

## Curator's legal efforts in executing state-owned enterprise assets in bankruptcy

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**ABSTRACT** The task of the Curator in Bankruptcy is to administer and settle the bankruptcy estate. It is also the curator who must carry out the execution of the bankrupt assets. In practice, it is not easy, and there are several obstacles faced, especially when the debtor in bankruptcy is a Limited Liability Company in the form of a State-Owned Enterprise Persero. Until now, there are no assets of BUMN PT Persero (in bankruptcy) that can be executed. The purpose of this study is to find out how the execution of assets of P.T. Kertas Leces Persero (in bankruptcy) and what the curator's efforts are about it. The research is juridical empirical. The results of the study show: There are two stages of asset execution—management and settlement of bankrupt assets. However, there are still obstacles, both internal and external, with considerable government intervention. The curator's efforts to deal with these obstacles are by sending letters to all relevant agencies, taking an inventory of the assets and legal documents belonging to P.T. Kertas Leces Persero, which are needed in the process of executing the bankruptcy assets.

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### 1. INTRODUCTION

The role of the state through state-owned enterprises (hereinafter referred to as BUMN) becomes very important when it is formulated in a provision as formulated in Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia), in which branches Production which is important for the state and which affects the livelihood of the people must be controlled by the state (Ruslina, 2012). This shows the state's authority to participate in economic activities through the operation of production branches which can be categorized as important for the state and considered vital and strategic for the interests of the state (Ilmar, 2012).

BUMN in the form of a Persero cannot be separated from the problems of ups and downs in the financial situation. Awareness of the ups and downs of the financial situation is proven by the existence of several lawsuits and petitions for bankruptcy statements against BUMN Persero, which occurred including P.T. Dirgantara Indonesia (Persero) in 2007 (Hartini, 2016) (Hartini, 2016), PT. Djakarta Lloyd (Persero) in 2011 (Hartini, 2016), and PT. Iglass (Persero) in 2009 (Mahkamah Agung, 2011). Of the several bankruptcy cases of BUMN Persero, in the end, none of them could be declared bankrupt, even the implementation of how the execution of the assets of BUMN Persero was very questionable because it was not clear how it was implemented. In reality, if it can be declared bankrupt at the Commercial Court, it will be cancelled at the cassation level, or if it is granted at the cassation level, it will be cancelled at the Judicial Review level.

P.T. Kertas Leces Persero, as a BUMN, has been bankrupt and at this time (2019) has reached the stage of implementing the execution of assets in the realm of the auction by the Asset Management Company (PPA). Therefore, the authors are interested in studying it further, considering that no one has ever succeeded in executing the assets of state-owned companies in bankruptcy in Indonesia. So, if later at the end of P.T. Kertas Leces (Persero) can carry out the execution of assets, so it will be the history of the only BUMN Persero that can execute assets so that it can pay debts to all its creditors. P.T. Paper Leces (Persero) itself has been homologated through decision 05/PKPU/2014/P.N.Niaga.Sby on May 18, 2015. Although the road to bankruptcy Leces may be somewhat different from the predecessor BUMN Persero, namely PT. Dirgantara Indonesia (Persero), PT. Djakarta Lloyd (Persero) and finally P.T. Iglass (Persero).

Based on the description in the background above, there are also provisions that are ambiguous and contradict the laws and regulations related to the mindset about the concept of bankruptcy which has been misinterpreted by various parties; this causes judges to always be giddy in adjudicating bankruptcy cases of BUMN, especially BUMN in the form of Persero. The implementation of the execution of the assets of a state-owned company Persero that has been declared bankrupt, will experience obstacles in the implementation process if the conflict and wrong mindset is not immediately straightened out.

P.T. Kertas Leces Pesero paper was chosen as the object of the research study because, until 2019 yesterday, it had reached the execution stage of the execution of assets

in the realm of the auction by the Asset Management Company (PPA). This is very interesting to study because it is quite a long process. So, according to the author, it is urgent to explore how the execution of the assets of P.T. Kertas Leces (Persero) to the team of curators who handle it. Looking at the problem, if then P.T. Kertas Leces (Persero) is finally able to carry out the execution of assets, so it will be the history of the only BUMN Persero that can execute assets so that it can pay debts to all its creditors. P.T. Kertas Leces (Persero) has been homologated through decision 05/PKPU/2014/P.N.Niaga.Sby on May 18 2015 (Surabaya Commercial Court).

There have been several previous studies regarding bankruptcy and also Delaying Debt Payment Obligations, but the authors still have not found similar research related to the efforts made by the curator in carrying out the execution of State-Owned Enterprises assets. There are several previous studies related to bankruptcy, for example: by (Nilasari, 2013) entitled: Position of Securities in the Case of Sellers Declared Bankrupt in Short-Selling Transactions in the Capital Market, (Primadhany, 2014) concerning Legal Protection Against Consumers of Graha Dewata Housing As a result of the bankruptcy of P.T. Dewata Abdi Nusa, Astiti (2014) (Astiti, 2014) regarding: Confiscation of Collateral in bankruptcy, then on Cross-Border Bankruptcy from the Perspective of International Law and Its Comparison with National Instruments in Several Countries by Hadjaloka (2015), UUK and PKPU No. 37 of 2004 Overriding the Applicability of Principles Pacta Sunt Servanda in Bankruptcy Dispute Resolution by (Hartini, 2015), Legal Status of Bank Guarantee on Behalf of Third Parties In Bankruptcy Perspective, by (Hartini, 2017). Next is the research from (Johan, 2021). It is entitled Separatist Creditors Problems on Postponement of Debt Payment Obligations Based on the Supreme Court's Decree Number 30/KMA/SK/I/2020.

While research in the field of SOES Persero, for example, by (Sumawati, 2019) Restructuring State-Owned Enterprises (SOEs) as a Strategy to Face Demonopolization Policies, (Cahyani & Djatmiati, 2020): Demarcation of BUMN: Between Private Laws and Public Laws (2020), more from (Sitepu, 2020): State-Owned Enterprises Finance from the Perspective of State Funds.

Based on the description in the background, this is the basis for the author to raise this research with a legal issue: 1). How is the execution of the assets of P.T. Kertas Leces Persero? 2) What is the role of the curator in overcoming obstacles in the execution of the assets of State-Owned Enterprises (BUMN) in bankruptcy?

## 2. METHOD

The problems that have been formulated above will be answered or solved using an empirical juridical approach. The juridical approach (law is seen as a norm or *das sollen*), because in discussing the problem, this research uses legal materials, both primary legal materials and secondary legal materials (written law and unwritten law). Empirical approach (law as a social, cultural or *das sein* reality), because this research uses primary legal materials obtained from the field. So, the empirical juridical approach in this study means that analyzing the problem and is done by combining secondary materials (for example, the homologation decision on P.T. Kertas Leces (Persero) and primary legal ma-

terials obtained in the field, namely about the implementation of the execution of assets in bankruptcy by the curator.

## 3. RESULTS AND DISCUSSION

### 3.1 Execution of Asset Assets of P.T. Kertas Leces (Persero) in Bankruptcy by Curator

Execution of Asset Execution at P.T. Kertas Leces (Persero) can be based on the provisions of Article 15 paragraph (4) jo. Article 86 paragraph (3) jo. Article 115 paragraph (1) of the law. Number 37 of 2004 concerning Bankruptcy and PKPU through a Court Decision at the Surabaya District Court No. 01/Pdt.Sus. Peace Cancellation/2018/P.N. Niaga.Sby jo No. 05/PKPU/2014 /P.N.Niaga.Sby dated May 18, 2015, which was pronounced at a trial which was open to the public through the Panel of Judges on September 25, 2018 (the "Decision") regarding the Application for Cancellation of Agreement submitted by: (1) Harris Irwanto, et al. (15 former employees) as Petitioners for the cancellation of Peace I; and (2). Lathe Alex Suprptono, as Petitioner for Cancellation of Peace II. In this case, represented by Eko Novriansyah S.H. et al., whose office is at the ENP Law Office having its address at the Fatmawati Mars Complex, South Jakarta.

The applicants filed a lawsuit for the cancellation of the agreement against P.T. Paper Leces (Persero), which is domiciled on Jalan Raya Leces, Probolinggo Regency, East Java. Where in the execution of the execution designates and appoints: (1) Anggi Gitaharani, S.H., M.H., (2) Rayi Baskara, S.H., M.H., and (3) Febry Arisandi, S.H., M.H.

As the Curator Team of P.T. Kertas Leces (Persero) (in bankruptcy) will carry out the management and settlement in the bankruptcy process in this case. Where the appointment appointed Sarwedi S.H., M.H., Commercial Judge at the Surabaya District Court as Supervisory Judge.

There are two stages in the execution of bankruptcy assets (boedel bankrupt), namely the management phase and clearing stage.

**Bankrupt Asset Management Stage.** Announce the existence of bankruptcy spread in 2 (two) Newspapers and the State Gazette of the Republic of Indonesia, which are determined by the Supervisory Judge at the same time containing notification of the time and place of the first creditor meeting, the deadline for submitting creditor/tax claims to the curator at the time and place of the verification meeting (Article 15 paragraph 4 in conjunction with Article 14 UUK and PKPU); This can be proven by the publications in 2 newspapers, namely: Bisnis Indonesia Newspaper, dated October 1, 2018, and Jawa Pos Newspapers They were dated October 1 2018.

Carry out all efforts to secure bankrupt assets and keep all documents, money, jewellery and other securities by providing a receipt (Article 98 of the UUK and PKPU) as well as making a record of bankruptcy assets or an asset inventory (Article 100 paragraph (1) of the UUK and PKPU); In an effort at this point because P.T. Kertas Leces (Persero) (In bankruptcy) is a Limited

Liability Company in the form of a long-established State-Owned Enterprise so that it takes time to secure the bankruptcy assets. As for the asset inventory, one of which is known to be P.T. Paper Leces (Persero) (In bankruptcy) has assets of a plot of land covering an area of 623 m<sup>2</sup> and the building thereon in accordance with the Certificate of Building Use Rights No. 277/ Kramat Pela registered under

the name of P.T. Paper Leces (Persero) (In Bankruptcy), with a limit of Rp. 11.49 billion.

Calling creditors/taxes to get their invoices to the Curator (Article 90 paragraph (4) UUK and PKPU); Bankruptcy Curator Febry Arisandi SH (Arisandi, 2020), told the author that in this regard, there are 32 concurrent creditors (without collateral), five separatist creditors (with collateral). Meanwhile, the separatist creditors come from the Tax Office, while on the other hand, there are more than 2000 registrants for employees of P.T. Kertas Leces (Persero) (in bankruptcy).

Make a list stating the nature, number of receivables and debts of bankrupt assets, name and residence of creditors, along with the number of receivables of each creditor (Article 102); In the peace proposal regarding the details of the debt restructuring of P.T. Paper Leces (Persero) (In bankruptcy), a total of 2.12 trillion from 431 creditors. The total receivables of each creditor are as follows: 1). Preferred Creditors are totalling Rp. 747.86 billion, 2). Separatist Creditors are totalling Rp. 1.154 trillion, 3). Concurrent Creditors are totalling Rp. 222.735 billion.

Collecting bankrupt debtors' receivables, holding creditors meetings, receiving and submitting reconciliation plans from the Bankrupt Debtors; The creditors meeting was held on October 11, 2018, to verify the receivables of P.T. Kertas Leces (Persero) (in bankruptcy). The curator, Febry Arisandi, S.H., emphasized that the creditors' meeting related to the verification was not only to match the invoice value but also to ensure its classification (Arisandi, 2020).

**Bankrupt asset settlement stage.** At the stage of settlement of the bankruptcy estate of P.T. Kertas Leces (Persero) (in bankruptcy) has just stepped into the implementation of the settlement and selling all bankrupt assets either by public auction or privately, with the price first being estimated by the appraisal team in accordance with Article 184 of the Bankruptcy Law and Suspension of Debt Payment Obligations. In this case, the Asset Management Company (PPA) as a separatist creditor announces the collateral assets of a plot of land with an area of 623 m<sup>2</sup> along with the building on it in accordance with the Certificate of Hak Guna Bangunan No. 277/ Kramat Pela registered under the name of P.T. Kertas Leces (Persero) (in bankrupt), with a limit of Rp. 11.49 billion and offer a guarantee of Rp. 3.44 billion in the Auction Offer dated December 11, 2018, at KPKNL V, Jakarta. For this guarantee, if within two months the insolvency expires, by law, it becomes the authority of the curator to execute (Arisandi, 2020).

### 3.2 The Curator's Efforts in Facing Obstacles in the Implementation of P.T. Kertas Leces Persero in Bankruptcy

As previously described in point 1, that "execution" can be fulfilled if it has fulfilled two stages, namely the Bankrupt Asset Management Stage and the Bankrupt Asset Settlement Stage. P.T. Paper Leces (Persero) (In bankruptcy) has reached the Bankruptcy Assets Settlement Stage, namely selling all bankrupt assets by auction through the Central Jakarta KPKNL V, which has obtained an appropriate price estimate from the appraisal team.

On the other hand, in the course of this execution, it can be said that there were several obstacles, both internal and external constraints. Internal Constraints: 1) Differences in Interpretation of Assets Owned by State-Owned Enterprises, 2) Disharmonization of Legislation, 3) Data Col-

lection on P.T. Paper Leces (Persero), which takes a long time. External Constraints, namely: (1) Estimates from Appraisal (Assessment Team) Take a Long Time, (2) Low Market Share Conditions, (3) Approval from the Office of State Assets and Auction Services (KPKNL).

In connection with the existence of both internal and external constraints, there are several efforts that have been made by the curator in the execution of the assets of P.T. Paper Leces (Persero), namely:

1. Write to several agencies related to P.T. Paper Leces (Persero) (In bankruptcy). Efforts to send this official letter were sent to several institutions related to P.T. Paper Leces (Persero), such as P.T. Asset Management Company (PPA), in accordance with the authority of the curator so that the proceeds from the sale of assets guaranteed by PPA can be used as bankrupt accounts or are in the account of the curator. In addition, the Ministry of Finance, the Tax Office, and the KPKNL (Office of State Assets and Auction Services).
2. inventory of assets belonging to P.T. Paper Leces (Persero) (In bankruptcy). it is intended that the assets belonging to P.T. The Leces paper is clearly recorded for later price matching by the appraisal/assessment team. After obtaining the appropriate price estimate for the assets of P.T. Paper Leces (Persero) is then used as the object of an auction announced at the KPKNL (Office of the State Assets and Auction Service).
3. inventory of legal documents required by the curator in the process of implementing P.T. Paper Leces (Persero) (In bankruptcy)

Efforts to inventory these documents include: (1) A copy/photocopy of the bankruptcy decision from the Commercial Court; (2) A copy/photocopy of the bankrupt register; (3) A statement from the Balai Harta Peninggalan / Curator as the party who will be responsible in the event of a civil lawsuit and criminal prosecution; (4) Original and/or photocopy of proof of transfer of rights or other evidence/documents stating that the assets belong to the bankruptcy in the case of written assets belonging to third parties; (5) Determination/description from the Supervisory Judge regarding the commencement of the state of insolvency; (6) Original and/or photocopy of proof of ownership/rights if based on statutory regulations it is necessary that ownership/rights are not controlled, there must be a statement/certificate from the sale that the goods are not accompanied by proof of ownership/rights by stating the reasons and; 7) Letter of approval from the Supervisory Judge that the bankruptcy estate is sold through auction in the event that an appeal or review is filed against the bankruptcy decision (Arisandi, 2020).

## 4. CONCLUSION

In the execution of the bankruptcy assets of P.T. Kertas Leces Persero (in bankruptcy), the curator must go through two stages, namely the Bankruptcy Asset Management Stage and the Bankrupt Asset Settlement Stage, which have been carried out properly. However, there are still obstacles, namely: Differences in Interpretation of Asset Ownership of State-Owned Enterprises (Persero), there is disharmony of laws and regulations, the duration of asset data collection as well as in the appraisal, the length of data collection on assets owned (since establishment-bankruptcy), low interest in auction buyers, and difficulty in obtaining

approval Auction from the State Assets and Auction Service Office (KPKNL).

The curator's efforts in dealing with obstacles in the implementation of the assets of P.T. Kertas Leces Persero in Bankruptcy, both for internal and external obstacles carried out by the curator are sending letters to all agencies related to P.T. Kertas Leces (Persero) (In bankruptcy), conduct an inventory of owned assets and legal documents required by the curator in the process of implementing P.T. Kertas Leces (Persero) (in bankruptcy)

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