

## **Judicial Implication of Bankruptcy for State Universities as Legal Entities**

**Oppy Pramudya Wisnu Wardhana<sup>1)</sup>, Sukarmi<sup>2)</sup>, Herman Suryokumoro<sup>3)</sup>**

<sup>1)</sup>Masters of Law Study Program Post-Graduate Faculty of Law Brawijaya University, Indonesia

<sup>2)</sup>Faculty of Law, Brawijaya University, Indonesia

\*Corresponding Author

Email: [opypramudya@student.ub.ac.id](mailto:opypramudya@student.ub.ac.id)

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### **Abstract**

*The issue of the existence and implications of the policy of transforming PTN into PTNBH based on laws and regulations. The research is used as a study that can answer the optimal benefits for the community in obtaining education following the development of the times and can be highly competitive. This study identifies a problem formulation: What are the legal implications of the bankruptcy status of PTNBH based on UU KPKPU if financial difficulties occur? This study uses a normative legal method through legal interpretation analysis to comprehensively examine the concept of PTNBH Legal Entities. Concerning financial management and potential bankruptcy, this study confirms that the application of the Bankruptcy Law to PTNBH requires special consideration considering the characteristics of PTNBH as an educational institution that involves the government and public interests so that it cannot be directly analogized with private legal entities or BUMN. From the analysis results, there is a legal vacuum in the field of finance and PTNBH assets which are prone to triggering conflicts in the future.*

**Keywords: Bankruptcy, Legal Entity, State Universities as Legal Entities.**

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## **INTRODUCTION**

State Universities as Legal Entities (hereinafter abbreviated as PTNBH) are higher education institutions that have a special status. Because they are owned by the state, PTNBH is considered a public legal entity because PTNBH is responsible for regulating public affairs, especially in the field of higher education, as an extension of the government, they also can act like private legal entities in general, meaning that they can carry out activities that are usually carried out by non-governmental organizations (Darlis, Ahmad, 2023).

PTNBH has the authority to exercise autonomy over state universities in their management based on Act Number 12 of 2012 concerning Higher Education (Higher Education Law). Two areas are the authority of autonomous higher education management, namely academic and non-academic areas. In the academic area, it is related to the determination of operational guidelines and norms and the implementation of the tri dharma of higher education. In the non-academic field, management includes the determination of operational guidelines and protocols and their implementation related to personnel, finance, student affairs, organizations, and infrastructure.

Universities in Indonesia have been transformed into legal entities for 13 years, starting with the enactment of Government Regulation Number 60 of 1999 concerning Higher Education and Government Regulation Number 61 of 1999 concerning the Establishment of Legal Entity Higher Education Institutions. From 2000 to 2006, seven universities were established as State-Owned Legal Entities (BHMN).

The Constitutional Court, through Decisions Number 11, 14, 21, 126, and 136/PUU-VII/2009, annulled Act Number 9 of 2009 on Legal Entities in the Field of Education (UU BHP) because it conflicted with the 1945 Constitution of the Republic of Indonesia (UUD NRI). Following the annulment of the BHP Law, the government issued a new regulation that changed the status of State-Owned Legal Entities (BHMN) to Public Service Agencies (BLU) ().

Subsequently, the Higher Education Law mandated a transformation in the status of higher education institutions from BHMN to State Universities with Legal Entity (PTNBH).

Flexibility in financial management allows PTNBH to receive funds from the government in the form of State University Operational Assistance (BOPTN) as well as funds from the community. This flexibility exists because, in principle, PTNBH differs from legal entities in general. The legal status of PTNBH is regulated through Government Regulations, enabling it to engage in various activities, including business, social initiatives, and the establishment of business entities such as foundations, cooperatives, and others.

Theoretically, PTNBH has the authority to establish norms and policies in the financial sector, enabling collaboration with third parties that may potentially face bankruptcy. As a result, PTNBH could be named as a respondent and declared bankrupt by the court. In cases where PTNBH establishes a legally incorporated business entity, that entity will bear responsibility for its debts if they become due and are not paid. However, if the business entity is not legally incorporated, PTNBH may be held liable for those debts.

Although PTNBH has the potential to be declared bankrupt, it cannot be subjected to bankruptcy proceedings because the relevant laws and regulations don't provide for the bankruptcy of PTNBH. Bankruptcy is defined as follows:

Article 2 Verse (1) of the Bankruptcy and Suspension of Debt Payment Obligations Law (UU KPKPU): "A debtor with two or more creditors who fail to pay at least one debt that is due and collectible may be declared bankrupt by a court decision, either upon their petition or upon the petition of one or more creditors."

Article 2 Verse (5) UU KPKPU: "A debtor that operates as an insurance company, reinsurance company, pension fund, or state-owned enterprise engaged in public interest activities may only be declared bankrupt at the request of the Minister of Finance."

The regulation stipulates that bankruptcy applies only to legal subjects, namely individuals and legal entities (Hartini, Rahayu, 2007), but it does not provide further clarification regarding State Universities with Legal Entity Status (PTNBH). Neither the Higher Education Law nor the Bankruptcy and Suspension of Debt Payment Obligations (KPKPU) Law specifically addresses the bankruptcy of PTNBH, leading to a potential polemic when issues arise within PTNBH. Therefore, it is essential to study this matter to provide legal certainty. If PTNBH were to be declared bankrupt, it could have negative repercussions for students, lecturers, and employees associated with the institution.

## RESEARCH METHODS

This study employs normative legal research, also referred to as doctrinal legal research. The law is understood as written provisions stated in applicable regulations, as well as rules and norms that serve as a foundation for appropriate human behavior (Amiruddin, Zainal, 2010). Every study utilizes a specific research approach, and this study adopts a regulatory approach, focusing on the examination of relevant legal rules. Additionally, an analytical approach is employed to interpret the conceptual meaning of the regulations and to assess their application in two stages of examination. The first stage involves uncovering the meaning embedded in legal rules, while the second stage evaluates the practical implementation of these rules through an analysis of legal decisions.

Normative legal research always begins with a normative premise, utilizing secondary legal materials as the primary sources. This study employs prescriptive normative legal materials, which means that analyzing a legal issue must involve examining the substance of positive law and its textual elements, including not only the norms but also the principles and values they

embody. In the context of this research, the discussion extends to the principles and values inherent in PTNBH-owned business entities when facing bankruptcy (Ibrahim, Johnny, 2007).

The legal materials in this study encompass national positive legal regulations with binding authority, categorized hierarchically into three types: primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws and regulations; secondary legal materials consist of books, journals, expert opinions, specific legal cases, jurisprudence, and similar sources; tertiary legal materials provide guidance or explanations for primary and secondary legal materials, such as legal dictionaries, encyclopedias, and the Great Dictionary of the Indonesian Language.

The legal material search technique in this study was conducted through a literature review, utilizing resources obtained from the Malang City Public Library, the Central Library of Brawijaya University, the Legal Science Documentation Center at the Faculty of Law, Brawijaya University, personal collections, correspondence, and other sources accessible via the internet. The legal material analysis technique was carried out in several stages: the identification stage, the description stage, and the functional analysis stage. The analysis method applied combines deductive and inductive approaches to evaluate the consistency of Indonesian laws and regulations in providing legal certainty regarding the bankruptcy of PTNBH-owned business entities.

The legal material analysis technique is divided into several stages: the identification stage, the description stage, and the functional analysis stage. The analysis method employs both deductive and inductive approaches to evaluate the consistency of Indonesian laws and regulations in ensuring legal certainty regarding the bankruptcy of PTNBH-owned business entities (Subhan, Hadi, 2009).

## **RESULT AND DISCUSSION**

### **Juridical Perspective**

The legal perspective refers to a viewpoint or approach based on the law. When a problem or event arises, legal practitioners can analyze it from a legal perspective by applying applicable legal rules, principles of justice, and legal norms recognized within the positive legal system. This perspective is essential for providing a clear framework to resolve conflicts or disputes, ensuring that a fair and acceptable solution is reached for all parties involved (Rachmawanto, Mohammad, 2015).

Furthermore, the legal perspective helps prevent unlawful actions and reduces the risk of conflicts by guiding individuals to avoid legal violations. It also guarantees legal certainty, allowing society to interact and carry out activities in an orderly and secure manner, knowing what is permissible and what is not. Ultimately, the legal perspective serves to uphold justice for all parties involved in a case.

The main elements of the legal perspective include facts, the law governing the event, the interpretation of the law, and the application of the law to achieve justice. These elements are essential for analyzing cases comprehensively, ensuring that the appropriate decision is made. The application of the legal perspective can be described as follows:

#### **a. Legal Cases**

In every legal case, a legal perspective is utilized to analyze the relevant facts and identify any legal violations, thereby enabling the determination of appropriate sanctions for such violations.

**b. Policy Maker**

In policymaking, the legal perspective must be carefully considered, especially when formulating new policies, to ensure that they do not conflict with existing laws and regulations. Every policy developed must adhere to the legal framework. The legal perspective plays a crucial role in ensuring that the policy is not only effective in achieving its objectives but also legally valid and does not infringe upon the rights of citizens.

**c. Contract**

Agreements or contracts made by the parties must fulfill the requirements established in contract law to possess binding legal force. The role of the legal perspective in the agreement is to ensure its legal validity and compliance with the stipulated requirements (Gunawan, Sandi, 2018).

Thus, the legal perspective functions as an instrument for examining and understanding all aspects of life. An understanding of the legal perspective not only enables the rational and objective analysis of a situation but also fosters the ability to act judiciously in various contexts.

**Legal Perspective of Article 1, Verse (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations**

The definition of bankruptcy is outlined in Article 1, Paragraph (1) of the KPKPU Law, which states: “Bankruptcy is a general seizure of all the assets of a bankrupt debtor, the management and settlement of which is carried out by a Curator under the supervision of a Supervisory Judge as regulated in this Law.”

In the context of PTNBH, which differs from private companies, the principle of bankruptcy still applies. This means that if PTNBH is declared bankrupt, the following consequences will occur: (Dewi, Vita, 2023)

- a) All assets owned by PTNBH, including land, laboratory equipment, copyrights of scientific works, buildings, operational funds, and others, will automatically become subject to confiscation. It can be stated that there are no exceptions unless specific legal provisions provide immunity from certain laws.
- b) The curator, as a party appointed by the court, will take over, manage, and liquidate all assets owned by PTNBH that have been declared bankrupt. The curator’s duties include inventorying assets, selling assets necessary to satisfy debts, and managing the remaining assets under applicable legal provisions.
- c) All actions taken by the curator are of course under the supervision of a supervising judge, whose duty is to ensure that the bankruptcy process is carried out under the law and in the interests of all related parties, including creditors and PTNBH employees so that no behavior or wrong benefits one party.

The legal perspective on PTNBH with bankrupt status is comprehensive and can be explained as follows (Saleh, Muhammad, 2024):

- 1) PTNBH declared bankrupt will automatically cease all operational activities, including teaching and learning processes, community service, research, and other related functions.
- 2) The future of PTNBH employees will depend on the curator’s and court’s decisions, as employees may face the risk of losing their jobs and entitlements.
- 3) Students enrolled at a PTNBH declared bankrupt will experience uncertainty, as they may encounter difficulties in continuing their studies or obtaining their diplomas. This situation can be detrimental to all students, including new students and those completing their final assignments.
- 4) The bankruptcy of a PTNBH not only negatively impacts the university itself but can also harm the quality of national education, particularly in the affected region (Islami, Jundu, 2024).

To prevent bankruptcy in PTNBH, comprehensive preventive measures are necessary, including the following:

1. Improvement of Governance

Governance is crucial for the success and stability of any company or legal entity. Without proper governance, a company may experience a decline leading to bankruptcy. Implementing good and transparent governance in PTNBH will help prevent misuse of funds and mitigate financial losses, both on a small and large scale. To enhance the quality of governance, periodic audits, and evaluations must be conducted to identify actions that could be detrimental to PTNBH. These checks and oversight mechanisms serve as tools to prevent the accumulation of issues, ensuring that any problems that arise can be addressed promptly and effectively.

2. Strengthening Supervision

Supervision is crucial for enhancing PTNBH performance and preventing losses or potential issues. It should be conducted by authorized parties to facilitate the early detection of financial problems. Furthermore, supervision must be carried out objectively, without prioritizing personal or group interests.

3. Provision of Sufficient Funds

The government must carefully consider funding for PTNBH by providing an adequate budget to ensure its functions can operate effectively. Through regular supervision and audits, sufficient funds can be allocated for their intended purposes. This also enables the government to request transparent accountability from PTNBH.

**Protection of State Assets Utilized by State Universities as Legal Entities**

Although PTNBH is structured as a legal entity, it holds assets that are state-owned but intended for the public interest, such as land, buildings, and laboratory equipment (Siti, Anisah, 2008). This must be carefully considered in the PTNBH bankruptcy process to ensure the protection of state assets from being lost or misused by unauthorized parties (Harsono, Boedi, 1994). State assets can be categorized into two types:

a. PTNBH Assets that Can Be Used as Bankruptcy Assets

1. Fixed Assets with a Commercial Nature

Fixed assets can be utilized as bankruptcy assets if they consist of commercial buildings rented to third parties, hotels owned by PTNBH, and/or business centers operated by PTNBH for commercial purposes.

2. Investment Assets

Investment assets that can be used as bankruptcy assets include shares in private companies, bonds, and/or other commercial securities.

3. Cash

Assets that can be used as bankruptcy assets include cash derived from PTNBH's commercial activities, provided that it is not intended for educational or research purposes. Such cash may be confiscated by the curator.

4. Assets Not Used in Primary Activities

Assets such as laboratories and research equipment that are no longer utilized for academic purposes can also be classified as assets subject to confiscation or bankruptcy assets of PTNBH.

b. PTNBH Assets That Cannot Be Used as Bankruptcy Assets

1. Assets Designated for Academic Activities

Assets that cannot be used as bankruptcy assets include lecture halls, libraries, laboratories, and other educational facilities directly involved in teaching and learning activities.

2. Assets of Historical and Cultural Value

Buildings that cannot be used as bankruptcy assets include historic buildings, museums, or collections of historical objects specifically owned by PTNBH.

3. Assets Related to Research and Scientific Development

In addition to buildings, research equipment that is actively used by researchers, research laboratories, and all research outcomes with commercial potential cannot be used as bankruptcy assets. These assets must be preserved for the benefit of the wider community (Saputra, Khanan, 2023).

4. Assets Obtained from Grants or Donations with Special Provisions

Assets obtained through grants or donations cannot be confiscated, as these gifts are provided to PTNBH specifically for educational and research purposes.

**Legal Perspective on Article 2, Verse (1) of Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Debt Payment Obligations**

According to Article 2, Verse (1) of the KPKPU Law, which states: “A debtor who has two or more creditors and fails to pay in full at least one debt that has matured and is collectible shall be declared bankrupt by a court decision, either at their request or at the request of one or more of their creditors.”

This provision triggers the bankruptcy legal process as outlined in the KPKPU Law (Makmur, Syafrudin, 2016). Article 2, paragraph (1) serves as the basis for determining which entities may be declared bankrupt. The requirements for bankruptcy are also stipulated in the KPKPU Law as follows:

a) Number of Creditors

The primary requirement for a person or company to be declared bankrupt is that they must have two or more creditors to whom they owe a debt.

b) Failure to Make Debt Payments

The debtor must be unable to pay the debt in full when it becomes due.

c) Sufficient Evidence

A bankruptcy petition does not require complex evidence; simple evidence is sufficient to demonstrate that the debtor has more than one creditor and has failed to pay their debts when due, thus making the case eligible for judicial consideration.

These requirements do not explicitly include PTNBH as a party that may face bankruptcy. However, if PTNBH accumulates significant debts that it is unable to pay upon maturity and has more than one creditor, one or more of these creditors may file a bankruptcy petition against PTNBH.

If the requisition is accepted by the court, the assets that can be used as bankruptcy assets will be inventoried by a curator and subsequently sold to settle PTNBH’s debts with its creditors. This situation would have a significant impact on the cessation of PTNBH’s operations and the quality of education provided to the students enrolled there.

The KPKPU Law thoroughly regulates the requirements and procedures that must be followed in the bankruptcy process to ensure fairness for all parties involved, including both debtors and creditors. It is important to note that PTNBH plays a crucial role in the education sector, which underscores the necessity of taking preventive measures to avoid PTNBH’s bankruptcy.

Article 8 Verse (4) of the KPKPU Law states: “A petition for a declaration of bankruptcy must be granted if there are facts or circumstances that prove simply that the requirements for being declared bankrupt as referred to in Article 2 Verse (1) have been met.”

This article has a fairly important role in determining the fate of a bankruptcy requisition, because it regulates the burden of proof in bankruptcy cases, meaning that if there is a party that files a bankruptcy petition against a company or individual, then the party must prove in real and

thorough terms that the company or individual does meet the requirements for being declared bankrupt, such as having many debtors and not paying debts that have matured.

If the evidence presented is sufficiently strong, the court is obligated to grant the bankruptcy petition. The party filing the petition must provide concrete and thorough evidence demonstrating that the company or individual meets the criteria for bankruptcy, such as having multiple creditors and failing to pay debts that have matured. If the evidence meets these requirements, the court is required to approve the bankruptcy petition.

### **Legal Implications of Articles 21 and 22 of Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Debt Payment Obligations in the Event of Bankruptcy of State Universities as Legal Entities**

All assets owned by a debtor who has been declared bankrupt, including both existing assets and those acquired during the bankruptcy process, will be consolidated into a single entity to settle all debts owed to creditors.

This is outlined in Article 21 of the KPKPU Law, which states: “Bankruptcy includes all assets of the debtor at the time the bankruptcy declaration decision is made and everything obtained during the bankruptcy process.”

As a result, the debtor may use any income generated during the bankruptcy process to pay off their debts. This principle is known as the principle of universality, meaning that all assets of the debtor will serve as collateral for all creditors, without exception, allowing creditors to exercise their rights.

If a PTNBH goes bankrupt, Article 21 of the KPKPU Law can be applied with significant consequences. The consequences that arise are as follows:

#### 1) All PTNBH Assets Become Objects of Confiscation

During the PTNBH bankruptcy process, from an economic perspective, it is evident that all assets owned by the PTNBH will become objects of confiscation, except for assets that are exempted from being classified as bankruptcy assets. Assets that can be confiscated include fixed assets, such as buildings, laboratory equipment, land, libraries, and others. Intangible assets, such as patents, copyrights, and trademarks, may also be subject to confiscation. Additionally, current assets, including special inventory and receivables, will be considered confiscated assets.

These assets will be managed by the curator to ensure their protection and will be sold to settle PTNBH’s debts. Consequently, all assets of PTNBH that are subject to bankruptcy proceedings and granted by the court will become the curator’s responsibility, to be managed and utilized in the best possible manner for the benefit of the creditors.

#### 2) Asset Management by the Curator

All assets seized by the curator during the PTNBH bankruptcy process will be managed in full by the curator appointed by the court and overseen by the supervising judge. The curator is responsible for preparing a complete inventory of all assets owned by PTNBH, assessing each asset, and facilitating their sale. The proceeds from these sales will be used to settle PTNBH’s outstanding debts. Any remaining funds from the sale will be returned to the debtor, as the rightful owner of the assets.

#### 3) Priority of Debt Payment

Debt payments will be made by the priority order outlined in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. In general, debts secured by collateral, such as specific assets in the form of fixed or movable property, will be prioritized for payment over debts that are unsecured (Sidabutar, Lambok, 2019).

The purpose of prioritizing debt payment for secured creditors is to provide greater protection to those creditors who have pledged collateral for their debts, ensuring that the secured assets are returned to them as proof of their ownership rights.

The implementation of bankruptcy regulations for PTNBH presents challenges, as not all assets of PTNBH can be freely liquidated. Some assets, such as lecture halls, libraries, laboratories, and other facilities, serve public interests. Furthermore, the bankruptcy of PTNBH can disrupt the educational process, necessitating efforts to minimize its impact on the students enrolled.

Therefore, the government plays a crucial role in addressing PTNBH's bankruptcy. It must take steps such as increasing the budget allocation to PTNBH, restructuring its debts, and safeguarding public assets to ensure the continuity of education and protect the broader public interest. PTNBH bankruptcy cases should not be evaluated solely from a business perspective, but must also take into account the social implications and the wider community's needs.

The legal implications of PTNBH declaring bankruptcy include the loss of assets that will be sold to settle outstanding debts. Moreover, if there are indications that government-provided funds or the business scope of PTNBH are involved, it becomes crucial to ensure proper oversight. Regular checks and supervision of PTNBH's operations play a significant role in addressing issues promptly and accurately, thereby preventing future bankruptcies. Any misuse of government funds or mismanagement within the scope of PTNBH's business should be reported to the relevant authorities to ensure clarity regarding the cause of the problem. The responsible party can then be subject to sanctions under applicable regulations.

Additionally, the application of Article 21 of the KPKPU Law to PTNBH necessitates a more nuanced approach, taking into account the unique context of educational institutions. Not all assets owned by PTNBH should be treated in the same manner as those of private companies, as these assets serve public interests that must be safeguarded to prevent disruption to the educational process.

Therefore, the role of the government, particularly the Ministry of Education, is crucial in formulating policies that protect public interests and ensure the continuity of higher education while still fulfilling obligations to creditors in the bankruptcy process. The bankruptcy of PTNBH, especially with the application of Article 21 of the KPKPU Law, carries far-reaching consequences.

Generally, Article 21 of the KPKPU Law governs the management of debtor assets during the bankruptcy process. However, its application to PTNBH requires special consideration. A more in-depth interpretation and approach are necessary to address PTNBH bankruptcy cases. The government and relevant institutions must collaborate to develop a balanced solution that ensures the rights of creditors are met while protecting the public interest, particularly the continuity of the teaching and learning process.

Article 22 of the KPKPU Law stipulates the following:

“The provisions referred to in Article 21 do not apply to:

- a. Objects, including animals, that are genuinely necessary for the Debtor concerning their work, equipment, medical devices required for health, beds, and items used by the Debtor and their family, as well as food for thirty (30) days for the Debtor and their household, and other similar items;
- b. All income obtained by the Debtor from their work, such as salary from a position or service, wages, pensions, waiting money, or allowances, as determined by the Supervisory Judge; or
- c. Money provided to the Debtor to fulfill a legal obligation to provide for their livelihood.”

This article regulates certain assets that are exempted from the general seizure of the debtor's property, to protect the basic needs of the debtor and their family to ensure their survival. The key points of this provision are as follows:

- a) Basic Needs:

- 1) Items that are directly essential for the debtor's work or daily living needs are excluded from the bankruptcy estate.
  - 2) Examples of such items include work-related equipment, medical devices, housing, food, and household items used daily.
  - 3) The specific number and type of items excluded are typically determined by the Supervising Judge, based on the debtor's needs.
- b) Income:
- 1) The debtor's income, such as salary, wages, pension, or allowances, is not considered part of the bankruptcy estate.
  - 2) This provision aims to ensure that the debtor retains sufficient income to meet the needs of their life and family.
  - 3) The amount of income to be excluded will be determined by the Supervising Judge, considering the debtor's and their family's needs.
- c) Maintenance Money:
- 1) Money given to the debtor for fulfilling maintenance obligations, such as for the support of children or spouses, is also excluded from the bankruptcy estate.
  - 2) This aims to protect the rights of the debtor's family, ensuring they continue to receive adequate financial support for their livelihood.

PTNBH possesses distinct characteristics, as it is an educational institution with legal entity status. The primary distinction between PTNBH and general debtors lies in its establishment purpose and the form and nature of its assets. PTNBH was established to provide educational services to the public, thereby serving a public function, whereas private companies are primarily founded to maximize profit.

The focus of PTNBH is on the development of human resources, and its assets are dedicated to supporting educational activities. Furthermore, the government holds responsibility for ensuring the sustainability and quality of higher education, as it plays a crucial role in preparing high-quality human resources for the workforce, contributing to the nation's progress.

The legal implications of bankruptcy for PTNBH necessitate a comprehensive analysis of the exceptions outlined in Article 22 of the KPKPU Law, which describes the assets of PTNBH that are not included in the bankruptcy estate. PTNBH's assets can be subject to the provisions of Article 22 of the KPKPU Law, as follows:

- a. Basic Necessities
  1. Application  
This exception generally applies to goods necessary for the daily operations of PTNBH, such as office equipment, consumables, and other related items.
  2. Challenges  
The distinction between necessities and assets used for educational purposes (e.g., library books) must be clearly defined to avoid ambiguity.
- b. Income
  - 1) Application  
This exception applies to the salaries of PTNBH employees. However, for income derived from PTNBH's commercial activities (if applicable), it is important to assess whether such income qualifies for this exception.
  - 2) Challenges  
Careful differentiation must be made between income generated from PTNBH's core educational activities and that from its commercial ventures.
- c. Maintenance Money
  1. Application

This exception applies to maintenance money allocated to PTNBH employees who have family dependents.

## 2. Challenges

Consideration must be given as to whether old-age benefits or pensions of PTNBH employees are also encompassed within this exception.

To address the complexities of PTNBH bankruptcy, a comprehensive approach involving multiple parties is essential. One critical step is the formulation of specific regulations governing the PTNBH bankruptcy process. These regulations should account for the unique characteristics of higher education institutions, particularly their social objectives and significant role in human resource development. Furthermore, a forum should be established that brings together various stakeholders, including the Ministry of Education, universities, and experts, to devise appropriate solutions.

The role of the supervising judge is crucial in ensuring that the bankruptcy process is conducted fairly and transparently, safeguarding the rights of all parties involved. The application of Article 22 of the KPKPU Law to PTNBH requires careful and thorough consideration. It is important to remember that PTNBH is not merely a business entity but an institution integral to human resource development. Consequently, the solutions implemented must strike a balance between the interests of creditors and the broader public interest in education.

### **The Legal Application of Article 24 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations**

Article 24 of the KPKPU Law is a crucial provision in regulating the management of debtor assets following a bankruptcy declaration. This article outlines that, upon the declaration of bankruptcy, the control and management of the debtor's assets are automatically transferred to the appointed curator. As such, all assets of the debtor will be under the curator's authority for proper management. The essence of this article is as follows:

#### a) Transfer of Debtor's Rights

Upon the bankruptcy decision, all rights related to the debtor's assets that are included in the bankruptcy estate are transferred to the curator.

#### b) Effectiveness of the Bankruptcy Decision

The legal effects of the bankruptcy decision take effect from 00:00 local time on the day the decision is announced.

#### c) Exceptions for Ongoing Transactions

Transactions that were initiated before the bankruptcy decision, such as monetary transfers and stock exchange transactions, are exempt from the automatic transfer of control to the curator.

The provisions of Article 24 of the KPKPU Law are applied automatically following the court's declaration of bankruptcy. In this context, the curator assumes responsibility for managing and liquidating the PTNBH assets to repay its debts. The transfer of control over the assets implies the following (Hasby, Abdullah, 2024):

#### a. Transfer of PTNBH Assets

All assets of PTNBH that are included in the bankruptcy estate will be transferred to the curator. These assets may include land, buildings, equipment, funds, and other related items.

#### b. Termination of PTNBH's Financial Autonomy

PTNBH will lose the authority to manage its finances. All decisions regarding the use of the bankruptcy estate will be made by the curator.

#### c. Exceptions for Ongoing Transactions of PTNBH

Transactions initiated before the bankruptcy decision, such as the payment of employee salaries or the settlement of bills to suppliers, will continue following the applicable provisions.

To address the complexities associated with PTNBH's bankruptcy, several strategic actions must be taken. One of the most urgent steps is the development of specific regulations that govern the bankruptcy procedures for state universities. These regulations must take into account the unique characteristics of PTNBH as an educational institution and the broader public interest.

Furthermore, active engagement from various relevant parties, including the Ministry of Education, other universities, and experts in law and finance, is essential to formulate a comprehensive solution. In the bankruptcy process, the role of the supervising judge is crucial. The supervising judge holds the responsibility of overseeing the bankruptcy process and ensuring that the rights of all parties involved, including creditors and students, are adequately protected.

Article 24 of the KPKPU Law establishes a clear legal framework regarding the transfer of rights to debtor assets following a bankruptcy decision. However, its application to PTNBH necessitates special consideration due to the unique characteristics of this educational institution. A solution is required that ensures a balance between the interests of creditors and the public interest in the field of education.

### **Legal Perspective on Article 31 of Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Debt Payment Obligations for State Universities as Legal Entities**

General seizure is a legal action that occurs when an individual or company is declared bankrupt. All assets of the bankrupt debtor are seized and managed by a curator, who will then sell these assets, with the proceeds used to pay off the company's debts.

Article 31 of the KPKPU Law places general seizure in a dominant position, such that when a company is declared bankrupt, general seizure automatically applies to all of the company's assets. This implies that any prior seizures carried out by other parties may be deemed invalid. The Supervisory Judge in the bankruptcy process holds the authority to annul these previous seizures. Consequently, Article 31 of the KPKPU Law emphasizes that the general seizure in the bankruptcy process is under the supervision of the Supervisory Judge.

If a State University as a Legal Entity (PTNBH) is declared bankrupt, Article 31 of the KPKPU Law will automatically apply. The general seizure will override all prior seizures; however, it is important to note the special characteristics of PTNBH as an educational institution with assets of strategic value and significant public interest in the field of education. Therefore, the application of Article 31 of the KPKPU Law must be carried out with caution. In practice, there may be exceptions and/or special treatment for PTNBH. Consequently, bankruptcy cases involving PTNBH require comprehensive consideration, including the active involvement of the government to identify the most appropriate solution, which could involve providing additional funding, restructuring debt, and protecting public assets. Although the application of Article 31 of the KPKPU Law is automatic, its implementation is not without challenges, as it necessitates a deep understanding of bankruptcy law and careful deliberation of the involved interests.

### **Potential for Bankruptcy, Determination, and Filing of Bankruptcy Against State Universities as Legal Entities**

State Universities as Legal Entities (PTNBH) endeavor to develop various business units and income sources to support their operational activities and institutional development. This effort is evident in several initiatives undertaken by these universities. For instance, the Bandung Institute of Technology (ITB) has established the Innovation and Entrepreneurship Development Institute (LPIK), which manages business incubators and spin-off companies aimed at promoting the commercialization of research and innovation.

Similarly, Gadjah Mada University (UGM) operates several University-Owned Enterprises (BUMU), such as Gama Multi Usaha Mandiri (GMUM), which engages in various sectors including tourism, property, and trade. These initiatives capitalize on the university's assets and expertise. The University of Financial (UI), on the other hand, runs the University of Financial Hospital (RSUI), which not only provides health services but also serves as an educational and research facility. UI also operates various other business units that offer consulting and training services to both the community and industry.

These examples demonstrate that PTNBHs leverage their autonomy to innovate and explore alternative sources of income beyond the allocation from the state budget (APBN) while remaining committed to their core missions of education, research, and community service.

Although the government has so far covered the deficit, along with the increasing size of PTNBH and the increasing need for operational funds, the risk of losses and budget deficits is also increasing. Therefore, for the government to continue to bear the budget deficit that may occur continuously and in significant amounts. Although unlikely, the bankruptcy option can be an alternative to consider if PTNBH experiences very severe financial difficulties and there are financial other possible solutions. However, the bankruptcy mechanism for PTNBH is still not explicitly regulated in laws and regulations and is still being debated among legal experts.

Based on the KPKPU Law, a legal entity can be declared bankrupt if it meets the main requirements that have been described. The recurring budget deficit in PTNBH implicitly indicates that there is unpaid debt because expenditure exceeds income. Thus, theoretically, PTNBH has the potential to meet the bankruptcy criteria in the KPKPU Law. However, until now there has been financial regulation that explicitly regulates the bankruptcy mechanism of PTNBH, but as a comparison, it can be compared to the bankruptcy mechanism of State-Owned Enterprises (BUMN) and Banking which already have special regulations.

For entities that have public interests and/or are related to state finances, the authority to file for bankruptcy is not immediately handed over to creditors like other private legal entities but is held by a state institution that has the authority to protect broader interests. There is an analogy that illustrates that one day the bankruptcy mechanism of PTNBH will be regulated by filing for bankruptcy by creditors to the government, such as the ministry in charge of higher education.

## CONCLUSION

Theoretically, PTNBH could meet the bankruptcy criteria outlined in the KPKPU Law; however, its implementation still faces significant challenges due to the lack of specific regulations governing the bankruptcy process for PTNBH. Existing regulations are inadequate and fail to comprehensively address the unique aspects of PTNBH bankruptcy. Therefore, additional regulatory measures are necessary, either through amendments to the KPKPU Law to include provisions specifically addressing PTNBH or through the formulation of government regulations within the framework of the Dikti Law. These regulations should provide clear guidelines for handling financial issues that could lead to bankruptcy, including procedures, authorities, and mechanisms for addressing state assets and ensuring the continuity of education. The absence of clear regulations results in legal uncertainty, which is detrimental when resolving PTNBH's financial problems. Legal certainty is essential for ensuring that issues are addressed transparently and systematically.

PTNBH, which receives government funding, must be subject to thorough checks and supervision to ensure transparency in its financial management. This oversight is critical to preventing the accumulation of problems that could ultimately lead to bankruptcy. To safeguard

PTNBH's assets and the public interest it serves, bankruptcy petitions involving PTNBH could be submitted to the government or the relevant ministry overseeing higher education. This would facilitate the identification of a balanced solution that protects both the rights of creditors and debtors while ensuring the continued operation of PTNBH and the preservation of its educational mission

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