

# Legal Implications of Subsidiary Bankruptcy on the Parent Stated-Owned Enterprise

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**Abstract:** Bankruptcy is an act of confiscating all the assets of the Bankrupt Debtor, the management of which is carried out by the Curator under the supervision of the Supervisory Judge, by the provisions of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. A bankruptcy application can be submitted to a Limited Liability Company provided that it meets the requirements stated in Article 2 paragraph (1) of Law Number 37 of 2004. This Limited Liability Company does not only include ordinary Limited Liability Companies but also subsidiaries of State-Owned Enterprises (BUMN). This study employs a normative legal approach, examining the legal system that regulates the legal consequences for BUMN as the parent company if its subsidiary is declared bankrupt. If a BUMN subsidiary goes bankrupt, the BUMN parent company cannot be held accountable, as the two entities are separate entities. However, several conditions allow the BUMN parent company to be held accountable for the bankruptcy of its subsidiary, for example, if the parent company is involved in determining management, finances, or business decisions that lead to the subsidiary experiencing financial difficulties. Additionally, the parent company of a BUMN can also be subject to bankruptcy if it acts as a corporate guarantor for its subsidiary.

## 1. Introduction

Bankruptcy is a general seizure of all assets of the Bankrupt Debtor whose management and settlement are carried out by the Curator under the supervision of the Supervisory Judge as regulated in Article 1 number 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the KPKPU Law). The occurrence of bankruptcy begins with the debtor's inability to pay debts that have matured and can be collected, which is also a requirement for filing a bankruptcy petition, as regulated in Article 2 of the KPKPU Law. Based on Article 2 of the KPKPU Law, it can be seen that the requirements for filing a bankruptcy petition are that the debtor has 2 (two) or more creditors and the debtor does not pay at least one debt that has matured and can be collected.<sup>1</sup>

<sup>1</sup> Afif Khalid dkk, "Aspek-Aspek Hukum Tentang Permohonan Pernyataan Pailit," *Al' Adl: Jurnal Hukum*, Volume 14 Nomor 1, Fakultas Hukum Universitas Islam Kalimantan, Kalimantan, 2002, h. 218. DOI: <http://dx.doi.org/10.31602/al-adl.v14i1.6171>.

Based on Article 1, paragraph 3 of the KPKPU Law, a debtor is a person who has a debt due to an agreement or law, the payment of which can be collected in court. The person referred to in Article 1, number 3, of the KPKPU Law is not limited to a natural person or individual but also includes a legal person or legal entity. A legal entity is a person created by law.

According to R. Subekti, a legal entity is a body or association that can have rights and carry out actions like humans and has its assets, can be sued, or can be sued before a judge.<sup>2</sup> Thus, because a legal entity has rights and can act like a human being (natural person), a legal entity can also be declared bankrupt because, as a debtor, it is unable to pay debts to creditors that have matured and can be collected.

Business entities can be divided into 2 (two) large groups, namely business entities with legal entities and business entities without legal entities.<sup>3</sup> In Indonesia itself, business entities, when classified based on their owners, are divided into 3 (three) groups, namely State-Owned Enterprises (BUMN), Private-Owned Enterprises (BUMS), and Individually-Owned Enterprises. Based on Law Number 19 of 2003 concerning State-Owned Enterprises (hereinafter referred to as the BUMN Law), a company can be considered a BUMN if the government's shares are at least 51 percent.<sup>4</sup> Government shares in state-owned enterprises come from direct participation in the State Revenue and Expenditure Budget (hereinafter referred to as APBN) or through a separate state assets scheme. Regarding the definition of a state-owned enterprise subsidiary as regulated in the Regulation of the Minister of State-owned Enterprises No. PER-03/MBU/2012 of 2012 concerning Guidelines for the Appointment of Members of the Board of Directors and Members of the Board of Commissioners of State-Owned Enterprise Subsidiaries (hereinafter referred to as Permeneg BUMN No. 3/2012).

Article 1 number 2 of Permeneg BUMN No. 3/2012 explains that a state-owned enterprise subsidiary is a limited liability company whose shares are mostly owned by a state-owned enterprise or a limited liability company controlled by a state-owned enterprise.<sup>5</sup> M. Yahya Harahap stated that to utilize the principle of limited liability, a company can establish a "Subsidiary Company" to run the business of the "Parent Company." By the principle of separation and distinction known as a separate entity, the assets of the parent company and the subsidiary are "isolated" from potential losses that will be experienced by one of them.<sup>6</sup>

The steps taken by the government to improve the economy in Indonesia so as not to lag behind other developing countries include forming a BUMN holding company. The holding company aims to own shares in one or more other companies and/or control, manage, and regulate one or more of these other companies.<sup>7</sup> Based on the above, the author wrote this journal with the title: "Legal Implications of Subsidiary Bankruptcy on the Parent Stated-Owned Enterprise" to find out the legal consequences that occur to BUMN as the parent company if the company which is its subsidiary is declared bankrupt.

<sup>2</sup> Chidir Ali, "Badan Hukum", Bandung, Alumni. 1999, h. 18-19.

<sup>3</sup> Erika Permatasari, "Jenis-jenis Badan Usaha dan Karakteristiknya (online)," 2020, <https://www.hukumonline.com/klinik/a/jenis-jenis-badan-usaha-dan-karakteristiknya-lt4f51947253585>, Diakses pada 7 Juni 2023.

<sup>4</sup> Undang-Undang Nomor 19 Tahun 2003 Tentang Badan Usaha Milik Negara.

<sup>5</sup> Peraturan Menteri Negara BUMN No. PER-03/MBU/2012 Tahun 2012 Tentang Pedoman Pengangkatan Anggota Direksi dan Anggota Dewan Komisaris Anak Perusahaan Badan Usaha Milik Negara.

<sup>6</sup> M. Yahya Harahap, "Hukum Perseroan Terbatas," Jakarta. Sinar Grafika. 2009, h. 49-50.

<sup>7</sup> Sri Rejeki Hartono, "Kapita Selekta Hukum Perusahaan," Bandung. Mandar Maju. 2000. h.89.

## 2. Method

Based on the title and issues to be discussed in this journal and to obtain useful findings, this research is compiled using the normative legal research method. This method focuses on literature studies, which involve reviewing various library materials and secondary data. The purpose of this research is to collect theories, concepts, legal principles, and laws and regulations related to the topic discussed. According to Soerjono Soekanto, the scope of normative legal research includes 1) research on legal principles, 2) research on legal systematics, 3) research on the level of legal synchronization both vertically and horizontally, 4) comparative legal studies, and 5) legal history research. In writing this journal, the focus of the research will be directed at legal systematics, especially related to the regulation of legal consequences arising against BUMN as the parent company when its subsidiary is declared bankrupt by the court.

## 3. Legal Implications of Subsidiary Bankruptcy on the Parent Stated-Owned Enterprise

Based on the civil law system adopted by Indonesia, a Limited Liability Company (hereinafter referred to as PT) is a separate legal entity that is burdened with rights and obligations. Although there are no specific regulations regarding the parent company in the Limited Liability Company Law (hereinafter referred to as the UU PT), in practice, subsidiaries are established with PT status and have a position as an independent and autonomous legal entity as a legal subject so that limited rights and obligations in the field of assets (limited liability) also apply. This concept aligns with the legal doctrine that emphasizes the separation of legal personality between Companies.<sup>8</sup>

The parent company of a BUMN has the privilege of being a subsidiary of the parent company; namely, its status is equal to the BUMN itself. In this case, the subsidiary has the opportunity to run and develop certain businesses related to the lives of many people or natural resources that are important to the country. However, the parent company is responsible for the subsidiary to the extent of the authority given to it in terms of management and other company policies. However, if the subsidiary is a company in the form of an independent PT, the parent company cannot be held legally responsible.

Shareholders are only responsible to the extent of the value of the share capital they have paid into the company.<sup>9</sup> The existence of the principle of piercing the corporate veil alters the concept of this liability, whereby the responsibility of shareholders becomes unlimited if they are involved in activities that can result in losses to the Company.

Regarding bankruptcy in the parent company, in this case, the BUMN parent company is protected from losses. If one of the BUMN subsidiaries goes bankrupt or becomes insolvent, the parent company experiences capital losses and a decrease in net assets. However, the debtors and creditors of the bankrupt Company cannot sue or collect from the parent company to obtain compensation. The risks faced by a holding company are also increasingly diverse, including bankruptcy. It has become a common need, even though it has formed small companies; one or some

<sup>8</sup> Agitha Cindy Qhoyrita Majidha, Az Zahra Adhelistya Putthi Zanetti, and Uut Ristiana. "Analisis Pertanggungjawaban Holding Company Badan Usaha Milik Negara (BUMN) Terhadap Kepailitan Anak Perusahaan." *Dilihat Dari Perspektif Hukum Perusahaan*. *Jurnal Ilmiah Penelitian Mahasiswa*, 2 (6) 2024:159-69. <https://doi.org/10.61722/jipm.v2i6.513> h. 160.

<sup>9</sup> Pasal 3 ayat (1) Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas.

of the subsidiaries, as well as the parent company itself in the holding Company, will make loans, also known as credit. If the credit cannot be paid off and is due, the Company may be forced to file for bankruptcy.<sup>10</sup>

The principle of a separate legal entity means that the parent company and its subsidiaries each stand as separate, independent legal entities. Thus, each parent company and subsidiary are separate legal entities. Suppose a lawsuit is filed against a company. In that case, it cannot be directed to other subsidiaries that are part of the parent company, nor can it be directed to the parent company itself.<sup>11</sup>

The requirements for a company to be declared bankrupt are regulated in Article 2 paragraph (1) of the KPKPU Law, where debtors who are proven to meet the requirements in this article can be declared bankrupt, both individual debtors and legal entities. One of the parties declared bankrupt is the parent company. The KPKPU Law does not provide a special requirement that bankruptcy applications for parent companies and subsidiaries must be submitted in the same document.<sup>12</sup> This means that the applicant is given the freedom to file for bankruptcy against a parent company and its subsidiaries.

This indicates that the separation of legal relations between the parent company and its subsidiaries occurs at the organizational level. This is different when it comes to the existence of shareholders. The principle of piercing the corporate veil allows for the existence of shareholders. It should be underlined that the shareholder in a BUMN subsidiary is not the state but the BUMN itself. The General Meeting of Shareholders (hereinafter referred to as the GMS) explains that the shareholder in a BUMN subsidiary is the BUMN board of directors. To ensure accountability reaches shareholders in the bankruptcy issue of a BUMN subsidiary, those who can be involved are the BUMN directors, who are also shareholders.

Therefore, if a BUMN subsidiary goes bankrupt, the BUMN director, in this case, must be able to prove that their influence and decisions in managing their subsidiary have been based on mature considerations and not due to negligence. The BUMN director can be released from the bankruptcy responsibility of his subsidiary if he can prove this. The parent company can still be held accountable if it is proven that there is involvement between the parent company and the determination of the Company's management, finances, and business decisions that cause losses to the Company. Second, actions taken by the subsidiary for the benefit of the parent company. Third, the parent company improperly ignores the financial adequacy of the subsidiary. As explained in Article 3, paragraph (2) letters (b), (c), and (d) of the UU PT, in certain circumstances, shareholders can be held accountable up to personal assets.<sup>13</sup>

Although they are different entities, subsidiaries of BUMN's parent company still maintain a relationship with each other. Although the state does not directly own the subsidiary, it indirectly owns capital in the subsidiary through the BUMN, so interests related to the subsidiary must be based on transparent decisions made by the parent company of the BUMN.<sup>14</sup>

<sup>10</sup> Syuhada, Wahyu. "Analisis Hukum Perusahaan Pada Kasus Kepailitan Anak Perusahaan Badan Usaha Milik Negara (Holding Company)". *UNES Law Review* 5 (4), 2023. 2352-68. <https://doi.org/10.31933/unesrev.v5i4.564> h. 2354.

<sup>11</sup> Ahmad Yani & Gunawan Widjaja, "Seri Hukum Bisnis Perseroan Terbatas," Jakarta, Raja Grafindo Persada, 1999, h.156.

<sup>12</sup> Imran Nating, "Hukum Kepailitan", Jakarta, Pustaka Utama Grafiti, 2002. h.42.

<sup>13</sup> Rita Diah Widawati, "Tanggung Jawab Induk Perusahaan Terhadap Perikatan Yang Dilakukan Oleh Anak Perusahaan," Tesis, Medan, Magister Kenotariatan USU, 2009. h.117-118.

<sup>14</sup> Hizkia Bendigo Holanasi, "Hubungan Hukum Induk Perusahaan BUMN Terhadap Anak Perusahaan dalam Perspektif Hukum Perusahaan", Surakarta. Fakultas Hukum Universitas Negeri Sebelas Maret Surakarta, 2019, h.44.

Additionally, the parent company of a BUMN can also be held responsible for the bankruptcy of its subsidiary if the parent company serves as the corporate guarantor of its subsidiary. A corporate corporate guarantee, also known as a company guarantee, is a guarantee of debt by a legal entity whose regulations are the same as those for personal guarantees.<sup>15</sup> This corporate guarantee is established through a guarantee agreement, where the corporate guarantor is a legal entity that provides a guarantee of debt repayment. In the guarantee agreement, the essence is that the third party agrees, for the benefit of the debtor, to bind themselves to fulfill the debtor's obligations if, at the time, the debtor fails to fulfill their obligations.<sup>16</sup> If the subsidiary, as the main debtor, is unable to pay its debt obligations and the main debtor has been declared bankrupt. The parent company of the BUMN, as the corporate guarantor, can be held accountable.

As a corporate guarantor, the parent company of the BUMN itself has a special right. Namely, the corporate guarantor is not required to pay off the main debtor's obligations to creditors before the main debtor's assets have been seized and sold, and the proceeds from the sale of the debtor's assets are not sufficient to meet the debtor's obligations to creditors. If this special right is exercised, the corporate guarantor, in this case, the parent company of the BUMN, which is used as collateral by its bankrupt subsidiary, will only pay off the remaining obligations of its bankrupt subsidiary to its creditors.<sup>17</sup> The privilege is a form of protection owned by the corporate guarantor, in this case, the parent company of the BUMN, where the corporate guarantor is only responsible for the debt of the main debtor if all the assets of the main debtor have been seized and auctioned to settle the debt of the main debtor. Therefore, the corporate guarantor cannot be filed for bankruptcy by the creditors of the main debtor before all the assets of the main debtor have been used up. This cannot then save the parent company of the BUMN as the corporate guarantor instantly from bankruptcy. The parent company of the BUMN, as the corporate guarantor, can still be filed for bankruptcy if it states that it has relinquished its privileges but still cannot pay the debts of its bankrupt subsidiary. If this happens, then the parent company of the BUMN as a corporate guarantor can be filed for bankruptcy by the creditor together with the main debtor, namely its subsidiary, because if the parent company of the BUMN has acted as a corporate guarantor of its subsidiary, then its responsibility is joint and several, namely if the debt of the main debtor has matured. It is stated that the debt of the corporate guarantor is also matured. The court plays a crucial role in ensuring that the process complies with the law and considers its socio-economic impact.<sup>18</sup>

Thus, the parent company of a BUMN must carefully consider whether it wants to apply as a corporate guarantor, even for its subsidiary. Suppose the main debtor, namely its subsidiary, is unable to pay its debt and files for bankruptcy. In that case, the parent company of the BUMN, as a corporate guarantor, can also become a defendant in the bankruptcy proceedings.<sup>19</sup>

<sup>15</sup> Sri Soedewi Masjchoen Sofwan, "Hukum Jaminan di Indonesia, Pokok-Pokok Hukum Jaminan dan Jaminan Perorangan," Yogyakarta. Liberty Offset. 2001, h.79-80.

<sup>16</sup> Bernadetha Aurelia Oktavira, "Pemberian Corporate Guarantee oleh PT, Perlukah Persetujuan RUPS?," 2022, (online) <https://www.hukumonline.com/klinik/a/pemberian-icorporate-guarantee-i-oleh-pt-perlukah-persetujuan-rups-cl4153>. Diakses pada 19 Juni 2023.

<sup>17</sup> Gunawan Widjaja dan Kartini Muljadi, "Perikatan Pada Umumnya," Jakarta. Raja Grafindo Persada. h.24-25.

<sup>18</sup> Swandhani, Triyana Kartika, Suparji Ahmad, and Sadino Sadino. 2024. "Efektivitas Prosedur Kepailitan Badan Usaha Milik Negara (BUMN) Dalam Putusan Pengadilan". *Binamulia Hukum* 13 (2):573-87. <https://doi.org/10.37893/jbh.v13i2.966> h. 581.

<sup>19</sup> Ahmad Faiq Rifqi, "Akibat Hukum Pelepasan Hak Istimewa Oleh Corporate Guarantor terhadap Hak-hak Kreditor dalam Penundaan Kewajiban Pembayaran Utang," (Yogyakarta: Fakultas Hukum Universitas Islam Indonesia, 2020), h.7.



#### 4. Conclusion

Based on the discussion above, the relationship between the parent company and the subsidiary is each standing independently as a legal entity. Thus, each parent company and subsidiary are separate legal entities. However, if the subsidiary goes bankrupt, the parent company of the BUMN is only responsible to the extent of the shares owned in its subsidiary (separate legal entity). However, the parent company can be held accountable if it can be proven that the parent company participated in causing losses to a subsidiary. In addition, the parent company of the BUMN can also be held accountable for the bankruptcy of its subsidiary if the parent company acts as the corporate guarantor of its subsidiary. Therefore, the responsibility that will be carried out is jointly and severally; namely, if the debt from the main debtor has matured, it is stated that the debt from the corporate guarantor is also due.

#### References

- Agitha Cindy Qhoyrita Majidha, Az Zahra Adhelistya Putthi Zanetti, and Uut Ristiana. "Analisis Pertanggungjawaban Holding Company Badan Usaha Milik Negara (Bumh) Terhadap Kepailitan Anak Perusahaan Dilihat Dari Perspektif Hukum Perusahaan". *Jurnal Ilmiah Penelitian Mahasiswa*, 2 (6) 2024: 159-69. <https://doi.org/10.61722/jipm.v2i6.513>.
- Ali, Chidir. "Badan Hukum." Bandung. Alumni, 1999.
- Harahap, M. Yahya. "Hukum Perseroan Terbatas." Jakarta. Sinar Grafika, 2009.
- Holanasi, Hizkia Bendigo, dan Dona Budi Kharisma. "Kajian Yuridis Hubungan Hukum Induk Perusahaan BUMN terhadap Anak Perusahaan BUMN dalam Perspektif Hukum Perusahaan." *Privat Law* 10, no. 2 (2022). <https://doi.org/10.20961/privat.v10i2.65073>.
- Majidha, Agitha Cindy Qhoyrita, Az Zahra Adhelistya Putthi Zanetti, and Uut Ristiana. "Analisis Pertanggungjawaban Holding Company Badan Usaha Milik Negara (Bumh) Terhadap Kepailitan Anak Perusahaan Dilihat Dari Perspektif Hukum Perusahaan." *Jurnal Ilmiah Penelitian Mahasiswa* 2, no. 6 (2024): 159-169. <https://doi.org/10.61722/jipm.v2i6.513>.
- Nating, Imran. "Hukum Kepailitan." Jakarta. Pustaka Utama Grafiti, 2002.
- Oktavira, Bernadetha Aurelia. "Pemberian Corporate Guarantee oleh PT, Perlukah Persetujuan RUPS?" *Hukumonline*, 2022. <https://www.hukumonline.com/klinik/a/pemberian-icorporate-guarantee-i-oleh-pt-perlukah-persetujuan-rups-cl4153/>. Diakses 19 Juni 2023.
- Permatasari, Erika. "Jenis-jenis Badan Usaha dan Karakteristiknya." *Hukumonline*, 2020. <https://www.hukumonline.com/klinik/a/jenis-jenis-badan-usaha-dan-karakteristiknya-lt4f51947253585/>. Diakses 7 Juni 2023.
- Rejeki, Sri Hartono. "Kapita Selekta Hukum Perusahaan." Bandung. Mandar Maju, 2000.
- Rifqi, Ahmad Faiq. "Akibat Hukum Pelepasan Hak Istimewa Oleh Corporate Guarantor Terhadap Hak-Hak Kreditor Dalam Penundaan Kewajiban Pembayaran Utang." (2020). [dspace.uui.ac.id](https://dspace.uui.ac.id).
- Riswandi, Iwan, and Salamiah Salamiah. "Aspek-Aspek Hukum Tentang Permohonan Pernyataan Pailit." *Al-Adl: Jurnal Hukum* 4, no. 1 (2022): 218-230. <http://dx.doi.org/10.31602/al-adl.v14i1.6171>.
- Soekanto, Soerjono, dan Sri Mahmudji. "Penelitian Hukum Normatif: Suatu Tinjauan Singkat." Jakarta. Raja Grafindo Persada, 2003.
- Sofwan, Sri Soedewi Masjchoen. "Hukum Jaminan di Indonesia: Pokok-Pokok Hukum Jaminan dan Jaminan Perorangan." Yogyakarta. Liberty Offset, 2001.

- Swandhani, Triyana Kartika, Suparji Ahmad, and Sadino Sadino. "Efektivitas Prosedur Kepailitan Badan Usaha Milik Negara (BUMN) dalam Putusan Pengadilan." *Binamulia Hukum* 13, no. 2 (2024): 573-587. <https://doi.org/10.37893/jbh.v13i2.966>
- Syuhada, Wahyu. "Analisis Hukum Perusahaan Pada Kasus Kepailitan Anak Perusahaan Badan Usaha Milik Negara (Holding Company)." *Unes Law Review* 5, no. 4 (2023): 2352-2368. <https://doi.org/10.31933/unesrev.v5i4.564>.
- Widawati, Rita Dyah. "Tanggungjawab Induk Perusahaan Terhadap Perikatan Yang Dilakukan Oleh Anak Perusahaan." PhD diss., Universitas Sumatera Utara, 2009. <http://repository.usu.ac.id/handle/123456789/38916>.
- Widjaja, Gunawan, dan Kartini Muljadi. "Perikatan Pada Umumnya." Jakarta. Raja Grafindo Persada, 2004.
- Yani, Ahmad, dan Gunawan Widjaja. "Seri Hukum Bisnis Perseroan Terbatas." Jakarta. Raja Grafindo Persada, 1999.
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