Supremasi Hukum: Jurnal Kajian Ilmu Hukum
ISSN: 2723-4207 (e) | 2302-1128 (p)
https://ejournal.uin-suka.ac.id/syariah/Supremasi/
Vol. 15, No. 1, 2026, pp. 27-48, doi: 10.14421/sh.ctp9wt71

The Application of Separate Legal Entity and Distributive Justice in State-Owned Enterprise Bankruptcy: Lessons from Indonesia

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Abstract

The financial bankruptcy of State-Owned Enterprises (SOEs or BUMN in Indonesian term) present an acute doctrinal dilemma in modern economic law: how to reconcile the sovereign protection of public assets with corporate market discipline and creditor justice. This study analyzes the legal standing of PT Merpati Airlines as a subject to bankruptcy and examines the application of insolvency principles in its liquidation case. Employing a doctrinal legal research method through statutory, conceptual, and case approaches, this research operationalizes the theory of justice to scrutinize how bankruptcy regulations and BUMN legal frameworks govern the court's decision concerning PT Merpati Airlines. The findings reveal several key points. First, as a Persero whose capital is divided into shares, PT Merpati Airlines has the legal character of a limited liability company and is therefore subject to bankruptcy proceedings. Second, the declaration of bankruptcy against PT Merpati Airlines in 2022 was based on the separate legal entity doctrine. This doctrine is further confirmed by the enactment of Law No. 16 of 2025 on BUMN, which clarifies the status of BUMN Persero as an independent legal entity. Third, the application of the Pari Passu Pro Rata Parte and separate legal entity principles reflects substantive justice in ensuring that the debtor's assets can be distributed fairly and proportionally among creditors. Theoretically, these findings resolve the doctrinal tension between state asset protection and corporate bankruptcy through distributive justice. Practically, it guides commercial courts, trustees, and policymakers in balancing state financial rules with substantive creditor rights during SOE liquidations.

Keywords: *BUMN Persero; Bankruptcy; PT Merpati Airlines; Separate Legal Entity.*

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Introduction

Globally, the financial distress and insolvency of State-Owned Enterprises (SOEs) present a persistent legal challenge concerning the boundaries between sovereign immunity, public interest mandates, and modern corporate law principles. Across various jurisdictions, courts and legislatures grapple with whether state-backed corporations should be shielded by sovereign asset protection or subjected to standardized market-exit and corporate insolvency mechanisms.

State-Owned Enterprises (in Indonesian is *Badan Usaha Milik Negara*/BUMN) are business entities in which the government holds a majority stake and serve as an important instrument in national economic development.[1] The regulation of BUMN bankruptcy in Indonesia is a complex issue because it must take into account two key aspects: the protection of the public interest and the application of bankruptcy law principles.[2] BUMN take two forms: Limited Liability Companies (Persero) and Public Enterprises (Perum).[3] BUMN are a concrete manifestation of the implementation of Article 33 of the 1945 Constitution of the Republic of Indonesia. BUMN play a strategic role in improving the welfare of the people. In line with the duties of the Indonesian government, the objective of BUMN is to advance the general welfare.[4] The presence of BUMN in Indonesia is not merely to complement the activities of the private sector and Cooperatives; the role of BUMNs goes beyond ordinary companies.[5]

However, the professional management of BUMN has not yet been fully implemented. This cannot be separated from two key issues: corruption and bankruptcy. The regulation of bankruptcy petitions against BUMN in Law No. 37 of 2004 on Bankruptcy and the Suspension of Debt Payment Obligations indicates that the government is aware of the financial fluctuations of BUMN. The implications of bankruptcy can result in the general seizure of all assets belonging to the bankrupt debtor.In this context, bankruptcy can affect legal

[1] Budi Harianto, "Kerugian Negara Diakibatkan Oleh Badan Usaha Milik Negara (BUMN) Sebagai Kerugian Keuangan Negara: Penelitian," *Jurnal Pengabdian Masyarakat Dan Riset Pendidikan* 3, no. 4 (2025): 3899–905, https://doi.org/10.31004/jerkin.v3i4.1184.

[2] Gema Akhmad Muzakir, "Pengaturan Kepailitan BUMN Yang Melayani Kepentingan Umum: Tinjauan Hukum Dan Implementasi," *Jurnal Ilmu Sosial Dan Humaniora* 4, no. 2 (2025): 265–76, https://doi.org/10.57248/jishum.v4i2.635.

[3] Jimmy Simanjuntak, "Pembubaran Badan Usaha Milik Negara Berbentuk Perseroan Terbatas (BUMN Persero): Jimmy Simanjuntak," *Jurnal Hukum To-Ra : Hukum Untuk Mengatur Dan Melindungi Masyarakat* 10, no. 1 (2024): 165–77, https://doi.org/10.55809/tora.v10i1.338.

[4] SH Gunawan Nachrawi, *BUMN Sebagai Usaha Pemerintah Menuju Kesejahteraan Rakyat: Tinjauan Filosofis, Sosiologis, Politis Dan Yuridis* (Bandung; CV Cendekia Press, 2021).

[5] SH Gunawan Nachrawi, *Reinventing BUMN: Pengelolaan BUMN Dalam Perspektif Pasal 33 UUD NRI 1945* (Bandung; CV Cendekia Press, 2021).

entities, such as limited liability companies.[6] However, the issue of bankruptcy becomes more complex when the entity facing bankruptcy is a state-owned limited liability company (BUMN Persero). Although organized as a limited liability company, the legal status of a BUMN Persero is also tied to the legal framework governing state finances and the national treasury. This situation raises questions regarding which legal regime should be applied when a state-owned enterprise (Persero) faces bankruptcy.

This issue is reflected in the regulatory framework for BUMN Persero, which intersects with several legal regimes, namely Law No. 19 of 2003 on State-Owned Enterprises, Law No. 37 of 2004 on Bankruptcy and the Suspension of Debt Payment Obligations, Law No. 40 of 2007 on Limited Liability Companies, Law No. 17 of 2003 on State Finance, and Law No. 1 of 2004 on the State Treasury. The overlap between these various legal regimes has led to different interpretations regarding the status of BUMN Persero when facing bankruptcy. According to Law No. 17 of 2003, a BUMN Persero cannot be declared bankrupt by any party. This provision is reinforced by Article 50(a) of Law No. 1 of 2004 on the State Treasury. This article emphasizes that no party is permitted to seize funds or securities belonging to the state or a region, whether held by a government agency or a third party. This provision contradicts bankruptcy law, which treats the general seizure of a debtor's assets as one of the consequences of bankruptcy. This contradiction raises questions regarding the status of state-owned limited liability companies' assets in bankruptcy proceedings and creates legal uncertainty.

The doctrinal debate regarding the legal status of BUMN Persero in bankruptcy in Indonesia has been marked for decades by a normative clash (disharmony of norms) between the state financial regime and the bankruptcy law regime. Under the old regulatory framework, namely Law No. 19 of 2003 on State-Owned Enterprises, the lack of clarity regarding the boundary between separated state assets and state-owned assets gave rise to interpretations that conflicted with Article 50(a) of Law No. 1 of 2004 on the State Treasury. On the one hand, the state treasury doctrine prohibits the seizure of state-owned property or assets. On the other hand, the bankruptcy legal regime under Law No. 37 of 2004 states that the core essence of bankruptcy is a general seizure of all the debtor's assets. This conflict places BUMN Persero in a problematic dual position: whether they are subject to state immunity from execution or subject to the principles of pure corporate bankruptcy.

[6] Yonathan Aji Pamungkas Dinda Ayu Narassati, *Disparitas Putusan Pengadilan Tentang Permohonan Pailit Dan PKPU Oleh Kreditur Terhadap BUMN (Persero)*, December 19, 2023, https://doi.org/10.5281/ZENODO.10406346.

One case of bankruptcy involving a BUMN Persero in Indonesia that illustrates the complex dynamics between the bankruptcy legal system and the state treasury is that of PT Merpati Nusantara Airlines (Persero). PT Merpati Airlines (Persero) is an Indonesian state-owned enterprise (BUMN) operating in the regional aviation sector. PT Merpati Airlines (Persero) was established in 1962 and has its operational headquarters in Jakarta, where the government owns 96% of its shares.[7] PT Merpati Airlines (Persero) operates both domestic and international flight routes.

PT Merpati Airlines (Persero) is reported to have debts totaling Rp 10.95 trillion. This amount consists of Rp 1.09 trillion in claims from preferred creditors, Rp 5.99 trillion in claims from unsecured creditors, and Rp 3.87 trillion in claims from separate creditors. In 2018, the Panel of Judges at the Surabaya Commercial Court granted a settlement proposal submitted by PT Merpati Airlines (Persero) to its creditors to defer debt payments. The judge stated that PT Merpati Airlines (Persero) owed money to 85 unsecured creditors. The approval of this request prevented PT Merpati Airlines (Persero) from going bankrupt and allowed it to operate again. However, over time, PT Merpati Airlines (Persero) was unable to fulfill its obligations. Finally, on June 7, 2022, the Surabaya Commercial Court ruled that PT Merpati Airlines (Persero) had failed to comply with the Settlement Agreement. The Surabaya Commercial Court declared PT Merpati Airlines (Persero) bankrupt through Decision No. 5/Pdt.Sus-Pembatalan Perdamaian/2O22/PN.Niaga.Sby.[8]

This case highlights the challenges of reconciling provisions regarding state assets with bankruptcy principles when applied to BUMN Persero. A legal analysis of BUMN Persero reveals widespread concern regarding debt, losses, governance, management accountability, the financial standing of BUMN, and the relationship between BUMN and the state. Hidayatulloh and Erdős demonstrate that high BUMN debt is influenced by government mandates, the COVID-19 pandemic, corrupt practices in management, and capital constraints, which subsequently cause BUMN to experience difficulties in meeting their obligations and necessitate a bailout through state equity participation or privatization.[9] Pramono demonstrates that unprofessional management of BUMN Persero can lead to losses and disputes regarding the fulfillment of obligations to creditors, which must subsequently be resolved

[7] Dani Prasetya, "Anggota DPR: Merpati Seharusnya Dilikuidasi," Anggota DPR: Merpati Seharusnya Dilikuidasi, Kontan.co.id, Mei 2011, https://nasional.kontan.co.id/news/anggota-dpr-merpati-seharusnya-dilikuidasi-1.

[8] Putusan Nomor 5/Pdt.Sus-Pembatalan Perdamaian/2O22/PN.Niaga.Sby

[9] Hidayatulloh Hidayatulloh and Ã‰va ErdÅ‘s, "State-Owned Enterpriseâ€™s Debt in the State Financial Regime," *Sriwijaya Law Review*, January 27, 2023, 105–20, https://doi.org/10.28946/slrev.Vol7.Iss1.1843.pp105-120.

through bankruptcy proceedings.[10] Nasution finds that BUMN losses resulting from the negligence and mismanagement of the board of directors raise questions regarding the limits of the board's legal liability.[11] Meanwhile, Swardhana and Monteiro examined financial losses to the state in BUMN that have gone bankrupt, including factors such as unlawful acts or negligence, as well as issues regarding asset recovery and liability for such losses from the perspective of state financial law.[12]

In addition, Waluyo, Tegnan, and Setiowati found a disharmony between state financial regulations and bankruptcy law in the execution of BUMN asset seizures, which has created legal uncertainty regarding the management of BUMN assets in bankruptcy.[13] Noor and Putri pointed out that the overlap between state finances and the finances of BUMN has created issues regarding the liability of the board of directors, particularly when losses resulting from business risks are treated as state losses, even though Law No. 1 of 2025 has explicitly mandated the separation of BUMN finances from state finances.[14] Aprita and Hayatuddin subsequently focus on the distinction between business risks, governance violations, and criminal liability of BUMN through the application of the Business Judgment Rule.[15] Meanwhile, Maulida, Utari, Novita, and Munir discussed the role of BUMN in Indonesia's economic transformation, highlighting issues of efficiency, governance, state intervention, and fiscal vulnerabilities arising from the management of BUMN.[16]

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[10] Heru Pramono, "Legal Protection For Creditors To Ensure The Fulfillment Of State-Owned Enterprises (Persero)'S Liabilities In The Indonesian Legal System," *Prophetic Law Review* 5, no. 2 (2023): 129–56, https://doi.org/10.20885/PLR.vol5.iss2.art1.

[11] Mirza Nasution, "Inconsistency in Legal Liability in Article 9G of Law Number 1 of 2025 Concerning State-Owned Enterprises," *Frontiers in Sociology* 11 (June 2026): 1791433, https://doi.org/10.3389/fsoc.2026.1791433.

[12] Gde Made Swardhana and Seguito Monteiro, "Legal Policy of State Financial Losses Arrangement In A State-Owned Enterprise," *BESTUUR* 11, no. 1 (2023): 171, https://doi.org/10.20961/bestuur.v11i1.61326.

[13] Waluyo Waluyo et al., "Aligning State Finance Regulations with SOE Bankruptcy Policy: Evidence from the United States," *Journal of Human Rights, Culture and Legal System* 5, no. 1 (2025): 246–78, https://doi.org/10.53955/jhcls.v5i1.470.

[14] Hendry Julian Noor and Karina Dwi Nugrahati Putri, "State-Owned Enterprises Law in Indonesia," in *Routledge Handbook of Indonesian Law*, 1st ed., by Simon Butt and Tim Lindsey (Routledge, 2026), https://doi.org/10.4324/9781032709840-48.

[15] Serlika Aprita and Khalisah Hayatuddin, "Business Judgment Rule and Corporate Criminal Liability in Indonesian SOEs: Distinguishing Business Risk from State Loss," *Khazanah Hukum* 8, no. 2 (2026): 320–41, https://doi.org/10.15575/kh.v8i2.54251.

[16] Aldehita Purnasanti Maulida et al., "Navigating Indonesia's Economic Crossroads: The Future of State-Owned Enterprises in a Transforming National Economy," *Indonesian Journal of Advocacy and Legal Services* 8, no. 1 (2026): 415–52, https://doi.org/10.15294/ijals.v8i1.55219.

Several of these studies indicate that research on BUMN Persero has extensively addressed factors leading to financial difficulties and bankruptcy, issues of debt and losses, creditor protection, directors' liability, the lack of harmony between state financial regulations and bankruptcy laws, as well as the boundary between state finances and corporate finances. However, most prior scholarship remains largely diagnostic—identifying the regulatory antinomy between state treasury protection and commercial insolvency without formulating an operational adjudication mechanism to resolve the tension. Consequently, while some studies have affirmed that BUMN are legal entities separate from the state and that BUMN assets originate from segregated state assets, the question of how this principle of separation operates doctrinally when a BUMN Persero is declared bankrupt has not yet been a primary focus of research. This is the unique aspect of this study, which applies the 'Separate Legal Entity' doctrine to analyze PT Merpati Nusantara Airlines (Persero), specifically regarding the legal consequences of the separation of the Persero's legal personality, assets, and liabilities from the state as a shareholder when the Persero is under bankruptcy proceedings.

Based on these issues, this study aims to analyze the legal framework of the status of BUMN Persero as subjects of bankruptcy through a case study of PT Merpati Airlines (Persero), as well as to assess the application of bankruptcy law principles in the ruling that declared Merpati bankrupt. Specifically, it addresses two research questions: (1) How does the separate legal entity doctrine determine the legal standing of BUMN Persero as a bankruptcy subject? and (2) How are core bankruptcy principles applied to achieve distributive justice for creditors?

This article offers a novel perspective by analyzing the bankruptcy case of PT Merpati Airlines (Persero) within the context of legal developments of BUMN, particularly in terms of the relationship between the legal status of a BUMN Persero, the status of its assets, and the application of the principle of general attachment in bankruptcy law, especially following the enactment of Law No. 16 of 2025. This study also contributes to provide vital doctrinal clarity for commercial courts, trustees, and policymakers in balancing state asset governance with substantive creditor justice.

Methodology

This legal research is oriented toward normative legal research, which involves examining legal principles, legal doctrines, and legal rules to address the legal issues encountered.[17] In such normative legal research, scholarly

[17] Robin West, *Toward Normative Jurisprudence* (Cambridge University Press, 2011), https://doi.org/10.1017/CBO9781139043922; Achmad Irwan Hamzani et al.,

literature serves as the primary source. This type of research is also referred to as doctrinal research, in which law is often conceptualized as what is written in statutes (*law in books*). The appropriate use of methodology affects the accuracy of the results, which in turn has a broad impact on society. Therefore, the researcher uses literature as the primary data to analyze the case. This study also employs a literature-based approach, specifically by examining books, statutes, and other documents related to this research.[18]

The data collection technique in this study involves gathering relevant research materials, specifically regarding the legal framework governing BUMN as subjects of bankruptcy with legal certainty in the bankruptcy case of PT Merpati Airlines (Persero), and analyzing whether the judge, in ruling on PT Merpati Airlines (Persero), applied the applicable legal principles.

This study operationalizes a theoretical framework combining the Separate Legal Entity doctrine and Aristotle's Theory of Distributive Justice. The Separate Legal Entity doctrine is employed to assess the legal boundaries between state assets and corporate assets, determining whether PT Merpati Airlines (Persero) is an independent legal entity subject to general bankruptcy attachment under corporate law. Furthermore, Aristotle's theory of distributive justice is applied to examine the court's enforcement of the *Paritas Creditorium* and *Pari Passu Pro Rata Parte* principles, evaluating whether the liquidation of the debtor's estate treats competing creditors with proportional equality based on their claim magnitude and statutory ranking.

Result and Discussion

The Status of BUMN Persero as Legal Entities Subject to Bankruptcy: The Case of PT Merpati Airlines (Persero)

Bankruptcy is not merely a state of insolvency, but rather a legal status declared by a court towards a debtor who is unable to fully repay debts that are due.[19] The issue becomes more complex when the debtor is a BUMN, as

"Implementation Approach in Legal Research," *International Journal of Advances in Applied Sciences* 13, no. 2 (2024): 380, https://doi.org/10.11591/ijaas.v13.i2.pp380-388.

[18] Patricio Masbernat et al., "La Revisión de Literatura y Las Investigaciones En Derecho," *Revista Pedagogía Universitaria y Didáctica Del Derecho* 12, no. 1 (2025): 57–80, https://doi.org/10.5354/0719-5885.2025.77833; Vladimir Rodríguez Cairo et al., "Revisión Sistemática de Literatura Científica Aplicada a La Investigación Jurídica," *Revista Pedagogía Universitaria y Didáctica Del Derecho* 11, no. 1 (2024): 63–91, https://doi.org/10.5354/0719-5885.2024.70653.

[19] Robert E. Sheriff and Masatoshi Hara, "Ways To Avoid Bankruptcies: Aviation Industry In The United States," *INTERNATIONAL Conference on Business, Management, and Economics Engineering Future-BME*, 2025, https://api.semanticscholar.org/CorpusID:277087553; Itok Dwi Kurniawan et al., "Legal Frameworks and Advocacy in Bankruptcy Restructuring: A Comparative Analysis of Financial

the status of a BUMN lies at the intersection of the state's interests as a shareholder, its status as a legal entity, and the application of the bankruptcy legal regime. When a BUMN experiences financial failure, the issue is not only related to the corporation's ability to fulfill its obligations to creditors but also concerns the limits of the legal relationship between the BUMN as a legal entity and the state as the owner of its capital.

Developments in various regulations regarding BUMN indicate that the status of BUMN cannot be treated as a uniform category under bankruptcy law. The legal form of BUMN is significant because legislation distinguishes between BUMN organized as "Persero" and "Perum." This distinction has implications for capital structure, legal status, and the relationship between the assets of the BUMN and the state. The separation of assets has implications for shareholders in terms of limited liability in the event of a loss.[20] Therefore, to determine the status of a BUMN as a subject of bankruptcy law, it is first necessary to determine its legal form and the legal consequences of that form.

Within this framework there is an issue of regulatory alignment. On the one hand, the State Treasury Law prohibits the seizure of money or securities belonging to the state or local governments under certain circumstances. On the other hand, the KPKPU Law establishes bankruptcy mechanisms for certain BUMN. This tension cannot be resolved simply by stating that BUMN are state property, because the first issue that must be determined is whether the assets that are the subject of the legal relationship constitute state assets in the capacity of the state or assets of the BUMN as a separate legal entity.

This issue became concrete in the case of PT Merpati Airlines (Persero). Merpati is a BUMN organized as a "Persero" that was subsequently declared bankrupt through Judgment No. 5/Pdt.Sus-Pembatalan Perdamaian/2022/PN.Niaga.Sby in conjunction with No. 4/Pdt.Sus-PKPU/2018/PN.Niaga.Sby. The case originated from a PKPU procedure that resulted in a settlement agreement between PT Merpati Airlines and its creditors. When the obligations agreed upon in the settlement agreement were not fulfilled, one of the creditors (PT Perusahaan Pengelola Aset (Persero)) filed a petition to annul the settlement, which ultimately led to PT Merpati Airlines being declared bankrupt.

PT Perusahaan Pengelola Aset (PPA) is one of the creditors that has filed a claim with the trustee team; the value of the claim, as verified by the trustee team, is Rp. 982,546,425,914.00. PT Perusahaan Pengelolaan Aset (Persero) proposed a settlement under the following scheme. First, PPA's

Service Authorities in Indonesia and the United States," *Indonesian Journal of Advocacy and Legal Services* 7, no. 1 (2025): 255–90, https://doi.org/10.15294/ijals.v7i1.13909.

[20] Meidy Yanto Sandi et al., "Kekayaan Negara Yang Dipisahkan Dalam Badan Usaha Milik Negara (BUMN) Dalam Bentuk Persero," *Notary Law Journal* 2, no. 3 (2023): 181–202, https://doi.org/10.32801/nolaj.v2i3.45.

(CLF) claim, following agreement on a payment plan, amounts to Rp. 251,536,843,570.00, to be paid in a lump sum in the 15th year, with the principal debt remaining the same as at the time of debt conversion. Second, the PPA (RR) claim, following an agreed payment plan, amounts to Rp. 381,443,598,092.00 under a debt restructuring plan with a 7-year grace period, with payment due in the 8th year.[21] However, Merpati failed to fulfill this obligation. Based on these facts, the Panel of Judges concluded that PT Merpati Airlines (Persero) had failed to fulfill the terms of the settlement agreement. Pursuant to Article 291 in conjunction with Article 170 of Law No. 37 of 2004, the judges annulled the settlement agreement and declared PT Merpati Airlines (Persero) bankrupt with all legal consequences.[22]

Regardless of the concrete basis for the bankruptcy statement, the fundamental legal issue is the status of BUMN Persero as a legal entity subject to bankruptcy proceedings, given that it is widely recognized that BUMN plays an extremely significant role. This issue primarily concerns the restrictions on the parties authorized to file a bankruptcy petition for a BUMN, as regulated in Article 2, paragraph (5) of the Bankruptcy Law. That provision states that if the debtor is a BUMN operating in the public interest, a petition for a declaration of bankruptcy may only be filed by the Minister of Finance. The scope of the entities referred to in Article 2(5) must be determined based on the characteristics of BUMN as defined in that provision. The explanation of Article 2(5) of the KPKPU Law provides the criteria that a BUMN engaged in a public interest sector is one in which the entire capital is owned by the state and is not divided into shares. Thus, there are two characteristics that must be considered in determining the scope of this restriction: ownership of the entire capital by the state and a capital structure that is not divided into shares.

These criteria are important because the BUMN Law distinguishes between two forms of BUMN: "Persero" and "Perum."[23] A Persero is a BUMN organized as a limited liability company (PT) with capital divided in shares, whereas a Perum is a BUMN whose entire capital is owned by the state and is not divided into shares. Thus, the characteristics mentioned in the Explanation of Article 2(5) of the KPKPU Law align more closely with the characteristics of a Perum than with a Persero. This distinction serves as a crucial basis for determining whether the restriction on the authority to file for bankruptcy under Article 2(5) applies to BUMN Persero or only to BUMN that meet the characteristics specified in that provision. On this basis, the issue of authority to file for bankruptcy for BUMN is not appropriately determined

[21] Putusan Nomor 5/Pdt.Sus-Pembatalan Perdamaian/2O22/PN.Niaga.Sby.

[22] Putusan Nomor 5/Pdt.Sus-Pembatalan Perdamaian/2O22/PN.Niaga.Sby.

[23] Rizky Novian Hartono et al., "Kerugian Keuangan Negara Pada Badan Usaha Milik Negara (BUMN) Dalam Perspektif Doktrin Business Judgement Rule," *KELUWIH: Jurnal Sosial Dan Humaniora* 2, no. 1 (2021): 23–33, https://doi.org/10.24123/soshum.v2i1.4392.

solely based on the fact that the capital of the BUMN originates from the state. Consideration must be given to the legal form and capital characteristics of the BUMN in concern. If a BUMN is organized as a "Persero," its capital is divided into shares, and the legal regime for limited liability companies applies to it. Conversely, a BUMN organized as a "Perum" has capital that is not divided into shares. This distinction leads to different consequences regarding the classification of these two forms of BUMN under the bankruptcy regime.

In this context, PT Merpati Airlines (Persero) occupies a different position from BUMN which capital is not divided into shares. As a Persero, Merpati is a legal entity in the form of a limited liability company. Article 11 of the BUMN Law emphasizes that all provisions and principles applicable to limited liability companies, as regulated in the Limited Liability Companies Law, apply to Persero. Therefore, Merpati's status as a BUMN does not negate its legal character as a limited liability company. Rather, this status serves as the basis for determining its standing as a debtor under bankruptcy law.

This interpretation is supported by Supreme Court Judgement No. 075K/PDT.SUS/2007 regarding the bankruptcy of PT Dirgantara Indonesia (Persero). This case law demonstrates that BUMN Persero are classified under the legal framework of limited liability companies. Thus, the state's presence as a shareholder doesn't automatically negate the Persero's status as a legal entity separate from its shareholders. In the context of bankruptcy, this status is crucial because the entity liable to creditors is the Persero legal entity itself, not the state as a shareholder.

Consequently, the status of BUMN Persero as a legal entity subject to bankruptcy proceedings can be determined through a systematic analysis of its legal form, capital structure, and the specific provisions of the Law on KPKPU. BUMN Persero is not equivalent to all other forms of BUMN because Persero has capital divided into shares and is subject to the principles of limited liability company law. In the context of PT Merpati Airlines (Persero), these characteristics classify it as a legal entity that can be a debtor under the bankruptcy regime.

Legal Principles in the Bankruptcy Ruling Against PT Merpati Airlines

When examining and ruling on bankruptcy cases, judges must not only mechanically apply normative provisions but also ground their decisions in the principles that form the legal basis of bankruptcy law and consider factors that may assist in determining the evidence.[24] These principles are essential to ensure that bankruptcy is not merely a mechanism for declaring a debtor

[24] Viqi Anugraha and Adlin Budhiawan, "Prinsip Pembuktian Sederhana Sebagai Syarat Penundaan Kewajiban Pembayaran Hutang," *Journal of Education Research* 4, no. 2 (2023): 742–51, https://doi.org/10.37985/jer.v4i2.201.

bankrupt, but also provides a basis for determining the debtor's legal status, protecting creditors, and liquidating the debtor's assets in an orderly and proportional manner. In the context of PT Merpati Airlines (Persero), the application of these principles holds particular significance because the debtor is a state-owned enterprise (BUMN) organized as a Persero. The issue is not only whether PT Merpati Airlines (Persero) meets the conditions for a bankruptcy ruling to be issued, but also how the principles of bankruptcy law are applied to a legal entity that is institutionally a BUMN and, legally, a limited liability company.

Thus, the principles of bankruptcy law must be interpreted in conjunction with the legal character of a "BUMN Persero" as a legal entity possessing its own assets and separate legal liabilities. Several principles relevant to interpreting the bankruptcy ruling on PT Merpati Airlines (Persero) include the debt principle, the Paritas Creditorium principle, the Pari Passu Pro Rata Parte principle, and the Separate Legal Entity doctrine. Among these principles, the doctrine of the Separate Legal Entity holds a central position because it determines how the status of PT Merpati Airlines (Persero) as a BUMN must be understood in relation to the state, its shareholders, the company's assets, and its creditors.

The first principle is the principle of debt. The principle of debt serves as the starting point in the application of bankruptcy law because bankruptcy is fundamentally aimed at settling a debtor's obligations to its creditors. The existence of debt forms the basis for the legal relationship between debtor and creditor and simultaneously serves as the subject matter that must be resolved through bankruptcy proceedings. Therefore, the status of a business entity as a BUMN does not automatically negate the relevance of the debt principle. If a BUMN Persero has obligations that are past due and enforceable and fails to fulfill them, those obligations remain the company's debts and can serve as the basis for the application of bankruptcy law.

The case of PT Merpati Airlines (Persero) demonstrates that the existence of debt is evidenced not merely by debt-credit relations, but also by obligations arising from a settlement agreement ratified during the PKPU proceedings. The ruling notes that Merpati failed to fulfill its obligations to creditors as agreed in the settlement agreement. The issue is no longer merely about the existence or absence of a creditor-debtor relationship, but rather about the failure of PT Merpati Airlines (Persero) to fulfill obligations that had been agreed upon and legally ratified. PT Merpati Airlines (Persero) acknowledged the existence of these obligations but declared that they were unable to fulfill them due to a deterioration in their financial condition resulting from the *COVID-19* pandemic. This fact becomes an important consideration for the Surabaya Commercial Court in assessing the negligence of the settlement agreement.

The principle of debt in the PT Merpati Airlines (Persero) case thus demonstrates that its status as a state-owned enterprise (BUMN Persero) does not alter the obligation as a legal obligation of the corporation. The debt remains with PT Merpati Airlines (Persero) as the debtor. At this point, the principle of debt intersects with the doctrine of Separate Legal Entity: the obligations forming the basis of the bankruptcy are the obligations of the legal entity PT Merpati Airlines (Persero), not automatically the obligations of the state as a shareholder.

The second principle is *Paritas Creditorium*. This principle states that all of the debtor's assets, whether movable or immovable property, as well as assets currently owned by the debtor and those the debtor will own in the future, are subject to the debtor's settlement of obligations.[25] The *Paritas Creditorium* principle treats the debtor's assets as collateral for the fulfillment of obligations to creditors. This principle implies that debt settlement is not based on individual actions by creditors against the debtor, but rather through a collective mechanism that treats the debtor's assets as the subject of settlement.

The judge's reasoning in passing judgment on PT Merpati Airlines (Persero) reflected the application of the *Paritas Creditorium* principle. The principle that places creditors on an equal footing regarding the fulfillment of their rights to the debtor's assets. Judgment No.: 5.Pdt.Sus-Pembatalan Perdamaian/2O22/PN.Niaga.Sby *Jo.* No.: 4/Pdt.Sus-PKPU/20l8/PN.Niaga.Sby. stated that two creditors (PT Perusahaan Pengelola Aset (Persero) and PT Pandawa Ady Ahza) have equal rights to all of the debtor's assets, as the debtor was proven to be unable to pay its debts and had defaulted on the Settlement Agreement under Judgment Number: 04/Pdt.Sus-PKPU/2018/PN.Niaga.Sby, dated November 14, 2018. The ruling also noted the existence of a number of assets related to the creditors' interests, including 15 Mortgage Certificates, one Fiduciary Security Certificate, and two Collective Share Certificates.[26]

The presence of these creditors demonstrates the function of bankruptcy as a collective mechanism. When PT Merpati Airlines (Persero) failed to fulfill its obligations, the resolution should not have been carried out through individual claims on the debtor's assets, but rather through the bankruptcy mechanism, which places the debtor's assets under a liquidation process in accordance with bankruptcy law. This principle also explains why bankruptcy is necessary as a mechanism to prevent unlawful execution or

[25] Jimmy Simanjuntak, "Pembubaran Badan Usaha Milik Negara Berbentuk Perseroan Terbatas (BUMN PERSERO): Jimmy Simanjuntak," *Jurnal Hukum To-Ra : Hukum Untuk Mengatur Dan Melindungi Masyarakat* 10, no. 1 (2024): 165–77, https://doi.org/10.55809/tora.v10i1.338.

[26] Putusan Nomor: 5.Pdt.Sus-Pembatalan Perdamaian/2O22/PN.Niaga.Sby

individual actions by creditors that could potentially harm the interests of other creditors.

The next principle is *Pari Passu Pro Rata Parte*. The *Pari Passu Pro Rata Parte* principle states that the assets serve as joint collateral for the creditors, and the proceeds must be distributed proportionally among them.[27] The *Pari Passu Pro Rata Parte* principle complements the *Paritas Creditorium* principle. While *Paritas Creditorium* establishes the basis for the equal standing of creditors in collective proceedings, *Pari Passu Pro Rata Parte* states that the results of the settlement of the debtor's assets are distributed proportionally according to the amount of each creditor's claim and their respective legal standing, while still taking into consideration the rights of creditors that are granted certain *priorities by law*. This principle relates to the provisions of Article 1132 of the KUHPerdata regarding the debtor's assets as joint collateral for creditors.

Financial decision-making is increasingly taking place in an increasingly complex and uncertain environment.[28] This principle aims to ensure fairness to creditors through the concept of proportional justice, the creditors with larger claims will receive a larger share of the payments. In the context of the bankruptcy ruling for PT Merpati Airlines (Persero), the judge applied the *Pari Passu Pro Rata Parte* principle.

In the PT Merpati Airlines (Persero) case, the application of this principle must be preceived as a consequence of the general attachment and the liquidation process of the bankrupt estate, not merely as a result of the ruling's disposition determining the payment amount to each creditor. The bankruptcy ruling declared PT Merpati Airlines (Persero) bankrupt with all its legal consequences. Once bankruptcy occurs, the debtor's assets enter the liquidation process and are used to satisfy obligations to creditors in accordance with the amount and legal standing of each. Therefore, improvements are needed to enable the company to address potential risks.[29]

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[27] Johannes M. Schumacher, "Ex-Ante Estate Division under Strong Pareto Efficiency," *Mathematical Social Sciences* 113 (September 2021): 10–24, https://doi.org/10.1016/j.mathsocsci.2021.04.006; Yuhelson and Nur Hakim, "Legal Protection of Secured Creditors in Contemporary Bankruptcy: A Comparative Study of Positive Law and Islamic Law," *MILRev: Metro Islamic Law Review* 4, no. 2 (2025): 1189–214, https://doi.org/10.32332/milrev.v4i2.11518; Giuseppe Ferri, "Il trattamento dei creditori nel concordato tra competenze collettive e interessi individuali," *Osservatorio del diritto civile e commerciale* (IT), no. 2 (2015): 371–86, https://doi.org/10.4478/81755.

[28] Berta Marques and Pablo J. López-Tenorio, "The Central Role of Financial Behavior within Financial Literacy: A Gender-Based Configurational Approach to Understanding Risk Aversion," *European Research on Management and Business Economics* 32, no. 3 (2026): 100326, https://doi.org/10.1016/j.iedeen.2026.100326.

[29] Vivienne Reiner et al., "Can Global Modern Slavery Be Footprinted for Corporate Due Diligence? A Data Review and Analysis," *Journal of Industrial Ecology* 29, no. 4 (2025): 1077–89, https://doi.org/10.1111/jiec.70037.

In a broader context, the application of the *Pari Passu Pro Rata Parte* principle is useful for controlling imbalances in economic power and interests among the parties, which can be a factor that increases the potential for conflict, particularly when there are financial obligations that have become due and remain unpaid.[30] The judge will generally grant a bankruptcy petition if the creditor can present supporting evidence during the hearing, such as debt agreements, *invoices*, demand letters, acknowledgments of debt, and other relevant documents.

The application of the principles of *Paritas Creditorium* and *Pari Passu Pro Rata Parte* in the case of PT Merpati Airlines (Persero) aligns with Aristotle's concept of distributive justice. The *Paritas Creditorium* principle grants creditors equal standing with respect to the debtor's assets. This equality does not imply that every creditor must receive the same amount of payment. Equality in bankruptcy must be viewed within the framework of proportionality, in accordance with this principle, each creditor receives fulfillment of their rights based on the amount of their claim and their legal standing. This interpretation was subsequently refined through the *Pari Passu Pro Rata Parte* principle, which states that the debtor's assets serve as joint collateral and the proceeds from their liquidation are distributed proportionally among the creditors, unless certain creditors are entitled by right of priority.

In the context of the bankruptcy ruling regarding PT Merpati Airlines (Persero), distributive justice is reflected in the legal consequences of the declaration of bankruptcy, in the form of a general attachment of the debtor's assets, which are subsequently used to satisfy obligations to creditors. Distributive justice is a transparent form of justice.[31] Although the panel of judges does not specify in detail the amount each creditor will receive in the ruling, the bankruptcy mechanism places all creditors in a collective settlement process while taking into consideration the amount of their claims and their legal standing. This mechanism essentially prevents any single creditor from receiving unilateral repayment at the expense of other creditors' interests. Bankruptcy serves not only as a mechanism for liquidating the debtor's assets but also as an instrument for creating a more equitable distribution of the bankrupt estate. In accordance with the distributive principle, justice is realized

[30] Sebastian Smart, "Corporate Power, Conflict and Transitional Justice: Addressing Business Human Rights Abuses in the Digital Era," *Business and Human Rights Journal* 10, nos. 2–3 (2025): 318–34, https://doi.org/10.1017/bhj.2025.10027.

[31] Muhammad Rubbani and Zaenul Mahmudi, "Praktik Pembagian Waris 'Bagi Rusa' Perspektif Teori Keadilan Distributif Aristoteles," *Sakina: Journal of Family Studies* 8, no. 2 (2024): 150–63, https://doi.org/10.18860/jfs.v8i2.6697.

when individual rights and freedoms are protected, and people are treated equally.[32]

In accordance with the theory of distributive justice, the application of the debt principle in the PT Merpati Airlines (Persero) case is reflected in the implementation of this principle. The existence of debts that have fallen due and are enforceable serves as an objective basis for the emergence of creditors' rights to the debtor's assets. In that case, the existence of PT Merpati Airlines (Persero)'s debt, the falling due of its obligations, and the failure to fulfill the settlement agreement demonstrated that creditors' rights must be protected by law. The bankruptcy ruling serves as the basis for placing the fulfillment of these rights within a collective mechanism, ensuring that payments are not made based on which party first controls the debtor's assets, but rather according to the provisions and order of priority established under bankruptcy law.

The *Separate Legal Entity* Doctrine in the Bankruptcy of BUMN Persero

The principles of *Paritas Creditorium* and *Pari Passu Pro Rata Parte* serve as important guidelines to be applied by the trustee, who has the authority and responsibility to manage and liquidate the assets of the bankrupt debtor. The application of the debt principle, *Paritas Creditorium,* and *Pari Passu Pro Rata Parte* to PT Merpati Airlines (Persero) ultimately depends on a more fundamental issue: which party is legally considered the debtor, and whose assets constitute the subject of settlement in the bankruptcy proceedings. This issue must be addressed through the doctrine of *Separate Legal Entity* principle, the principle that a corporation is a legal entity separate from its shareholders. PT Merpati Airlines (Persero)'s status as a state-owned enterprise (BUMN) does not negate its legal character as a limited liability company. The BUMN Law classifies a "Persero" as a BUMN organized as a limited liability company. Article 11 of Law No. 19 of 2003 on BUMN states that all provisions and principles applicable to limited liability companies, as set forth in the Limited Liability Companies Act, are applicable to a "Persero."

Therefore, if PT Merpati Airlines (Persero) has debts, the party obligated to settle those debts is PT Merpati Airlines (Persero) as a legal entity, not the state in its capacity as a shareholder. Similarly, when PT Merpati Airlines (Persero) is declared bankrupt, the assets subject to liquidation in principle are the company's assets within the bankruptcy estate, not the entire wealth of the state. This is the point of the "Separate Legal Entity" doctrine, which is crucial

[32] Yosef Keladu, "Kesamaan Proporsional Dan Ketidaksamaan Perlakuan Dalam Teori Keadilan Aristoteles: Proportional Equality and Inequality of Treatment in Aristotle's Theory of Justice," *DISKURSUS - JURNAL FILSAFAT DAN TEOLOGI STF DRIYARKARA* 19, no. 1 (2023): 54–78, https://doi.org/10.36383/diskursus.v19i1.347.

in determining the boundary between the company's assets and those of its shareholders.[33] These consequences also explain why the principles of *Paritas Creditorium* and *Pari Passu Pro Rata Parte* can be applied to the PT Merpati Airlines (Persero) case. Both principles apply to the assets of the bankrupt debtor.

Normative developments following the PT Merpati Airlines (Persero) ruling demonstrate a strengthening of the legal distinction between BUMN and the state. Law No. 16 of 2025 affirms in Article 4B that any profits or losses incurred by BUMN constitute the profits or losses of BUMN itself. This provision reinforces the legal framework that BUMN, as a legal entity, holds a distinct position regarding its assets and liabilities from that of the state as a shareholder. The adverse effects arising from this issue are closely tied to the economy.[34] In the context of bankruptcy, this separation is crucial because it determines which assets are subject to settlement with creditors. Article 62A of Law No. 16 of 2025 also clarifies the possibilities for BUMN assets to be transferred, pledged, or used in joint ventures. Law No. 16 of 2025 is not intended to retroactively assess the validity of the ruling regarding PT Merpati Airlines (BUMN Persero), but rather serves as a legal development that clarifies the normative framework regarding the separation of BUMN assets from those of the state. From this perspective, the "Separate Legal Entity" doctrine becomes increasingly important for understanding why a state-owned enterprise's assets can be used to settle the company's obligations without automatically converting the entire state's assets into bankruptcy estate assets.

The strong application of the *Separate Legal Entity* doctrine is also evident in the distinction between Persero and Perum, which further clarifies this legal framework. A Persero has capital divided into shares, whereas a Perum is a BUMN whose entire capital is owned by the state and is not divided into shares. This distinction in capital structure has implications for how each type of BUMN is treated under the bankruptcy legal regime. The characteristics of a Persero as a corporation whose capital is divided into shares indicate that the state's ownership of a Persero is represented in the form of share ownership. Thus, a distinction must be made between shares owned by the state and the

[33] Noora Alkhalifa and Raed Alnimer, "Balancing Corporate Independence and Accountability: A Critical Analysis of the Separate Legal Entity Principle and Its Implications for Women in Corporate Structures," in *Technological Innovation and Enhancing Decision Processes in Modern Enterprises*, vol. 631, ed. Reem Khamis Hamdan, Studies in Systems, Decision and Control (Springer Nature Switzerland, 2026), https://doi.org/10.1007/978-3-032-04378-8_40.

[34] Elin Jönsson, "Justice from Below: Struggles Against Corporate Misconduct in the National Contact Point System," *Nordic Journal of Criminology* 25, no. 2 (2024): 1–17, https://doi.org/10.18261/njc.25.2.4.

corporate assets that belong to the Persero as a legal entity. This distinction is a key consequence of the *Separate Legal Entity* doctrine.

The increasing application of the *Separate Legal Entity* doctrine aligns with developments in international corporate law, which emphasize a legal framework regarding corporate accountability that has evolved rapidly.[35] The bankruptcy of PT Merpati Airlines (Persero) provides a crucial lesson in resolving the tension between the bankruptcy regime and the state treasury. This case serves as a reminder for corporate governance to enhance compliance and enforcement of regulations in order to address corporate issues at their root causes.[36] Normatively, the status of BUMN should not be treated uniformly; the restriction on bankruptcy petitions by the Minister of Finance (Article 2, paragraph (5) of the KPKPU Law) is substantively more applicable to Perum entities, whereas BUMN whose capital is divided into shares are subject to the pure corporate regime and are not exempt from bankruptcy law.

The application of the *separate legal entity* doctrine and the principles of bankruptcy (*paritas creditorium* and *pari passu pro rata parte*) confirms that when a BUMN Persero fails to fulfill its obligations (such as the annulment of a composition agreement under Article 291 in conjunction with Article 170 of the KPKPU Law), the settlement of debts and the bankruptcy estate (*boedel pailit*) remain solely with the corporate legal entity, not with the state as a shareholder. Finally, the enactment of Law No. 16 of 2025 serves as a normative confirmation that reinforces the separation of the assets of BUMN from those of the state without retroactive effect, in order to ensure legal certainty and distributive justice for creditors.

The findings of this case study offer vital implications for the evolution of global corporate governance and international insolvency norms. In an era where sovereign commercial entities extensively participate in cross-border commerce and finance, enforcing the separate legal entity doctrine in SOE bankruptcy mitigates sovereign-risk asymmetry and reinforces investor confidence. By strictly separating state sovereign assets from corporate estate liabilities, this approach aligns developing-economy SOE governance with international standards established by UNCITRAL and the OECD Guidelines on Corporate Governance of State-Owned Enterprises, ensuring predictable market-exit rules that prevent moral hazards in state-backed commercial entities.

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[35] Klaas Hendrik Eller, "Pricing and Distribution in Global Value Chain Regulation," *Leiden Journal of International Law* 38, no. 3 (2025): 455–76, https://doi.org/10.1017/S0922156524000475.

[36] Ioannis Kampourakis and Lottie Lane, "The Law and Political Economy of Business and Human Rights: From Governance Gaps to Root Causes," *Leiden Journal of International Law* 38, no. 3 (2025): 417–32, https://doi.org/10.1017/S0922156524000517.

The application of the "separate legal entity" doctrine in corporate law must be situated within the framework of bankruptcy principles, particularly "paritas creditorium" and "pari passu pro rata parte," which fundamentally place creditors in a position proportional to the bankruptcy estate. This aligns with the view that law essentially equates to justice that must be achieved.[37] The values of justice demand that there be no excessive dominance by secured creditors that would sacrifice the rights of unsecured creditors.[38]

Conclusion

The normative debate surrounding the bankruptcy of BUMN Persero stems from the tension between the bankruptcy regime and the protection of state assets, where the Minister of Finance's restrictions on filing for bankruptcy are substantially more applicable to state-owned enterprises (Perum) whose capital is not divided into shares. Therefore, the basis for the bankruptcy ruling on PT Merpati Airlines (Persero) through the annulment of the composition agreement (Article 291 in conjunction with Article 170 of the Bankruptcy Law) is assessed as valid and appropriate because its status as a "Persero" is subject to pure corporate law. This case offers an important lesson that the application of the *separate legal entity* doctrine, as well as the principles of bankruptcy (*paritas creditorium* and *pari passu pro rata parte*), establishes a corporation as an independent legal entity whose assets must be liquidated proportionally. The application of these principles in the bankruptcy ruling regarding PT Merpati Airlines (Persero) was reinforced by the enactment of Law No. 16 of 2025, which strengthens the application of the *separate legal entity* doctrine while also serving as a normative confirmation that reinforces the separation of the assets of BUMN Persero from the state.

This study enriches distributive justice in corporate insolvency and offers practical guidance for balancing creditor protection with state finances. Limited by its single-case doctrinal focus, future scholarship should expand toward comparative empirical analyses across other state corporate sectors.

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[37] Afrinald Rizhan, "Konsep Hukum dan Ide Keadilan Berdasarkan Teori Hukum Statis (Nomostatics) Hans Kelsen," Articles, *KODIFIKASI* 2, no. 1 (2020): 61–71, https://ejournal.uniks.ac.id/index.php/KODIFIKASI/article/view/679.

[38] Gilang Fitri Hermawan; Djoni Sumardi Gozali; Saprudin Saprudin, "Rekonstruksi Perlindungan Hukum Kreditur Konkuren Dalam Sistem Kepailitan Indonesia: Telaah Keadilan Distributif Dan Kepastian Hukum," *Al-Adl : Jurnal Hukum*, no. Vol 18, No 1 (2026) (2026): 128–47. https://garuda.kemdiktisaintek.go.id/documents/detail/5984803

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