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by M. Hadi Shubhan

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LEGAL RESTRICTION OF BANKRUPTCY OF STATE-OWNED ENTERPRISE (SEO) AND SUSTAINABILITY: THE CASE OF INDONESIA

M. Hadi Shubhan[1*], Indrawati[2], Dri Utari CR[3]
[1,2,3]Faculty of Law, Universitas Airlangga, Indonesia.
Email: *hadi@fh.unair.ac.id

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Abstract

Purpose of Study: This research examines the possibility of state-owned enterprises being nailed in the legal system in Indonesia. According to the bankruptcy regulation in Indonesia, those who are unable to pay debts can be declared bankrupt by the creditors, including SOEs. However, other regulations state that the government's assets (including those within SOEs) cannot be confiscated, including within bankruptcy confiscation.

Methodology: The research method used in this study is qualitative research using the type of doctrinal law research. The approach used is to use the statutory approach, conceptual approach, and case approach. Data from this study were obtained from commercial courts in Jakarta and Surabaya.

Main Findings: this study found that there was a desynchronization of the regulations regarding the SOEs' bankruptcy, i.e., between the Bankruptcy Law and the other laws, and even points within the Bankruptcy Law itself. The example that can be taken in this study is PT Kertas Leces /Limited Liability Company (LLC) Kertas Leces) that had already gone bankrupt and experienced confiscation of its bankrupt assets.

Implications: The ideal bankruptcy model for SOEs is that the bankruptcy applicants for SOEs in the form of public companies or state-owned companies should be the Minister of Finance. The Ministry of Finance is responsible for the operational policies and supervision of SOEs, amounting to approximately 115 companies in the form of public companies or state-owned companies, including those that have already gone public and those which have not.

Novelty: previous studies have only focused on the assets of state-owned enterprises that have been separated and therefore bankrupt. This study examines another matter, namely that not all state-owned enterprises can be declared bankrupt and found one state-owned bankruptcy.

Keywords: *Bankruptcy, State-Owned Enterprises, Indonesia, Insolvency, Assets, Sustainability*.

INTRODUCTION

The issue of sustainability is a very interesting issue related to the vision, mission, and strategy of a corporation in economic development both global and local (Dobrovolskiene, 2015). he problem of economic hardship experienced in many countries is a global problem. In dealing with economic problems, the state undertakes various kinds of efforts, and one of the efforts that are often done by the state is to reform its particular legal system (Beraho, 2011). The financial system a country is more influenced by financial institutions in it, including the bankruptcy legal system (Meher, 2019). Sustainability is not a primary purpose for insolvency proceedings, but as a part of modern business management and strategy, sustainability influences liquidation and restructuring proceedings, as well. (Linna, 2019)

The purpose of using the bankruptcy instrument is to liquidate the assets of the debtor and then be distributed to all creditors, according to the degree of each creditor (Gawron, 2019). Bankruptcy risk will be felt by not only bankrupt companies but by all stakeholders so that it will affect the economy at large (Nguyen, 2019). The bankruptcy law instrument is expected to function as an alternative law instrument to more, efficiently, effectively and balance to settle debtor's debts to creditors. (Shubhan, 2019)

According to Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, the state-Owned Enterprises (SOEs) that can be declared bankrupt include those engaged in public interests, while the party that has the legal standing to submit a bankruptcy requests the Minister of Finance. The provision that enables SOE to enter bankruptcy is regulated in Article 2 paragraph (5) of the Law of Bankruptcy. The provisions of the SOE bankruptcy in the Bankruptcy Law cause problems because there is a desynchronization between the norms stated in Article 2 paragraph (5) with the norms contained in the Explanation of Article 2 paragraph (5). In the body of Article 2 paragraph (5), it is stated that SOEs engaged in public interests can be filed for bankruptcy only by the Minister of Finance.

In addition, the provisions of SOEbankruptcy in the Bankruptcy Law are not synchronized with Law No. 19 of 2003 concerning the SOE. Article 11 of the Law on SOEs reads, "*To Limited Liability Companies, all Terms and Principles apply as stipulated in Law Number 1 of 1995 concerning Limited Liability Companies*". The provisions of Article 11 of Law on SOEs suggest that the rules that apply to limited liability companies also apply *mutatis mutandis* to SOEs, both engaged in public interests, although the latter is not included in the provisions governing bankruptcy.

The provisions of state bankruptcy in the Bankruptcy Law are also not synchronous with Law No. 1 of 2004 concerning the State Treasury and Law No. 17 of 2003. Article 50 of the Law on the State Treasury states that any party is prohibited from confiscating state property. The provisions of article 2 letter g of Law No. 17 of 2003 concerning State

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Finance. The provisions of the Laws of State Treasury and the State Finance prohibit the confiscation of state property, including those belonging to SOEs.This statement is not synchronized with the Bankruptcy Law, which stipulates that bankruptcy is a general confiscation of the debtor's assets.

There are differences in the doctrines or scholars' opinions of legal issues towards the provisions of Article 2 paragraph (5) of the Bankruptcy Law related to SOE bankruptcy, i.e., the Law on SOE, State Assets, and the State Treasure Law. There is a group of experts who believe that an SOE cannot be declared bankrupt regardless of its type of SOE, and the only party that has the authority to declare its bankruptcy is the Minister of Finance. On the other hand, other expert groups hold the opinion that SOEs can be declared bankrupt. The SOEs in the form of Public Corporation is declared bankrupt by the Minister of Finance, and the SOEs in the form of Limited Liability Company can be declared bankrupt by its own request, the creditor's request, or by certain other parties.

The desynchronization of the doctrines of legal scholars and the regulations related to the bankruptcy of the SOE has resulted in legal uncertainty, thus resulting in a disparity in the decision regarding the application for bankruptcy to SOEs. However, many of the bankruptcy decisions were canceled in the Supreme Court, such as the Bankruptcy of PT Istaka Karya, PT Iglas, and PT Dirgantara Indonesia. PT Kertas Leces has been declared bankrupt by the Court after the discharge of bankrupt had been homologated. The other case is PT Merpati Airlines that has been in the status of Suspension of Debt Payment Obligations. Its homologation status was declared even though its creditors did not approve it.

LITERATURE REVIEW

The tendency for bankruptcy towards corporations during their life cycle is interesting to study (Akbar, 2019). or corporations that cannot afford their own funding, the corporation will seek credit from financial institutions. With financing from these loans, business risks are jointly borne (Kliestik, 2018). However, even though the LLC and the director are separate entities, the director may be held personally accountable if the director commits a faulty action which results in the company's becoming bankrupt. Failure and bankruptcy are a natural and inescapable part of business (Gerstrøm, 2015). Theoretically, this is possible. However, these individuals may set up their own businesses. If the issue escalates to the court, the individual will face prosecution for their actions, not as the company he/she represents, but as a person for their actions and as the company's shield as it is lifted in this case (Al-Tawil, 2018).

Company financial problems can occur, both financial difficulties are temporary and permanent financial difficulties. When the company's finances continue to experience difficulties, bankruptcy can occur (Wang, 2014). Bankruptcy is characterized as debt insolvency, the refusal of an entrepreneur to pay his debt obligations due to lack of funds (Kozlovskyi et al, 2019). This bankruptcy institution is expected to function as an alternative institution to more effectively, efficiently, and proportionately settle debtor's obligations to creditors. Miles said that bankruptcy law is designed to provide financial relief to the overburdened debtor and to assure that all creditors with claims against the debtor have the opportunity to receive their due share from the bankruptcy assets (Miles, 1996). Harold F. Lusk described the bankruptcy functions as follows: (1) to protect creditors from other creditors related to debt or debt payments, (2) to protect creditors from debtors related to assets owned by debtors from being misused, and (3) to protect the debtor from the actions of creditors that are not in accordance with the law (Lusk, 1986).

The existing bankruptcy legal system in the world consists of bankruptcy and insolvency. There are countries that adhere to the bankruptcy legal system which is always associated with insolvency, and there is also a bankruptcy legal system of a country that does not associate with insolvency. Modern bankruptcy laws are centered around preventive composition, arrangements, or corporate reorganizations (Beraho, 2008).

The term insolvency in the Indonesian bankruptcy legal system is not defined as assets ownerships that are less than the amount owed. The term insolvency is also not employed because the assets owned by the debtor to pay related debts are not required to conduct insolvency tests on the debtor's bankruptcy application. However, the term insolvency is still employed in the process of managing and settling bankrupt assets. In the process of managing and executing bankrupt assets, the term insolvency is employed as a sign that there is no bankruptcy cancellation so that the process of selling bankrupt assets is immediately started by the receiver (the Republic of Indonesia, 2004) or the execution of the creditor who holds the material security.

The term bankruptcy refers to the context of financial conditions, which is a state of uncertainty over the ability of a company to continue its operation due to financial difficulties. Financial distress is the occurrence of liquidity, which may be the cause of bankruptcy. Meanwhile, bankruptcy refers to the economic context of a situation concerning the uncertainty of a company's capability to continue its operations if its financial condition worsens (Lesmana, 2003). Meanwhile, financial distress refers to financial difficulties or liquidity, which may be the beginning of bankruptcy (Morrison, 2002). A company can be dissolved without going through bankruptcy because it can be dissolved by its owner through the mechanism of company dissolution under the provisions governing the company beyond the provisions of bankruptcy law, which refers to the Indonesian Limited Liability Company Law (the Republic of Indonesia, 2007).

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In the context of law in Indonesia, bankruptcy is employed as a legal instrument for people or companies who fail to pay their debt obligations to other parties (Shubhan, 2019). The failure of payment can be related or not related to the bankruptcy and financial difficulties of the debtor. Bankruptcy in Indonesia is only directed at debtors because of the reluctance of debtors to fulfill their debt obligations and is not directly linked to financial difficulties, or assets and financial solvency. Debtors not paying off debt can be motivated by a number of reasons, i.e., debtors experience short term financial difficulties, or debtors go bankrupt, or even the debtors do not want to pay the debt for good or bad reasons.

The function and purpose of bankruptcy law in the legal system in Indonesia has developed firstly as a tool to execute debtors' inadequate assets to repay all of their debts, as well as a debt collection mechanism. In Indonesia, bankruptcy can be employed as a way out, a mechanism for debtors experiencing financial difficulties, debtors experiencing bankruptcy, who experience insolvency (i.e., having debt that is greater than their assets) that do not require a solvency test. This solvency test, which was not carried out in Indonesia, did not require an audit on the actions of debtors who did not pay the debt because of incompetence or unwillingness. It is certainly different from other countries such as the United States, United Kingdom, and Hong Kong, which emphasize bankruptcy as the mechanism for resolving debtors having experienced solvency problems, and which always requires an insolvency test before checking their bankruptcy.

The function and purpose of bankruptcy law in Indonesia does not differentiate whether the debtors' act does not pay their debt due to their inability or due to their unwillingness. It is almost the same as the function and purpose of bankruptcy law in force in the Netherlands today. Peter Declercq emphasized that bankruptcy in the Netherlands set the aims for debtors who do not pay their debts to their creditors. Debtors who do not pay the debt will not be classified as unable to pay the debt or do not want to pay the debt even though the debtors have money to pay the debt. Peter Declercq stated, "A bankruptcy petition has to state facts and circumstances that constitute *prima facie* evidence that the debtor has ceased to pay its debts. This is considered to be the case if there are at least two creditors, one of whom has a claim which is due and payable and which the debtor cannot pay, refuses to pay, or simply does not pay." (Declercq, 2002)

METHODOLOGY

The research method used in this study is qualitative research using the type of doctrinal law research. The approach used is to use three approaches, that is, the statutory approach, conceptual approach, and case approach. Data from this study were obtained from commercial courts in Jakarta and Surabaya. The statutory approach is used to examine the provisions of applicable laws and regulations relating to the bankruptcy law system in Indonesia and about state-owned enterprises. The conceptual approach is used to examine the concepts of bankruptcy law and state-owned enterprises that are advanced by experts through their writings. The case approach is used to examine court decisions related to the bankruptcy of state-owned enterprises.

DISCUSSION AND ANALYSIS

Legal Standing of Bankrupt Petitioners against SOEs

Law reformation in bankruptcy is highly effective in resolving bankruptcy and bankruptcy property resolution. Before 1998, for approximately 50 years since the Independence of Indonesia, the court has only settled a few bankruptcy cases. The data identified that there have been 150 cases so far; in other words, there is only one bankruptcy case per year throughout Indonesia. Meanwhile, upon the bankruptcy law reformation, the bankruptcy management has significantly proliferated, especially for two bankruptcy courts, namely Commercial Court in District Court of Jakarta and Commercial Court in District Court of Surabaya. Relatively, Commercial Court in District Court of Jakarta Pusat handled 100 cases in 1999. In addition, 230 cases were settled by the District Court of Jakarta Pusat in 2017. On the other hand, the District Court of Surabaya in 2017 handled 59 cases. Hence, it is noticeable that there is an increase of more than 300 times since the reformation of the bankruptcy law.

Table 1: the number of bankruptcy cases in Jakarta and Surabaya

No.	Year	Commercial Court of Jakarta Pusat	Commercial Court of Surabaya
1	1999	100	5
2	2017	230	59

Source: Commercial Court of Jakarta Pusat and Commercial Court of Surabaya

This bankruptcy case petition is increasing presently. In the past two years, the bankruptcy case in Commercial Court is as follows:

Table 2: the number of bankruptcy cases in Jakarta, Surabaya, Semarang, Medan, and Makassar

No	Year	Number of Cases entered	Court
1	2017	411	District Court of Jakarta Pusat, Surabaya, Semarang, Medan, and Makassar

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2	2018	353	District Court of Jakarta Pusat, Surabaya, Semarang, Medan, and Makassar

Source: Data from the District Court of Jakarta, Surabaya, Semarang, Medan, and Makassar

An application for bankruptcy must fulfill the material requirements of the application and the provisions of legal subjects given the right or authority to file bankruptcy applications. Provisions of legal standing in the judicial requirements are related to legal subjects that can apply for bankruptcies are regulated in Article 2 of the Bankruptcy Law. Article 2 of the Bankruptcy Law stipulates that parties who can file for bankruptcy applications consist of 3 (three) parties as follow:

1. The debtors itself (bankruptcy/propose for Suspension of Debt Payment Obligations voluntarily);

2. The creditors;

3. The other parties.

Debtors are given the right by law to apply for bankruptcy or Suspension of Debt Payment Obligations status. Submission of bankruptcy/Suspension of Debt Payment Obligations status by the debtor is the main party in the request for bankruptcy. This is because the debtor himself is aware of the financial conditions related to the solvency of financial flows to meet payment obligations. In addition, if the debtor requests bankruptcy status, the bankruptcy conditions will be easily proven by the existence of at least one overdue debt and can be billed as well as the condition that the debtor had at least two creditors.

The next legal subject who has the legal standing to file for bankruptcy is the creditor. Creditors are people who have credit according to agreements or laws that can be billed through a proposed bill and granted by the court. In bankruptcy law, creditors are classified into three types as follow:

1. Creditor secured;
2. Preferential creditor; and
3. Concurrent creditor.

The existence of these three creditors is recognized. In the Dutch Bankruptcy Law, there is no doubt about the right of secured and preferential creditors to file for bankruptcy (HR June 18, 1982, NJ/Nederland Jurisprudence 1983,1). This law was also stated by Abdul Hakim Garuda Nusantara by quoting Polak's opinion, claiming that the creditors did not lose their authority to file bankruptcy requests for debtors who were in a state of stopping payment (J. Djohansjah, 2004).

The three aforementioned principles are essential, either in the laws concerning contracts, insurance, or bankruptcy. The absence of these principles will result in the insignificance of bankruptcy institution since the philosophy behind bankruptcy underlies the liquidation of the debtor's assets. Without bankruptcy, all debtors will fight legally and illegally, causing injustice both for the debtors themselves and the creditors, especially those coming late, who may not get any of the debtors' assets to repay the debts.

Creditors who have a business relationship with debtors are concurrent creditors, creditors secured as holders of material security rights, and preferred creditors who in the bankruptcy law regime have priority debt repayment rights. Creditor Securedsholding material security rights can execute material security as if the bankruptcy did not occur. However, the creditors secured still have the right in the form of remaining bills that are not sufficiently covered by the execution of collateral and interests regarding the sustainability of the debtor's business.

There are several other parties authorized by the law to file bankruptcy/legal standing applications other than debtors and creditors, who can file for bankruptcy or Suspension of Debt Payment Obligations status as follow:

1. Attorney;
2. Central Bank of Indonesia;
3. The Indonesian Financial Services Authority(OJK); and
4. The Ministry of Finance.

The Public Prosecutor is authorized to file for bankruptcy based on public interest as stipulated in Article 2 paragraph (2) of the Bankruptcy Law. In the explanation of Article 2 paragraph (2) outlining the meaning of the public interest that what is meant by "public interest" in the interest of the nation and state and/or the interests of the public community, for instance:

a. Debtors escaped;

b. Debtors embezzled part of assets;

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c. Debtors have debts to State-Owned Enterprises or other business entities that collect funds from the community;

d. Debtors have debts by raising funds from the community; or

e. It is considered as the public interest, according to the prosecutor's office.

The Prosecutors' Office once used the authority to file bankruptcy requests based on public interest. For instance, PT Aneka Surya Agung filed for bankruptcy by the Lubuk Pakam prosecutor in the Commercial Court at the Medan District Court with case number 02/Pailit/2005/PN.Niaga/Medan (CC. Medan, 2005). In addition, in the bankruptcy of PT Qurnia Subur Alam Raya and Ramli Araby, who were filed for bankruptcy by the Cibadak Sukabumi District Attorney at the Commercial Court in Central Jakarta District Court with case number 23/Pdt.Sus-Pailit/2013/PN.Niaga.Jkt.Pst (CC. QSAR, 2013).

Bank Indonesia is the only institution granted the legal standing to submit bankruptcy or Suspension of Debt Payment Obligations status requests to banks as stipulated in Article 2 paragraph (3) of the Bankruptcy Law. The authority of BI in filing bankruptcy towards banks is an exclusive authority, which means nullifying the authority of other parties in submitting bank bankruptcy applications. Despite having this exclusive authority, to date, Bank Indonesia has never used its authority in submitting bankruptcy requests to banks. Bank Indonesia prefers bank liquidation through administrative channels rather than through bankruptcy instruments.

At present, bank supervision has shifted from Bank Indonesia to the OJK through Law Number 21 of 2011 concerning the OJK. Although bank supervision has shifted from Bank Indonesia to the OJK, the Law regarding OJK does not explicitly regulate the transfer of authority to request bankruptcy from BI to OJK, thus the authority to file bankruptcy applications remains with Bank Indonesia. The Law on OJK should regulate the authority in submitting bankruptcy requests to Banks, such as the change in authority for filing bankruptcy on insurance companies from the Minister of Finance to OJK, as regulated in Law No. 40 of 2014, which directly concerning Insurance.OJK now has exclusive authority to file for bankruptcy in relation to Securities Companies, Stock Exchanges, Clearing Guarantee Institutions, Depository and Settlement Institutions. It can only apply a bankruptcy statement. The Financial Services Authority's authority in filing bankruptcy on securities companies and the like because the Bapepam institution has merged in the OJK. Bapepam had the authority to submit applications to securities companies.

The OJK also has the exclusive authority to submit bankruptcy requests in relation to insurance and reinsurance companies. The authority of the OJKto submits bankruptcy requests for insurance and reinsurance companies are regulated in Law Number 40 of 2014 concerning Insurance. By the issued regulation, it means the authority to file bankruptcy applications has been transferred from the Minister of Finance to the OJK. In practice, the OJK has applied to declare bankruptcy status to insurance companies, i.e., Insurance Bumi Asih Jaya in the Commercial Court at the Central Jakarta District Court as in case number Number 408 K/Pdt. Sus-Bankrupt/2015 (CC. Bumi Asih, 2015) junto 04/PDT.SUS-Bankrupt/2015/PN.NIAGA.Jkt.Pst. (CC. Bumi Asih 2, 2015) in conjunction with Decision Number 27Pdt.Sus.PKPU/2015/PN.NIAGA.Jkt.Pst (CC. Bumi Asih 3, 2015).

The final institution that has exclusive authority in bankruptcy applications is the Minister of Finance. The Minister of Finance has the authority to submit bankruptcy applications for pension fund companies and SOEs engaged in the public interest sector, which is regulated in Article 2 paragraph (5) of the Bankruptcy Law. Article 2 paragraph (5) fully states that "*In the event that the Debtor is an Insurance Company, Reinsurance Company, Pension Fund, or State-Owned Enterprise engaged in the field of public interest, the one who can file for bankruptcy statement is the Minister of Finance.*"

The bankruptcy of State-Owned Enterprises (SOEs) in Indonesia is an actual issue that has been studied and investigated to date. Although the issue of SOE bankruptcy appeared many years ago, the legal dynamics related to SOE bankruptcy regulations and practices have varied to date. The actual issue of the latest SOE bankruptcy is related to the bankruptcy of PT Kertas Leces which was declared bankrupt by the Commercial Court at the Surabaya District Court under Decision No. 1/1/Pdt.Sus.Pembatalan.Perdamaian/2018/PN.Niaga.Sby (CC Pembatalan, 2018) Jo Number 5/Pdt.Sus-PKPU/2014/PN.Niaga.Sby (CC. Leces, 2014), as supported by the Supreme Court with the decision of a Judicial Review Number 43 PK/Pdt.Sus-Pailit/2019 (CC. Pembatalan PK, 2019) and is now in the stage of bankrupt property confiscation.

The Minister of Finance's authority provisions for filing for bankruptcy on SOEs engaged in public interests as stipulated in Article 2 paragraph (5) the Bankruptcy Law leaves normative issues because, in that article, there is no scope concerning SOEs engaged in the public interest. The provisions of Article 2 paragraph (5) the Bankruptcy Law governing this authority constitute a vague norm. The obscurity of the norms of Article 2 paragraph (5) is worse due to the explanation of Article 2 paragraph (5) which reads, "*What is meant by 'State-Owned Enterprises engaged in public interests' are the state-owned enterprises whose entire capital is owned by the state, and not divided into shares.*" Therefore, as previously noted, the Explanation of Article 2 paragraph (5) does not synchronize with the body of Article 2 paragraph (5), wherein the body of Article 2 paragraph (5) mentions SOEs engaged in the public interest while in the explanation the capital structure is mentioned.

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SOEs Bankruptcy Practices and Models in the Court

The bankruptcy of SEO Companies has resulted in problems, the main one of which is the desynchronization of the authority to submit bankruptcy applications for Companies regulated in the Bankruptcy Law, for example, the desynchronization that occurs between Article 2 paragraph (5) and the explanation of Article 2 paragraph (5). In Article 2 paragraph (5), it is determined that if the requested bankruptcy is an SOE engaged in the field of public interest, the authority to file bankruptcy applications is with the Minister of Finance. In the part of the explanation, the Minister of Finance is authorized to submit bankruptcy requests if the state owns all SOE shares. It means that the field of public interest is different from the ownership of shares by the state. There are State-Owned Enterprises whose shares are owned by the state and also by other parties such as Pertamina, Jasa Marga, and Telkom, which are engaged in the public interest.

The desynchronized authority for filing bankruptcy results in a disparity in court decisions related to bankruptcy requests against SOE Companies. In this study, it was investigated that the bankruptcy of SOE Companies was overruled or canceled at the Supreme Court level in a number of cases. The data found are as follows:

Table 3: SEO bankruptcy cases in court

No.	Appellant	Respondent	Request	Year	Decision
1.	Muisah	PT Jasa Marga	Suspension of Debt Payment Obligations	2019	Overruled
2	Workers	PT Kertas Leces	Cancellation of Homologation	2018	Granted
3.	PT Adirga Graha dan	PT Hutama Karya	Suspension of Debt Payment Obligations	2017	Overruled
4.	PT Gunung Marmer	PT Hutama Karya	Suspension of Debt Payment Obligations	2017	Granted
5	PT Parewa Katering, PT Prathita Titian Nusantara, PT Kirana Mitra Mandir	PT Merpati Nusantara Airlines (Persero)	Suspension of Debt Payment Obligations	2017	Granted
6.	Sudiyarto, Jafar Tambunan(former employees)	PT Merpati Nusantara Airlines (Persero)	Bankruptcy	2016	Overruled
7.	PT Prathita Titian Nusantara	PT Merpati Nusantara Airlines (Persero)	Suspension of Debt Payment Obligations	2016	Overruled
8.	PT Tunas Perkasa Tekindo	PT DOK Perkapalan Surabaya (Persero)	Suspension of Debt Payment Obligations	2015	Withdrawn
9.	PT Lautan Warna Sari	PT Kertas Leces (Persero)	Suspension of Debt Payment Obligations	2014	Granted
10	Julia Tjandra	PT Djakarta Lloyd (Persero)	Suspension of Debt Payment Obligations	2013	Overruled
11	PT Sumber Rahayu Prima	PT Istana Karya (Persero)	Suspension of Debt Payment Obligations	2012	Granted with reconciliation
12	Receiver Team of The Indonesia Overseas Bank	PT Djakarta Lloyd (Persero)	Bankruptcy	2011	Overruled, Overruled
13	PT Japan Asia Investment Co Indonesia	PT Istana Karya (Persero)	Bankruptcy	2010	Overruled, Granted, Overruled
14	PT Interchem Plasaro Jaya	PT Iglas (Persero)	Bankruptcy	2009	Overruled, Accepted,
15	PT Magnus Indonesia	PT GarudaIndonesia (Persero)	Bankruptcy	2008	Overruled
16	Heryono, Nugroho, Sayudi (former employees of PT DI)	PT Dirgantara Indonesia (Persero)	Bankruptcy	2007	Accepted, Overruled
17	PT Magnus Indonesia	PT GarudaIndonesia (Persero)	Bankruptcy	2006	Overruled, Overruled, Overruled

18	BNP Paribas Hongkong	PT Dok &Perkapalan Kodja Bahari (Persero)	Bankruptcy	2006	Overruled, Overruled
19	PT Jaya Readymix	PT Hutama Karya (Persero)	Bankruptcy	1998	Granted, Overruled, Overruled

Source: Commercial Court of Jakarta Pusat and Commercial Court of Surabaya

From the above data, all bankruptcy requests of the state-owned companies engaged in public interests and whose shares are not wholly owned by the state or owned by the state, with a small portion by other parties, have been denied or overruled by the Supreme Court at the cassation level and at the judicial review level. However, there is one bankruptcy of SOE Company, which is already in the stage of bankruptcy property acquisition, namely PT Kertas Leces.

The bankruptcy of PT Kertas Leces has special characteristics, which can be employed as a model for bankruptcy of SEO Companies in the future, which are:

a. The business carried out by the company is not for the public interest. The company runs an ordinary commercial interest in the form of paper production;

b. The company's poor operational and financial conditions for the previous few years and even the workers' salaries could not be paid, and operational activities have stopped.

c. The bankruptcy status did not originate from a request for bankruptcy directly or the Suspension of Debt Payment Obligations status, which is the final bankruptcy declaration. Bankruptcy status was declared from the request for the cancellation of homologation, which was not implemented by the company.

CONCLUSION

There is a policies' desynchronization regarding the status of SEOs' assets between the Laws and Regulations and court decisions in the Constitutional Court and the Supreme Court. This desynchronization triggers legal uncertainty.

The bankruptcy of State-Owned Enterprises can be carried out against an SOE Company, which is not engaged in the public interest. If an SOE Company is engaged in the public interest sector, bankruptcy is only possible if filed by the Minister of Finance. The bankruptcy to SOE Company that switches from public to commercial interest has its own legal status, In this case, PTKertasLeces has been declared bankrupt, and its assets have been proclaimed as bankrupt assets, sold through a public auction, and a temporary distribution list has been determined for its creditors. The bankruptcy of PT KertasLeces can be declared because it is engaged in a business that is not in the public interest.

LIMITATION AND STUDY FORWARD

This research only limits the data from 1998 to 2019. Further research should be taken from the independence period until now and the data obtained at the Ministry of State-Owned Enterprises.

IMPLICATIONS

The ideal bankruptcy model for SOEs is that the bankruptcy applicants for SOEs in the form of public companies or state-owned companies should be the Minister of Finance. The Ministry of Finance is responsible for the operational policies and supervision of SOEs, amounting to approximately 115 companies in the form of public companies or state-owned companies, including those that have already gone public and those which have not.

CONTRIBUTION OF THE AUTHORS:

1. **M. Hadi Shubhan:** As a lead author and correspondent author (email: hadi@fh.unair.ac.id)
2. **Indrawati:** As a research data collector (email: indrawati@fh.unair.ac.id)
3. **Dri Utari CR:** As a language editor. (email: dri.utari@fh.unair.ac.id)

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