

Legal Standing of Employees as Individual Creditors in Filing for Bankruptcy of State-Owned Enterprises

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Abstract. *This study aims to analyze the legal standing of employees as individual creditors in filing for bankruptcy against State-Owned Enterprises (SOEs), with a focus on the case study of PT Merpati Nusantara Airlines (Persero) as stated in Cassation Decision Number 447 K/Pdt.Sus-Pailit/2016. This study was motivated by legal uncertainty regarding the rights of employees to file for bankruptcy against SOEs, even though they normatively meet the bankruptcy requirements as stipulated in Law Number 37 of 2004 concerning Bankruptcy and PKPU. The research method used was normative juridical with a legislative approach, case approach, and conceptual approach. Data was obtained through literature study and analyzed qualitatively deductively to examine the conformity of the judge's considerations with the provisions of Law Number 19 of 2003 concerning SOEs, Law Number 6 of 2023 concerning Job Creation, as well as the principles of justice and legal certainty. The results of the study show that the judge's considerations in rejecting the bankruptcy petition by employees are not fully in line with the provisions of the legislation, because PT Merpati has the status of a state-owned enterprise that is subject to private law and should be able to be declared bankrupt by creditors, including employees. However, the judge interpreted that Merpati's status as a state-owned enterprise with a public function prevented the bankruptcy process, which ultimately weakened the protection of workers' rights. The novelty of this research lies in emphasizing the importance of separating the public and commercial functions of SOEs and the need for consistent interpretation guidelines for judges in order to create substantive justice and legal certainty in future SOE bankruptcy cases.*

Keywords: Bankruptcy; Individual Creditors; PT Merpati; SOE.

1. Introduction

State-Owned Enterprises (SOEs) hold a vital position in the national economy, serving not only as key business entities but also as driving forces that support and implement the country's development agenda. This dual role means that SOEs not only aim to make a profit, but also

carry out social functions and support government policies in national development (Daffa & Herwiyanti, 2023). As business actors, SOEs compete like other business entities, but still bear the responsibility of providing goods and services to the community, including in sectors that are less attractive to the private sector. Meanwhile, as agents of development, SOEs are strategic instruments of the government in promoting economic growth, infrastructure development, energy supply, and price stabilization (Saputra et al., 2023). The legal basis for SOEs is regulated in Law Number 19 of 2003. Article 2 states that the objectives of establishing SOEs are to contribute to the national economy, pursue profits, and provide public benefits through the provision of quality and affordable goods and services. SOEs have an unusual role because, on the one hand, they act as state entities, but on the other hand, they also operate like business entities. As state entities, SOEs are owned and controlled by the government for the public interest. Nevertheless, as business entities, SOEs must operate with efficiency, competitiveness, and accountability, adhering to the principles of good corporate governance to ensure their performance remains transparent and sustainable. This strategic role makes SOEs an important pillar in national economic development and independence. (Saputra et al., 2023)

As business entities, SOEs are essentially subject to private law in carrying out their business activities. Although owned by the state, SOEs still operate as separate legal entities, have their own assets, and are subject to civil and corporate law provisions as applicable to other business entities (Arzetta Zahra Metthania et al., 2023). This means that SOEs are bound by contracts, can be sued in court, and are required to fulfill their legal obligations to business partners and other third parties. In this case, SOEs also face the same business risks as private companies, including the possibility of losses, liquidity difficulties, and debt defaults (Pangestu, 2020). Because SOEs also perform functions similar to those of companies, they will automatically face the possibility of being involved in commercial disputes, including bankruptcy mechanisms. The Supreme Court clarified that State-Owned Enterprises (SOEs) whose capital is fully or mostly state-owned and categorized as part of the state's separated assets, may still be declared bankrupt, as long as they do not carry out direct governmental functions and are not specifically exempted by law from bankruptcy proceedings (Sandi et al., 2023). Thus, the legal treatment of SOEs as subjects of bankruptcy must still consider the characteristics and functions of SOEs, so as not to disrupt the public interest and broader economic stability.

Bankruptcy in the Indonesian legal system is regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU). This law serves as the legal foundation for resolving situations in which a debtor cannot meet their financial obligations to creditors. According to Article 2 paragraph (1) of Law No. 37 of 2004, a debtor may be declared bankrupt if they have at least two creditors and fail to pay at least one debt that is due and payable. Bankruptcy is not considered a form of punishment, but rather a legal mechanism for settling debts collectively and in an organized manner. (Aulia & Nurkhaerani, 2025)

The main objective of bankruptcy is to achieve a fair and balanced settlement of debts between creditors and debtors (Dirgantara et al., 2025). Through this mechanism, the debtor's assets are

gathered and fairly distributed among creditors, following the principles of equity and priority as recognized in civil law. Thus, no creditor takes advantage or makes unilateral demands without regard to the rights of other creditors. In addition, bankruptcy also provides legal certainty and allows debtors to legally settle their responsibilities, as well as paving the way for them to restart their economic activities in the future. Regarding who has the authority to file for bankruptcy, the law grants this right to several legal entities, including individual creditors. Both individual and corporate creditors have the right to file a bankruptcy petition with the Commercial Court, provided that the formal requirements are fulfilled, specifically, the debtor must have at least two creditors and one outstanding debt that is due but remains unpaid. (Simanjuntak, 2020). The right of individual creditors to file for bankruptcy confirms that the Indonesian legal system guarantees equal legal protection, while also providing a legal mechanism for resolving financial conflicts that arise between parties.

The bankruptcy of State-Owned Enterprises (SOEs) has emerged as a complex and often debated legal issue within Indonesia's legal framework. The main problem lies in the legal uncertainty of SOEs in bankruptcy cases. SOEs have two roles, namely as business entities that can be declared bankrupt like private companies, but also as providers of public services that cannot be terminated just like that. Therefore, the treatment of SOEs in bankruptcy cases is considered important because it has a direct impact on the interests of many people. Thus, it is necessary to distinguish between SOEs that perform public functions (Perum), such as the provision of electricity, water, and public transportation, and SOEs that operate purely commercially (Persero) (Rokfa et al., 2020). SOEs that perform public functions tend to have special characteristics because they are closely related to the state's services to the community, so their bankruptcy can cause major disruptions to the public interest. In addition, another important aspect is the difference between separated and unseparated state assets. SOEs whose capital comes from separated state assets that have been transferred into shareholdings are basically treated like other business entities and are subject to private law provisions. Conversely, SOEs that use non-separated state assets are still considered a direct part of state institutions, so they can have immunity from certain legal processes, including bankruptcy (Putri, 2025).

One example that illustrates the complexity of this issue is the bankruptcy of PT Merpati Nusantara Airlines (Persero), a SOE engaged in the aviation sector. Although PT Merpati is a State-Owned Enterprise (SOE), the company faced severe financial distress, rendering it unable to meet its obligations to creditors. In a case that occurred in 2016, two former employees filed for bankruptcy at the Central Jakarta Commercial Court because they had not been paid their entitlements after termination of employment, namely Sudiyarto and Jafar Tambunan (Swastiningsih & Prasetyawati, 2022). In Decision No. 04/Pdt.Sus-Pailit/2016/PN.Niaga.Jkt.Pst, the court rejected the bankruptcy petition, reasoning that PT Merpati, as a State-Owned Enterprise serving the public interest, could only be placed into bankruptcy upon the initiative of the Minister of Finance, who holds the appropriate legal authority. This decision was then upheld by the Supreme Court in Cassation No. 447 K/Pdt.Sus-Pailit/2016.

This rejection raises important questions, considering that PT Merpati is a state-owned enterprise in the form of a limited liability company, with capital that is not wholly owned by the state because some of its shares are also owned by PT Garuda Indonesia (Persero) Tbk. Furthermore, as a limited liability company, PT Merpati is subject to the provisions of Law No. 19 of 2003 on State-Owned Enterprises and Law No. 40 of 2007 on Limited Liability Companies, which place the company under private law. Thus, the approval of the Minister of Finance should not be required for bankruptcy filings, and individual creditors still have legal standing to file for bankruptcy as stipulated in Article 2 paragraph (1) of the Bankruptcy Law. On the other hand, the Supreme Court and the Commercial Court tend to use a teleological approach in interpreting Article 2 paragraph (5), emphasizing that even though Merpati is a state-owned enterprise, it still performs a public service function because it serves flight routes to disadvantaged regions. This approach creates an overlap between bankruptcy norms and SOE legal norms, as well as blurring the line between private law and public law in the management of SOEs.

This study seeks to explore more deeply the legal ambiguity surrounding the status of employees when they act as individual creditors in submitting bankruptcy petitions against State-Owned Enterprises (SOEs). This is evident in the case of PT Merpati Nusantara Airlines, where the Supreme Court, through Cassation Decision Number 447 K/Pdt.Sus-Pailit/2016, rejected the bankruptcy petition filed by employees. In fact, normatively, the requirements for bankruptcy had actually been met. This situation has caused confusion. On the one hand, the law allows individual creditors to file for bankruptcy, but on the other hand, judges interpret the rules differently, resulting in employees' rights not being protected. This condition underscores the importance of conducting deeper research on how judges should assess bankruptcy petitions filed by employees, with the aim of ensuring both justice and legal certainty in such cases. Therefore, the author will conduct research entitled "Legal Standing of Employees as Individual Creditors in Filing for Bankruptcy of State-Owned Enterprises" with the aim of analyzing the judge's considerations in Cassation Decision Number 447 K/Pdt.Sus-Pailit/2016 regarding bankruptcy lawsuits filed by employees as individual creditors against SOEs, as well as its conformity with Law No. 37 of 2004 concerning Bankruptcy and PKPU and Law No. 19 of 2003 concerning SOEs, and to evaluate how judges should consider in deciding bankruptcy lawsuits filed by employees as individual creditors against a legal entity company in order to provide justice and legal certainty.

2. Research Methods

This research adopts a normative legal approach, focusing on the analysis of written legal sources—including legislation, court decisions, and relevant legal principles and doctrines (Soekanto & Mamudji, 2010). Several approaches were used in this study, namely the statute approach by examining the provisions in Law No. 37 of 2004 concerning Bankruptcy and PKPU, Law No. 19 of 2003 concerning State-Owned Enterprises, Law No. 16 of 2025 concerning the Fourth Amendment to Law No. 19 of 2003 concerning State-Owned Enterprises, and Law No. 6 of 2023 concerning Job Creation. The case approach was used by reviewing Decision Cassation Number 447 K/Pdt.Sus-Pailit/2016 as the main study, and conceptual approach by examining

the principles of justice, legal certainty, and legal doctrines regarding the legal standing of individual creditors and the position of employees as preferred creditors (TERSIANA, 2018). This research is descriptive and analytical in nature, describing and analyzing the application of legal norms in judicial practice. Data was obtained through library research by collecting primary, secondary, and tertiary legal materials relevant to the research problem. The collected data was analyzed qualitatively using the deductive method, which is drawing conclusions from general legal norms to then be applied to concrete cases regarding the position of employees as individual creditors in bankruptcy petitions against state-owned enterprises.

3. Results and Discussion

3.1. The Judge's Considerations Regarding Employee Lawsuits as Individual Creditors in Bankruptcy Petitions against SOEs in Cassation Decision No. 447 K/Pdt.Sus-Pailit/2016

In the case that is the focus of this study, a number of employees filed for bankruptcy against PT Merpati Nusantara Airlines to claim their unfulfilled employment rights, such as unpaid salaries and severance pay. The case was first heard in the Commercial Court and later advanced to the Supreme Court at the cassation level. However, the Supreme Court ultimately rejected the cassation appeal, thereby affirming the decision of the lower court.

Upon further examination, there are two main aspects that influence the court's legal considerations. First, the judges assessed that this case was not solely related to debt but also involved the employment relationship between the employee and the company, so that it was deemed more appropriate to resolve it through the Industrial Relations Court rather than through bankruptcy proceedings. This consideration reflects the judges' caution to avoid overlapping jurisdiction between bankruptcy law and labor law. Second, the judges considered the status of PT Merpati Nusantara Airlines as a state-owned enterprise with a dual function, as both a business entity and a provider of some public functions and therefore deemed it inappropriate be filed for bankruptcy freely like a private company due to the existence of public interests that must be protected. Several related authorities, such as the decision to dissolve or transfer SOE assets, are under the responsibility of the government, particularly the Ministry of Finance as the party representing the state.

The combination of these two factors served as the primary basis for the court's decision to reject the bankruptcy petition submitted by the employees. This illustrates the complexity of the relationship between business law, labor law, and the role of the state in managing SOEs that bear both economic and social responsibilities. Given this dual role, the resolution of legal disputes involving SOEs cannot be approached rigidly or merely by adhering to the letter of the law; it must also take into account their social responsibilities and the broader public interest. Therefore, in assessing the judge's consideration of the bankruptcy petition by employees as individual creditors against PT Merpati Nusantara Airlines (Persero), it is necessary to conduct a review not only from the formal side of the decision, but also from normative, sociological, and systemic aspects, considering that the judge's perspective in cases such as this can affect the

consistency of the application of bankruptcy law and the protection of workers' rights in the future (Safitri & Mediawati, 2024).

Supreme Court Decision Number 447 K/Pdt.Sus-Pailit/2016 reflects the judiciary's cautious attitude in handling bankruptcy petitions against state-owned enterprises, especially when filed by employees demanding employment rights. In this case, the judge emphasized institutional stability and the continuity of public service functions over legal protection of workers' rights. This approach demonstrates a legal interpretation oriented toward broader social interests, but at the same time raises debate because it has the potential to ignore the principles of legality and legal certainty. When the public interest is used as the main basis, concerns arise about unequal legal treatment between SOEs and the private sector (Tarigan, 2024). This condition reveals a tension between the interests of the state and individual justice, especially for workers who are structurally in a weaker position in industrial relations.

From a normative perspective, Article 2 paragraph (1) of the Bankruptcy and PKPU Law provides that any creditor with a due and payable claim has the legal right to file a bankruptcy petition against the debtor. Employees who have not received their wages and severance pay are legally classified as creditors with valid claims, and in some views, they are even recognized as preferred creditors (Arapenta et al., 2024). Therefore, from the perspective of positive law, employees actually qualify as bankruptcy petitioners. When their petition is rejected on the grounds that the settlement should be carried out through the Industrial Relations Court, this has the potential to reduce their constitutional rights as aggrieved parties.

In addition, the assumption that PT Merpati Nusantara Airlines should be protected from bankruptcy proceedings because it performs a public service function needs to be examined more closely. Legally, Merpati has the status of a limited liability company subject to private law, not a public legal entity. The ownership of some of its shares by other parties, such as PT Garuda Indonesia, indicates that its capital structure does not originate entirely from inseparable state assets. Based on the principle of separation of state assets in SOE corporate law, the capital that has been contributed becomes the company's assets, so that Persero should be treated the same as other private entities. Thus, granting SOEs organized as Persero de facto immunity from bankruptcy proceedings, merely because they carry out certain public functions, risks undermining the principles of legal certainty and equality, while also blurring the distinction between the state's role as a regulator and the SOE's role as a business entity. (Nabil, 2023).

From the perspective of worker protection, the Supreme Court's decision in this case also reflects an imbalance between the application of substantive and procedural justice principles. In industrial relations, workers are in a weaker position than employers in terms of economic and structural position, so they should receive stronger legal protection, including access to debt settlement mechanisms as regulated in the bankruptcy law system (Basofi & Fatmawati, 2023). When this access is restricted through overly narrow or rigid legal interpretations, it becomes difficult to achieve the substance of justice, which is the main objective of the law. This condition indicates a shift in focus from the protection of workers' rights to an emphasis on institutional

stability alone, which ultimately weakens the position of workers as legal subjects whose economic and social rights are guaranteed by the state. This approach is also not entirely in line with Law Number 6 of 2023 concerning Job Creation, which in its formulation emphasizes the importance of protecting workers' rights and legal certainty in the field of employment as part of the principle of social justice in national economic development.

Furthermore, the ambiguity in the interpretation of the law regarding the position of state-owned enterprises in the form of Persero in bankruptcy cases has the potential to have a broad impact on the position of individual creditors in the future. The inconsistency of judicial institutions in distinguishing between SOEs that are entirely public (Perum) and those that are commercially oriented (Persero) can create widespread legal uncertainty and affect an unstable business climate. When the boundaries between public and private entities are not consistently defined, creditors, including employees as parties with legitimate financial rights, will lose certainty regarding the access to and protection of the law to which they are entitled. Such a condition can erode public trust in the consistency and integrity of the judiciary, while also weakening the role of bankruptcy law as a mechanism for fair, transparent, and predictable collective debt resolution.

3.2. Judicial Considerations in Bankruptcy Lawsuits Filed by Employees as Individual Creditors against Legal Entities

Normatively, analysis of this case begins with an effort to uphold the balance between the rights of creditors which are guaranteed by the Bankruptcy Law and legal restrictions established when the debtor is a state-owned enterprise. Law No. 37 of 2004 stipulates that every creditor has the authority to file for bankruptcy if there are debts that are due and payable. However, Article 2 paragraph (5) of the law emphasizes that there are exceptions for SOEs that perform functions in the public interest, where the authority to file for bankruptcy against such entities lies with the Minister of Finance (WIBOWO, 2025).

On the other hand, the Law on SOEs and the amendments introduced through Law Number 16 of 2025 provide a clearer distinction between SOEs in the form of Persero and Perum, and regulate in detail the mechanism for managing state assets that are separated as business capital. Therefore, before imposing restrictions on the application of bankruptcy mechanisms, the court must first carefully assess the legal form and ownership structure of the business entity concerned. In addition, Law Number 6 of 2023 concerning Job Creation emphasizes the importance of legal certainty and protection of workers' rights as a form of social justice. This provision indicates that claims for wages and severance pay cannot be disregarded solely on procedural grounds or because the debtor is an SOE.

Thus, when examining bankruptcy petitions filed by employees against state-owned enterprises, judges should not automatically reject them simply because of the status of the company. Instead, the court has an obligation to thoroughly examine the legal facts, including the form of the business entity, its capital structure, and whether the company performs a public service

function. This balanced approach will ensure that the protection of workers as preferred creditors is maintained without neglecting broader public interests, while strengthening the application of the principles of justice and legal certainty in the commercial court system in Indonesia.

Based on a review of the literature and case law, this study has developed several criteria that can serve as guidelines for judges before rejecting bankruptcy petitions filed by employees. First, in the preliminary examination stage, judges need to confirm the legal form of the debtor, whether it is a limited liability company, a public company, or another form, because this is the basis for the application of Article 2 paragraph (5) of the Bankruptcy Law as stipulated in Law Number 16 of 2025 concerning the management and institution of state-owned enterprises. Second, if the debtor claims to perform a public service function, the burden of proof lies entirely with the respondent. Judges need to request objective evidence, such as a public service provision agreement or sectoral provisions that guarantee the continuity of services, rather than relying solely on normative claims. Third, in assessing the condition of inability to pay and the subject matter of the claim, the judge needs to distinguish between employment disputes related to employee status and actual financial claims such as wages or severance pay. For financial obligations, the bankruptcy mechanism is often the most effective way to guarantee payment to preferred creditors, so that the existence of an employment dispute should not negate the right of workers to file for bankruptcy. Fourth, if the bankruptcy process is proven to disrupt important public services, judges can take mitigation measures, such as providing temporary guarantees, joint supervision with relevant authorities, or temporary transfer of services. These criteria emphasize the importance of objective and consistent legal interpretation so that there are no disparities in future decisions.

From the perspective of substantive justice, this study shows that an approach that directs all employee claims to the Industrial Relations Court risks making the restoration of workers' rights less effective. The Industrial Relations Court does have the authority to handle employment status and normative rights issues, but it does not have adequate mechanisms to ensure that workers' financial rights are immediately fulfilled. In contrast, the bankruptcy mechanism has stronger instruments to protect debtor assets and regulate payment priorities (Dirgantara et al., 2025). Therefore, judges should apply a dual approach, whereby employment issues are still resolved in the Industrial Relations Court, while the bankruptcy or PKPU process continues to ensure that debtor assets are secure and the rights of workers as preferred creditors are protected. Legal literature also emphasizes that workers are entitled to priority in the payment of wages and other employment rights, so that the principles of justice and economic recovery for workers should be the main basis for every court decision (Hakim et al., 2025)

To maintain legal certainty and consistency in decisions, judges need clear guidelines in handling bankruptcy cases involving SOEs and workers. The main steps include confirming the legal status of the debtor from the outset, providing objective evidence of public interest claims, and distinguishing between labor disputes that fall under the jurisdiction of the Industrial Relations Court and financial claims that can be processed in the Commercial Court or through PKPU. If

there is a potential disruption to public services, judges can apply temporary protective measures to safeguard assets for the payment of workers' rights. In every bankruptcy process, wage and severance pay claims must still be prioritized as preferential debts in accordance with legal provisions. This approach promotes transparency, consistency, and fairness without neglecting public interest.

4. Conclusion

Based on the analysis, it can be concluded that the judges' considerations in Cassation Decision No. 447 K/Pdt.Sus-Pailit/2016 were not entirely consistent with the provisions of Law No. 19 of 2003 on State-Owned Enterprises and Law No. 37 of 2004 on Bankruptcy and PKPU. The judge rejected the bankruptcy petition filed by employees on the grounds that PT Merpati Nusantara Airlines was considered to be performing a public function, even though legally the company had the status of a limited liability company (Persero) subject to private law and could be declared bankrupt by creditors, including employees. The judge's interpretation that placed state-owned limited liability companies as immune to bankruptcy created legal uncertainty and weakened the protection of workers' rights. The judge should have balanced public interests and the individual rights of creditors by ensuring the legal form, capital structure, and financial obligations of SOEs are objective. By upholding the principles of justice and legal certainty, the court can ensure fair and balanced protection for employees while still acknowledging the public responsibilities undertaken by State-Owned Enterprises (SOEs).

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