

HARMONISASI PERUNDANG-UNDANGAN TERKAIT KEPAILITAN BADAN USAHA MILIK NEGARA PERSERO

(Analisis Pasal 11 UU No. 19 Tahun 2003 tentang Badan Usaha Milik Negara,
Pasal 50 UU No. 1 Tahun 2004 tentang Perbendaharaan Negara, dan Pasal 2 (g)
UU No. 17 Tahun 2003 tentang Keuangan Negara)

INTISARI

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Harmonisasi ketentuan Pasal 11 UU No. 19 Tahun 2003 tentang BUMN dengan Pasal 50 UU No. 1 Tahun 2004 tentang Perbendaharaan Negara dalam konteks mempailitkan BUMN Persero. UU No. 19 Tahun 2003 tentang BUMN telah mengidentikkan BUMN Persero sebagai “Perseroan Terbatas” (PT), sehingga berlaku ketentuan UU No. 40 Tahun 2007 tentang Perseroan Terbatas. Berarti terhadap BUMN Persero ini berlaku juga UU No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang. Namun disisi lain, UU No. 1 Tahun 2004 tentang Perbendaharaan Negara menyatakan bahwa terhadap BUMN Persero tidak dapat dipailitkan oleh siapa pun (Pasal 50), sehingga secara yuridis formal perlu dipertegas mengenai definisi “perusahaan publik yang bergerak di bidang kepentingan publik” itu adalah BUMN berbentuk Perum. Oleh karena itu BUMN berbentuk Persero tidak termasuk kategori “perusahaan negara yang bergerak di bidang kepentingan publik”, sehingga status hukumnya sama seperti Perseroan lainnya, yang berarti berlaku Undang-Undang Perseroan Terbatas, Undang-Undang Kepailitan dan Penundaan Kewajiban Utang, dan perundang-undangan lain yang berlaku pada Perseroan. Status modal milik negara yang telah dipisahkan dan ditanamkan atas nama Negara dalam BUMN Persero, apakah telah berstatus “privat” (bisnis) atau masih tetap berstatus “publik (negara)”? Sehingga perlu ditambahkan minimal 1 satu ayat yang mempertegas secara eksplisit bahwa modal negara yang ditanamkan dalam BUMN Persero bukan lagi sebagai asset Negara melainkan sebagai asset dari BUMN Persero tersebut, sehingga sudah bersifat privat, dan posisi Negara adalah sebagai pemilik dari lembar saham tersebut. Kemungkinan diberlakukan norma *piercing the corporate veil*, sehingga tanggung jawab terbatas (*limited liabilities*) Perseroan Terbatas (PT) menjadi tidak terbatas lagi karena lebih mementingkan aspek keadilan, apabila sebuah BUMN Persero telah dipailitkan, namun asset yang dimiliki tidak dapat mencukupi kebutuhan pembayaran utang.

Kata kunci: perusahaan publik, modal negara, *piercing the corporate veil*

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HARMONIZATION LEGISLATION RELATED TO BANKRUPTCY OF STATE OWNED BUSINESS ENTITIES LIMITED

(Analysis of Article 11 of Law No. 19 of 2003 on State-Owned Business Entities,
Article 50 of Law No. 1 of 2004 on State Treasury, and Article 2 (g) of Law No.
17 of 2003 on State Finance)

ABSTRACT

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Harmonization of Article 11 Law No. 19 of 2003 about State-Owned Business Entities (BUMN) and Article 50 Law No. 1 of 2004 about State Treasury in the context of bankruptcy of State-Owned Business Entities (BUMN). Law No. 19 of 2003 about State-Owned Business Entities (BUMN) has made the BUMN identical to limited liability company (PT), so that the Law No. 40 of 2007 about Limited Liability Company has been applied. It means that the Law No. 37 of 2004 about Bankruptcy and Delay of Obligation can also be applied to BUMN. But on the other side, Law No. 1 of 2004 about State Treasury stated that BUMN cannot be bankrupted by anyone (article 50); so in a formal juridical manner, it is needed to affirm that the definition of “public companies which work in the field of public interests” is the state-owned business entities in the form of public companies (perum). That’s why the state-owned business entities in the form of liability companies are not categorized as “public companies which work in the field of public interests”, so that the law status of those companies is the same as other liability companies, and it means that the law of liability companies, the law of bankruptcy and delay of obligation, and other laws related to liability companies can be applied. The state-owned capital’s status which has been separated and implemented on behalf of the country in the State-Owned Business Entities (BUMN), whether it has the “private” (business) status or still has the “public” (state-owned) status? So it is needed to be added at least one verse which explicitly affirm that the state-owned capital, which has been implemented in state-owned business entities (BUMN) in the form of liability companies, is not public asset anymore but the asset of the state-owned business entities themselves, so it is categorized as private capital, and the state position is as the owner of the stock sheets. The possibility of applying the piercing the corporate veil norm, so that the limited liabilities of limited liability companies cannot be called as “limited” anymore because it has put justice aspect above anything when a state-owned business entity has been bankrupted, but the asset the company had could not fulfill the needs for paying the liabilities.

Keywords: *public companies, state-owned capital (public capital), piercing the corporate veil.*

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