing guidance and assistance to economically weak entrepreneurs, cooperatives and the community. PKBL im-

³⁵ Government Regulation No. 72 of 2016 concerning the Addition of the Republic of Indonesia's Equity Participation into the Share Capital of a Limited Liability Company (Persero) Article 2A Paragraph 7

³⁶ Verdict Number: 15/Pdt.Sus-PKPU/2019/PN Niaga Mdn

³⁷ Article 66 Paragraph (1) of Law Number 19 of 2003 concerning State Owned Enterprises

³⁸R. Kartikasari, Lastuti Abubakar, *Penerapan Public Service Obligation (PSO) Pada BUMN Guna Meningkatkan Peran BUMN Sebagai Pelaku Usaha Yang Kompetitif Dalam Pembangunan Ekonomi*, (Jawa Barat, Universitas Padjadjaran, 2008), p.13

plementation techniques are regulated in the Minister of BUMN Regulation Number Per-05/MBU/2007³⁹. PKBL can only be run by BUMN in accordance with the provisions of Article 66 of the BUMN Law, and so PTPN I is a BUMN, because PTPN I runs the PKBL program.

Land Management Rights (HPL) are rights of control from the state whose implementation authority is partially delegated to the rights holders⁴⁰. BUMN is one of the parties that can obtain the delegation of Management Rights, in accordance with the provisions of Law Number 11 of 2020 concerning Job Creation in Article 137, stating that HPL can be given to the following parties:

1. Central Government Agencies;
2. Local government;
3. Land Bank Agency;
4. State Owned Enterprises/Regional Owned Enterprises;
5. State/Regional Owned Legal Entity;
6. Legal entity appointed by the Central Government⁴¹

This provision is also contained in PP No. 72 of 2016 in Article 2A Paragraph (7) letter b which states that "BUMN subsidiaries get special state and/or government policies, including in the management of natural resources with certain treatment as applied to BUMN." With the provisions of PP No. 72 of 2016, PTPN I as a BUMN subsidiary in the holding structure is a BUMN.

Decision of the Constitutional Court Number: 01/HPU-PRES/XVII/2019 states that " Because there is no direct capital or shares from the state, the majority of which are owned by the state, the two banks cannot be defined as BUMN" ⁴², thus the Court's Decision The constitution was refuted because PTPN I, as a subsidiary of BUMN, had direct state capital participation, both Series A Dwi Warna shares and Series B Dwi Warna shares, so that PTPN I could be defined as a BUMN. And if you look at the Supreme Court Decision Number 21 P/HUM/2017 that "There is no provision stating that SOEs that become subsidiaries of the parent SOE change to a Limited Liability Company, because state ownership through the holding company is still recognized by granting special rights so that control (supervision) of subsidiary SOEs can still be carried out by the state through the parent SOE " ⁴³, that way PTPN I can be defined as a SOE.

³⁹Soraya Anggun Puspitasari, Eko Ganis Sukoharsono, *Program Kemitraan Dan Bina Lingkungan (PKBL) Sebagai Implementasi Tanggung Jawab Sosial Badan Usaha Milik Negara : Studi Pelaksanaan PKBL Perum Jasa Tirta I*, (Malang :Universitas Brawijaya), page 5.

⁴⁰Article 136 Law number 11 of 2020 concerning Job Creation

⁴¹Article 137 Number 11 of 2020 concerning Job Creation

⁴²Constitutional Court Decision Number: 01/HPU-PRES/XVII/2019 Pg.1936

⁴³Supreme Court Decision Number 21 P/HUM/2017, page 41.

Based on this analysis, PTPN I, a subsidiary of BUMN, is a State-Owned Enterprise so that the decision Number: 15/Pdt.Sus-PKPU/2019/PN Niaga Medan deserves to be rejected by the panel of judges because the applicant does not have *legal standing* in filing PKPU against PTPN I because only the Minister of Finance has the authority to submit a PKPU against PTPN I, thus providing legal certainty and justice for PTPN I which is a BUMN subsidiary in a holding structure.

Legal certainty is a guarantee that the law must be implemented in a good way. Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties, so that these rules have a juridical aspect that can guarantee certainty that the law functions as a rule that must be obeyed⁴⁴. The theory of justice here is according to *Jhon Rawls* emphasizes the importance of a fair and impartial procedural which allows political decisions born from the procedure to be able to guarantee the interests of everyone⁴⁵, so that the judge has decided on the PKPU application Number: 15/Pdt.Sus-PKPU/2019/PN has provided legal certainty against PTPN I and provide justice to PTPN I based on the provisions of the applicable laws and regulations.

Legal Consequences Related to Refusal of Request for Postponement of Debt Payment Obligations Against Subsidiaries of State-Owned Enterprises in Decision Number 15/Pdt.Sus-PKPU/2019/PN Niaga Mdn

Legal consequences are consequences that occur as a result of legal actions that have been filed by legal subjects against legal objects. Legal consequences are born because of a legal action. The consequences in question are the consequences regulated by law, while the actions taken are legal actions, namely actions that are in accordance with applicable law.⁴⁶The existence of PKPU clearly has legal consequences for parties who have legal relations in accordance with the provisions of the Bankruptcy Law.

In case Number: 15 /PKPU/ 2019 / PN.Niaga Mdn which was submitted by the applicant CV Tunas Pelita Jaya against the Respondent PT. Perkebunan Nusantara I, among others, Respondent PKPU is a subsidiary of a State-Owned Enterprise (BUMN) engaged in the field of public interest, The decision contains reasons and considerations of the Judge in deciding the *aquo case* which contains that the PKPU respondent, namely PTPN I, is a subsidiary of PTPN III which can be said to be a BUMN so that a PKPU application can only be submitted by the Minister of Finance, not by a PKPU applicant in accordance with the provisions of Article 223 jo. Article 2 Paragraph (5) Law no. 37 of 2004 concerning Bankruptcy and PKPU

⁴⁴Asikin zainal, 2012, Pengantar Tata Hukum Indonesia, Rajawali Press, (Jakarta:Rajawali Press,2012). p.74.

⁴⁵

⁴⁶ R Soeroso *Pengantar Ilmu Hukum*, (Jakarta : Sinar Grafika,2006) p.295.

so that the Judge rejected the PKPU petition of the Petitioner, namely Tunas Pelita Jaya

The legal consequence of the decision Number: 15 /PKPU/ 2019 / PN.Niaga Mdn resulted in creditors having no *legal standing* to submit applications against debtors who are state-owned enterprises subsidiaries because PTPN I is a BUMN , PTPN I's debt to creditors has no impact or abolishes PTPN I's obligations in paying its debts to creditors. Bankruptcy law in Indonesia does not adhere to the principle of *debt forgiveness* so that the existence of the debt of BUMN subsidiaries to their creditors even though the PKPU application has been rejected by the judge still exists and is not reduced and resolved by means of these creditors can file a civil lawsuit and submit an application to the Minister of Finance ⁴⁷.

The submission of the application is addressed to the Minister of Finance through the Legal Bureau of the legal division of state assets, companies and legal information ⁴⁸. The legal division of the Law on State Assets, Companies and Legal Information has the task of carrying out research/study on legal drafting of draft laws and regulations that are regulatory or stipulation in nature and their processing, and research/study on juridical aspects of legal issues and/or providing legal advice in the context of settlement legal issues in the field of State Property, separated State assets, other State assets, State receivables, auctions, and companies, as well as organizing documentation, information, and legal dissemination ⁴⁹.

CONCLUSION

The regulation of BUMN subsidiaries both from laws and regulations and from jurisprudential decisions, both the Supreme Court Decision and the Constitutional Court Decision, still raises legal uncertainty, which still raises two categories of the position of BUMN subsidiaries, so that in terms of filing a bankruptcy application and PKPU against a child BUMN companies do not have legal certainty. The Judge's considerations in deciding and adjudicating the PKPU application Number 15/PDT.SUS-PKPU/2019/PN Niaga Mdn have provided legal certainty and justice, it can be seen from the judge's decision stating that PTPN I is a BUMN so that in the case of a bankruptcy application and PKPU the authorities are Minister of Finance. Because PTPN I is a holding structure so based on Government Regulation Number 72 of 2016 PTPN I is a BUMN and further strengthened in the Supreme

⁴⁷ Interview Results with Medan Commercial Court Judge Nelson Pandjaitan, March 31, 2022

⁴⁸ Moraya Hutajulu, Flora Pricilla Kalalo and Roosje Lasut , *Tinjauan Yuridis Peranan Menteri Keuangan Dalam Pengajuan Permohonan Pernyataan Pailit Terhadap Debitor BUMN*, Lex Et Societatis Volume. VIII/No. 4/Oct-Dec/2020

⁴⁹Article 68 Regulation of the Minister of Finance of the Republic of Indonesia Number 217/PMK.01/2018 Concerning the Organization and Working Procedures of the Ministry of Finance.

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Court Decision Number 21 P/HUM/2017 states that there is no provision stating that BUMN which is a subsidiary of the parent BUMN has changed become a Company. If in the Constitutional Court's decision Number: 01/HPU-PRES/XVII/2019 in the balance it does not mention in the holding structure, but only BUMN subsidiaries that are outside the holding structure. thus PTPN I is a BUMN

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