



# LEX PROGRESSIUM

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## APPLICATION OF DISCRETIONARY AMOUNT OF PKPU MANAGEMENT SERVICE REMUNERATION FOR POOR SOES: A CASE STUDY OF PT DKB (PERSERO)

Article	Abstract
<p><b>Author</b> Redi Setiadi<sup>1</sup>, Evita Isretno Israhadi<sup>2</sup></p> <p>Borobudur University<sup>1</sup>, Borobudur University<sup>2</sup></p> <p><b>Email</b> <a href="mailto:uwa_ganteng@yahoo.com">uwa_ganteng@yahoo.com</a><sup>1</sup>, <a href="mailto:evita_isretno@borobudur.ac.id">evita_isretno@borobudur.ac.id</a><sup>2</sup></p> <p><b>Data</b> Submitted : 01-02-2026 Revised : 01-03-2026 Accepted : 01-04-2026</p>	<p><i>PT DKB is one of the state-owned enterprises engaged in ship construction and repair, which contributes to the national economy. In 2023, PT DKB experienced cash flow difficulties, so it restructured through a Deferral of Debt Payment Obligations (PKPU) with a debt value of IDR 3.7 trillion. The PKPU process ended in peace, PT DKB was required to pay the PKPU Management Service Fee of IDR 18.5 billion and lawyer fees of IDR 1.5 billion. Due to the lack of cash flow, PT DKB made a loan withdrawal to PT Perusahaan Pengelola Aset (PT PPA) to pay these costs. The author formulates problems related to how to implement the Discretion on the amount of PKPU Management Service Reward for Dhuafa SOEs. The results of the study stated that the Implementation of Discretion in the amount of PKPU Management Service Remuneration for Dhuafa SOEs has not been implemented, considering that there is not yet an adequate Discretionary space both in Law Number 19 of 2023 jo. Law Number 16 of 2025 concerning SOEs; Law Number 37 of 2004 concerning Bankruptcy and PKPU; and Permenkumham Number 18 of 2021 concerning Guidelines for Service Rewards for Curators and Administrators.</i></p> <p><b>Keywords:</b> <i>State-Owned Enterprises; Delay of debt payment obligations; Discretion for the Service of PKPU Administrators.</i></p>

### INTRODUCTION

Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution (1945 Constitution) reflect the national economy. In particular, paragraph (2) states that "The branches of production that are important to the state and that control the livelihood of the people are

controlled by the state",<sup>1</sup> while paragraph (3) states that "The earth and water and the natural resources contained therein are controlled by the state and used for the greatest possible prosperity of the people".<sup>2</sup> Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution were implemented with the establishment of State-Owned Enterprises (SOEs).

SOEs carry out state functions in controlling and managing these production branches as stated in Article 33 paragraph (2) of the 1945 Constitution. SOEs also play a role in the implementation of Article 33 paragraph (3) of the 1945 Constitution through the management of natural resources. The role of SOEs in implementing Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution is reflected in Article 2 of Law Number 19 of 2003 concerning State-Owned Enterprises as amended several times, most recently by Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises as amended most recently by Law Number 16 of 2025 (Law Number 19 of 2003), that the objectives of establishing SOEs are as follows:<sup>3</sup>

1. Earn profits.
2. Contributing to the development of the national economy in general and state revenue in particular.
3. To be a pioneer of business activities that have not been implemented by the private sector and cooperatives.
4. Enable, support, and build partnerships with micro, small, medium, cooperative, and community enterprises.
5. As a Persero, it provides and guarantees the availability of high-quality and competitive goods and/or services.
6. As Perum, it ensures the availability of goods and/or services for the public benefit in order to fulfill the lives of many people and for strategic needs.
7. Building strategic industries based on research, innovation, and technology that synergize with other countries.

Article 1 number 1 of Law Number 19 of 2003, states that:<sup>4</sup>

State-Owned Enterprises, hereinafter abbreviated as SOEs, are business entities that meet at least one of the following conditions: a) all or most of its capital is owned by the State of the Republic of Indonesia through direct participation or b) there are Privileges owned by the State of the Republic of Indonesia.

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<sup>1</sup> Republic of Indonesia. Constitution of the Republic of Indonesia in 1945. (Yogyakarta: Terang Sejati, 2024), Article 33, p. 98.

<sup>2</sup> Republic of Indonesia, (Constitution 45) *Loc. Cit.*, Article 33, p. 98.

<sup>3</sup> Republic of Indonesia. Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises. LN Year 2025 Number 25. TLN Number 7097, Article 2, p. 8.

<sup>4</sup> Republic of Indonesia, (Law 1/2025) *Op. Cit.*, Article 1, p. 3.

Therefore, a business entity can be categorized as a state-owned enterprise if it meets the definition as referred to in Article 1 number 1 of Law Number 19 of 2003.

SOEs consist of Persero and Perum,<sup>5</sup> where Persero and Perum have several differences. The most striking difference between Persero and Perum can be seen from the ownership of capital and the purpose of its establishment. Persero is divided into stocks and has the main goal of pursuing profits. As for Perum, all of its capital is owned by the state and is not divided into shares, with the aim of providing goods and/or services for the public benefit in order to fulfill the lives of the people or strategic needs.

PT Dok & Perkapalan Kodja Bahari (Persero) (PT DKB) is one of the SOEs in the form of Persero. PT DKB's shares are owned by the State of the Republic of Indonesia (RI) for 99.995%, and the remaining 0.005 is owned by the Bumi Yamca TNI Navy Foundation. The State of the Republic of Indonesia only owns 1 (one) share of series A Dwiwarna shares in PT DKB. PT DKB is the result of the merger of 4 (four) SOEs in 1990, consisting of PT Dok & Shipping Tanjung Priok (Persero); PT Kodja (Persero); PT Pelita Bahari (Persero); and PT Dok & Galangan Kapal Nusantara (Persero). PT DKB has 3 (three) shipyards in Jakarta (Jakarta I, Jakarta II Shipyard, and Jakarta III Shipyard), and 6 (six) shipyards outside Jakarta (Cirebon Shipyard, Semarang, Palembang, Sabang, Banjarmasin, and Batam).

PT DKB's financial statements in the last 5 (five) years are still experiencing accumulated losses. The Financial Balance of PT DKB has total assets of IDR 2.1 trillion, the amount of unsustainable debt (*unsustained loan*) of IDR 3.7 trillion, so PT DKB has negative equity of IDR 1.6 trillion. This condition indicates that the company is in a sick condition and can be categorized as a "Dhuafa" SOE. Therefore, as of September 30, 2020, based on the Special Power of Attorney (SKK) Number SKK-32/MBU/09/2020, the Minister of SOEs has granted power of attorney to PT Perusahaan Pengelola Aset (Persero) (PT PPA) to manage, coach, and restructure/restructure PT DKB. On the basis of the SKK, PT PPA made various efforts to restructure/restructure PT DKB, one of which was through the Debt Payment Obligation Suspension (PKPU) process.

The PKPU process is carried out by referring to Articles 222 to 294 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Law Number 37 of 2004). In Law Number 37 of 2004 there is no explicit definition of PKPU, but Sutan Remy Sjahdeini stated that "PKPU is an opportunity for the Debtor to restructure its debts,

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<sup>5</sup> Republic of Indonesia, (Law 1/2025) *Op.Cit.*, Chapter 9, p. 34.

which can include the payment of all or part of the debt to the Creditor".<sup>6</sup> Article 222 paragraph (1) states that PKPU can be filed by a Debtor who has more than 1 (one) Creditor or by a Creditor. In this case, PT DKB has more than 100 Creditors, so in principle it is eligible for PT DKB as a Debtor to be able to apply for PKPU. However, the PKPU process of PT DKB was submitted by one of the Creditors.

The PT DKB PKPU process was filed by PT Arya Dipta Gemilang at the Commercial Court at the Central Jakarta District Court, on June 6, 2023.<sup>7</sup> The value of PKPU submissions is IDR 3.7 trillion. Furthermore, the PT DKB PKPU process is carried out through several stages, including:

1. Submission of PKPU application;
2. Preliminary examination by the commercial court;
3. Session of the panel of judges (Provisional PKPU period);
4. Creditor Meetings;
5. A panel of judges (Permanent PKPU period);
6. Creditor Meetings;
7. Peace plan;
8. Session of the Panel of Judges (Decision on the end of PKPU),

carried out within 94 (ninety-four) days, until the decision of the Commercial Court at the Central Jakarta District Court granting the PKPU application submitted by the Creditor (PT Arya Dipta Gemilang) on September 7, 2023.

Based on Article 6 of the Regulation of the Minister of Law and Human Rights Number 18 of 2021 concerning Guidelines for Service Rewards for Curators and Administrators (Permenkumham Number 18 of 2021), it is stated that PKPU Administrators can be given a *fee*, with the following details:<sup>8</sup>

1. At most 7.5% (seven point five percent) of the value of the debt that must be paid in the event that PKPU ends in peace; and
2. At most 5.5% (five point five percent) of the value of the debt that must be paid in the event that PKPU ends without peace.

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<sup>6</sup> Sutan Remy Sjahdeini. *Sejarah, Asas, dan Teori Hukum Kepailitan (Memahami Undang-Undang No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang)*. Cetakan ke-2. (Jakarta: Prenadamedia Group, 2018), p. 413.

<sup>7</sup> -----, *Putusan Nomor 160/Pdt.Sus-PKPU/2023/PN.Niaga.Jkt.Pst.* (Jakarta: Pengadilan Niaga pada Pengadilan Negeri Jakarta Pusat, 2023), p. 1

<sup>8</sup> Republic of Indonesia. Regulation of the Minister of Law and Human Rights Number 18 of 2021 concerning Guidelines for Service Rewards for Curators and Administrators. BN Year 2021 Number 245, Article 6, p. 6.

The PKPU process of PT DKB ended in peace. Furthermore, the PKPU Management proposed a Service Reward to PT DKB of IDR 37 billion, or 1% of the value of PKPU's proposed debt (IDR 3.7 trillion). In this case, PT DKB objected, so it negotiated with the PKPU Management. The results of the negotiations were agreed to be a Service Reward of IDR 18.5 billion, or 0.5% of the value of the debt proposed by PKPU. When compared to the maximum limit according to Permenkumham Number 18 of 2021, this amount is still below the maximum limit of 7.5%, but taking into account the financial condition of PT DKB which is experiencing financial difficulties, the amount of IDR 18.5 billion is still very burdensome. The most ironic thing is that PT DKB has to withdraw loans to be able to pay off the PKPU Management Service Reward. In addition, PT DKB is still burdened by lawyer fees of IDR 1.5 billion.

Paying attention to the regulation of Permenkumham Number 18 of 2021, there is a striking difference between the arrangement of Curatorial Service Remuneration for bankruptcy and the arrangement of Management Service Remuneration for PKPU. The Curator's Service Reward is graded more clearly with a decreasing percentage value, and there is the highest Service Reward limit for debt values above 1 trillion. As for the Management Service Reward, there is no gradation with a decreasing percentage value and there is no highest Service Reward limit. Thus, the author sees that there is a legal vacuum that has an impact on legal uncertainty.

Regarding the existence of a legal vacuum that will have an impact on legal uncertainty in Permenkumham Number 18 of 2021, and referring to Article 22 of Law Number 30 of 2014 concerning Government Administration (Law Number 30 of 2014), there is an opportunity for discretion by authorized government officials. In addition, considering that SOEs are an extension of the state's hand in prospering the community, the *going concern* / sustainability of SOEs with restructuring through PKPU must receive attention. One form of concern is by providing partiality to SOEs through regulations that provide PKPU fee waivers, especially for "Dhuafa" SOEs.

Related to the above problems, the author is interested in analyzing and describing the Application of Discretionary Amount of Management Service Remuneration in the Suspension of Debt Payment Obligations for Dhuafa State-Owned Enterprises (Case Study at PT Dok & Perkapalan Kodja Bahari (Persero)).

## **RESEARCH METHODS**

The type of research used is normative legal research, which places law as a system of norms that includes principles, norms, rules from laws and regulations, court decisions, agreements, and doctrines (teachings). The research approach uses a statutory approach (*statue*

*approach*), which is carried out by examining all laws and regulations related to the legal issues being handled, with secondary data sources (primary, secondary, and tertiary legal materials). The research technique used is a documentary study that examines documents, both related to laws and regulations and existing documents, as well as qualitative analysis techniques, which do not use numbers, but provide descriptions (descriptions) in words of findings.

## RESULTS OF RESEARCH AND DISCUSSION

Discretion is basically given by authorized officials and is included in the realm of public law. In the context of this thesis research, the discretion in question is in order to fill the legal void related to the regulation of the amount of Management Service Rewards in PKPU for Dhuafa SOEs. This legal vacuum means that there is no rule on this matter.

In implementing the implementation of the Discretionary amount of PKPU Management Service Reward for Dhuafa SOEs, the author has several ideas, taking into account the time period and risks of its implementation. In general, *the author's mind mapping*<sup>9</sup> can be shown in Table 9 below:

Table 1. Alternatives to Exercise Discretion

	Low Risk		Medium Risk	High Risk
Can be done right now	<p><b>-I-</b></p> <ul style="list-style-type: none"> <li>- Law No. 19/2003, Law No. 37/2004, and Permenkumham No. 18/2021 exist;</li> <li>- Letter of recommendation from the Minister of SOEs.</li> </ul>	Short Term (n.d. 1 yr)	<p><b>-II-</b></p> <ul style="list-style-type: none"> <li>- Revision of Permenkumham No. 18/2021;</li> <li>- Include provisions for <b>discretionary</b> abilities to provide exceptions for Dhuafa SOEs.</li> </ul>	<p><b>-III-</b></p> <ul style="list-style-type: none"> <li>- Revision of Permenkumham No. 18/2021;</li> <li>- Include exemption <b>provisions</b> for Dhuafa SOEs.</li> </ul>
		Long-Term (above 1 yr)	<p><b>-IV-</b></p> <ul style="list-style-type: none"> <li>- Revision of Law No. 19/2003, and Law No. 37/2004;</li> <li>- Include provisions for <b>discretionary</b> abilities to provide special treatment/exceptions for Dhuafa SOEs.</li> </ul>	<p><b>-V-</b></p> <ul style="list-style-type: none"> <li>- Revision of Law No. 19/2003, and Law No. 37/2004;</li> <li>- Include <b>provisions</b> for special treatment/exceptions for Dhuafa SOEs.</li> </ul>

Source: Data Processed by the Author, 2025

Based on Table 1 on Alternative Discretionary Implementation, 5 (five) quadrants are obtained which are the author's ideas, all of which adapt and/or accelerate laws and regulations. The laws and regulations in question include Law Number 19 of 2003, Law Number 37 of 2004, and Permenkumham Number 18 of 2021. Specifically, the regulation of each law and regulation

<sup>9</sup> *Mind mapping* is an information visualization technique that uses diagrams/tables to organize and connect ideas. This mind map helps in understanding, problem-solving, and learning by mapping information from one main concept to another.

that allows for provisions related to Discretion and/or special treatment/exceptions for Dhuafa SOEs, can be conveyed as follows:

Article 73 of Law Number 19 of 2003 is stated as follows:<sup>10</sup>

#### Article 73

- (1) Restructuring with the intention of restructuring as intended in Article 72 paragraph (1) letter c and for rescue as intended in Article 72 paragraph (1) letter d, is carried out through:
  - a. mergers, mergers, acquisitions, and separations;
  - b. transfer of shares;
  - c. issuance of new shares taken by the Shares by SOEs; and/or
  - d. other mechanisms.
- (2) Restructuring as intended in paragraph (1) is carried out while still paying attention to the interests of SOEs, shareholders, employees, and the community.

Article 234 of Law Number 37 of 2004 is stated as follows:<sup>11</sup>

#### Article 234

- (1) The Board appointed as referred to in Article 225 paragraph (2) must be independent and have no conflict of interest with the Debtor or Creditor.
- (2) The management as referred to in paragraph (1) who is proven not to be independent is subject to criminal and/or civil sanctions in accordance with laws and regulations.
- (3) Those who can become administrators as referred to in paragraph (1), are:
  - a. an individual domiciled in the territory of the Republic of Indonesia, who has special skills needed in order to manage the debtor's assets; and
  - b. Registered with the Ministry whose scope of duties and responsibilities in the field of law and laws and regulations.
- (4) The Management is responsible for his mistakes or negligence in carrying out management duties that cause losses to the Debtor's property.
- (5) The amount of the Administrator's service reward is determined by the court based on the guidelines set by the minister whose scope of duties and responsibilities in the field of law and laws and regulations after the delay of debt payment obligations ends and must be paid first from the debtor's assets.

Article 6 of Permenkumham Number 18 of 2021 is stated as follows:<sup>12</sup>

#### Article 6

- (1) The Service Reward for the Management is paid based on the agreement between the Debtor and the Management and determined by the panel of judges.
- (2) The Service Reward as intended in paragraph (1) is charged to the Debtor, the amount of which is calculated from the value of the debt that must be paid.
- (3) The determination of the Service Reward as intended in paragraph (1) also takes into account the opinion of the Creditor.
- (4) In the event that there is no agreement as intended in paragraph (1), the Service Reward for the Management is determined by the panel of judges with the following provisions:

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<sup>10</sup> Republic of Indonesia. (UU 1/2025), *Op.Cit.*, Article 73, p. 74.

<sup>11</sup> Republic of Indonesia. Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. LN Year 2004 Number 131. TLN Number 4443. (Yogyakarta: Anak Hebat Indonesia, 2024), Article 234, p. 116.

<sup>12</sup> Republic of Indonesia. (Permenkumham 18/2021), *Op.Cit.*, Article 6, p. 6.

- a. at most 7.5% (seven point five percent) of the value of the debt that must be paid in the event that PKPU ends in peace; and
- b. at most 5.5% (five point five percent) of the value of the debt that must be paid in the event that PKPU ends without peace.

As for the explanation and analysis of each quadrant, it can be conveyed as follows:

## 1. Quadrant I

Quadrant I is an idea that has low risk and there is no *delay time* in the implementation of the Discretion. Parties interested in providing special treatment/exceptions for Dhuafa SOEs, in this case the Ministry of SOEs, can directly adapt the provisions of existing laws and regulations. Provisions that can be directly adapted include the restructuring provisions in Article 73 of Law Number 19 of 2003, the provisions for determining the amount of PKPU Management Service Compensation in Article 234 of Law Number 37 of 2004, and the provision for PKPU Management Service Compensation in Article 6 of Permenkumham Number 18 of 2021.

Regarding the provisions of Article 73, Article 234, and Article 6 of the above laws and regulations, there is no need to revise it by including the provisions of discretionary abilities or including provisions for special treatment/exceptions for Dhuafa SOEs. The Ministry of SOEs, in this case, only needs to issue a "magic letter" in the form of a letter of recommendation from the Minister of SOEs, which essentially requests that Dhuafa SOEs be given special treatment/exemptions to the provisions on the amount of reward for PKPU Management Services. The letter of the Minister of SOEs was addressed to the Minister of Law and Human Rights (who has now changed its nomenclature to the Minister of Law), by being forwarded to the PKPU Management and the Commercial Court at the District Court, where the PKPU process of the Dhufa SOEs is being heard.

The special treatment/exception provisions for the amount of PKPU Management Services for Dhuafa SOEs, proposed by the author can be in the form of:

- a. Imposition of tariffs/amount of PKPU Management Services up to 0% (zero percent) or Rp0 (zero rupiah); and/or
- b. The PKPU Management Service Reward is borne by the state.

The imposition of "tariff/amount up to 0% (zero percent) or Rp0 (zero rupiah)" is a matter commonly applied as a form of special treatment/exception. The most common application is related to the imposition of tariffs/amounts of taxes/non-tax state revenues (PNPB) to

SOEs in the *holding*<sup>13</sup> process and *spin-off process*,<sup>14</sup> where there is a transfer of assets between business entities.

The author realizes that the idea of special treatment/exemption of the amount of PKPU Management Services for Dhuafa SOEs will cause *research*<sup>15</sup> from related parties. *Resistance* will come from the PKPU Management, supervisory judges, and the panel of commercial court judges, because it will reduce or eliminate the service rewards that should be received. *Resistance* will also come from the Ministry of Finance because it will be burdened to bear the cost of PKPU Management Services for Dhuafa SOEs.

Regardless of the risk of *resistance* that will arise, the author argues that the idea in Quadrant I is the most feasible to be done. This is considering that it does not require the revision of Law Number 19 of 2003, Law Number 37 of 2004, and Permenkumham Number 18 of 2021, which involve many related ministries/institutions and requires a short time. The time span and control of the issuance of the recommendation letter of the Minister of SOEs is *controllable* within the Ministry of SOEs.

## 2. Quadrant II

Quadrant II is an idea that has a medium risk with a period of less than 1 (one) year in the implementation of the Discretionary Implementation. Related parties to provide exceptions for Dhuafa SOEs, in this case the Minister of Law and Human Rights (which has currently changed its nomenclature to the Minister of Law), can directly accelerate the provisions of existing laws and regulations. The provisions that can be directly accelerated are the provisions for the Remuneration for the Services of PKPU Administrators in **Article 6** of Permenkumham Number 18 of 2021.

Regarding the provisions of Article 6 of Permenkumham Number 18 of 2021, it is necessary to revise it by including the provisions of Discretionary abilities to provide exceptions for Dhuafa SOEs. The revision of the provisions of Article 6 is carried out by adding 1 (one) new article, namely Article 6A, so that there is *a linearity*<sup>16</sup> between Article

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<sup>13</sup> *SOE Holding* is an organizational structure in which several SOEs are consolidated under one holding company. This holding company controls subsidiaries through majority shareholding, and aims to create synergies, increase efficiency, and strengthen the competitiveness of SOEs.

<sup>14</sup> *A SOE spin-off* is the separation of a part of a business unit or subsidiary from a SOE into a new independent entity. In this process, the parent company/state-owned company usually retains a portion of the shareholding in the new entity or distributes it to existing shareholders.

<sup>15</sup> *Resistance* is the attitude of rejecting, resisting, or opposing something. In different contexts, resistance can refer to resistance to change, pressure, or command.

<sup>16</sup> *Linearity* in the context of data analysis or research, refers to the nature of the relationship between independent (free) and dependent (bound) variables in a model.

6 and Article 6A. The amendment to Permenkumham Number 18 of 2021 in full, is as follows:

#### Article 6

- (1) The Service Reward for the Management is paid based on the agreement between the Debtor and the Management and determined by the panel of judges.
- (2) The Service Reward as intended in paragraph (1) is charged to the Debtor, the amount of which is calculated from the value of the debt that must be paid.
- (3) The determination of the Service Reward as intended in paragraph (1) also takes into account the opinion of the Creditor.
- (4) In the event that there is no agreement as intended in paragraph (1), the Service Reward for the Management is determined by the panel of judges with the following provisions:
  - a. at most 7.5% (seven point five percent) of the value of the debt that must be paid in the event that PKPU ends in peace; and
  - b. at most 5.5% (five point five percent) of the value of the debt that must be paid in the event that PKPU ends without peace.

#### Article 6A (new article)

- (1) The Minister of Law and Human Rights **may** provide an exemption related to the amount of remuneration for the services of the Management as intended in Article 6, for Debtors who are state-owned enterprises that do not have financial capabilities.
- (2) The exception as intended in paragraph (1) is proposed by the minister who has authority in the field of development of state-owned enterprises.

Technically, the proposed revision of Permenkumham Number 18 of 2021 can be proposed by the Ministry of SOEs to the Ministry of Law and Human Rights. This is considering that there is an interest of the Ministry of SOEs to be able to provide an exemption for the amount of PKPU Management Services for Dhuafa SOEs. Furthermore, the process of discussing the revision of Permenkumham Number 18 of 2021 will involve the Ministry of Law and Human Rights and will include the Ministry of SOEs.

The author is aware that the idea of revising Permenkumham Number 18 of 2021 by including the provisions of the Discretionary Ability to provide exceptions for Dhuafa SOEs, will cause *resistance* from related parties. *Resistance* will come from the Ministry of Law and Human Rights, because the Ministry of SOEs will "interfere" in the internal arrangements of the Ministry of Law and Human Rights which is the full authority of the Ministry of Law and Human Rights. *Resistance* will also come from other business entities that feel they are being treated discriminatory.

Apart from the risk of *resistance* that will arise, the author argues that the idea in Quadrant II is an alternative to medium risk, with resistance parties that are more controlled, but benefit in the form of the ability of Discretion to provide exceptions for Dhuafa SOEs. In addition, the revision of Permenkumham Number 18 of 2021 has a not too long time

span, and a more controllable control span because it only involves 1 (one) ministry, namely the Ministry of Law and Human Rights.

### 3. Quadrant III

Quadrant III is an idea that has a high risk with a period of less than 1 (one) year in the implementation of the Discretionary Application. Related parties to provide exceptions for Dhuafa SOEs, in this case the Minister of Law and Human Rights, can directly accelerate the provisions of existing laws and regulations. The provisions that can be directly accelerated are the provisions for the Remuneration for the Services of PKPU Administrators in **Article 6** of Permenkumham Number 18 of 2021.

Regarding the provisions of Article 6 of Permenkumham Number 18 of 2021, it is necessary to revise it by including exemption provisions for Dhuafa SOEs. The revision of the provisions of Article 6 is carried out by adding 1 (one) new article, namely Article 6A, so that there is *a linearity* between Article 6 and Article 6A. The amendment to Permenkumham Number 18 of 2021 in full, is as follows:

#### Article 6

- (1) The Service Reward for the Management is paid based on the agreement between the Debtor and the Management and determined by the panel of judges.
- (2) The Service Reward as intended in paragraph (1) is charged to the Debtor, the amount of which is calculated from the value of the debt that must be paid.
- (3) The determination of the Service Reward as intended in paragraph (1) also takes into account the opinion of the Creditor.
- (4) In the event that there is no agreement as intended in paragraph (1), the Service Reward for the Management is determined by the panel of judges with the following provisions:
  - a. at most 7.5% (seven point five percent) of the value of the debt that must be paid in the event that PKPU ends in peace; and
  - b. at most 5.5% (five point five percent) of the value of the debt that must be paid in the event that PKPU ends without peace.

#### Article 6A (new article)

- (1) The Regulation of Management Services Remuneration as intended in Article 6, is exempt for Debtors who are state-owned enterprises that do not have financial capabilities.
- (2) The exception as intended in paragraph (1) is proposed by the minister who has authority in the field of development of state-owned enterprises.

Technically, the proposed revision of Permenkumham Number 18 of 2021 can be proposed by the Ministry of SOEs to the Ministry of Law and Human Rights. This is considering that there is an interest of the Ministry of SOEs to be able to provide an exemption for the amount of PKPU Management Services for Dhuafa SOEs. Furthermore,

the process of discussing the revision of Permenkumham Number 18 of 2021 will involve the Ministry of Law and Human Rights and will include the Ministry of SOEs.

The author is aware that the idea of revising Permenkumham Number 18 of 2021 by including exemption provisions for Dhuafa SOEs will cause *resistance* from related parties. *Resistance* will come from the Ministry of Law and Human Rights, because the Ministry of SOEs will "interfere" in the internal arrangements of the Ministry of Law and Human Rights which is the full authority of the Ministry of Law and Human Rights. *Resistance* will also come from other business entities that feel they are being treated discriminatory.

Regardless of the risk *of resistance* that will arise, the author argues that the idea in Quadrant III is an alternative with high risk, but with a more controlled resistance party, with the benefit of having a clearer exemption provision for Dhuafa SOEs. In addition, the revision of Permenkumham Number 18 of 2021 has a not too long time span, and a more controllable control span because it only involves 1 (one) ministry, namely the Ministry of Law and Human Rights.

There are similarities between Quadrant II and Quadrant III, namely in terms of the proposed revision of the laws and regulations, namely Permenkumham Number 18 of 2021, the time span is less than 1 (one) year, the range of control involves the Ministry of Law and Human Rights. As for the difference, Quadrant II is more moderate because the substance proposed to be revised is in the form of the ability of Discretion to provide exemptions for Dhuafa SOEs, while Quadrant III is more extreme because it proposes exemption provisions for Dhuafa SOEs.

#### **4. Quadrant IV**

Quadrant IV is an idea that has a medium risk with a period of more than 1 (one) year in the implementation of the implementation of Discretion. There are many ministries/institutions related to provide special treatment/exceptions for Dhuafa SOEs, including the Ministry of SOEs, the Ministry of Finance, the Supreme Court, the Ministry of Law and Human Rights, and the Ministry of State Secretariat. Systematic and massive coordination is needed to be able to accelerate the provisions of existing laws and regulations. The provisions of these laws and regulations include the provisions for restructuring in Article 73 of Law Number 19 of 2003 and the provisions for determining the amount of PKPU Management Service Remuneration in Article 234 of Law Number 37 of 2004.

Regarding the provisions of Article 73 of Law Number 19 of 2003 and Article 234 of Law Number 37 of 2004, it is necessary to revise it by including the provisions of Discretionary abilities to provide special treatment/exceptions for Dhuafa SOEs. The revision of the provisions of Article 73 is carried out by adding 2 (two) new paragraphs, namely paragraph (3) and paragraph (4), while the revision of the provisions of Article 234 is carried out by adding 2 (two) new paragraphs, namely paragraph (6) and paragraph (7). The amendments to Article 73 of Law Number 19 of 2003 and Article 234 of Law Number 37 of 2004 are as follows:

Article 73 of Law Number 19 of 2003 is amended as follows:

Article 73

- (1) Restructuring with the intention of restructuring as intended in Article 72 paragraph (1) letter c and for rescue as intended in Article 72 paragraph (1) letter d, is carried out through:
  - a. mergers, mergers, acquisitions, and separations;
  - b. transfer of shares;
  - c. issuance of new shares taken by the Shares by SOEs; and/or
  - d. other mechanisms.
- (2) Restructuring as intended in paragraph (1) is carried out while still paying attention to the interests of SOEs, shareholders, employees, and the community.

(2 new verses)

- (3) The Minister **can** expand the meaning of other mechanisms as referred to in paragraph (1) letter d, by giving special treatment to SOEs.
- (4) Special treatment as referred to in paragraph (3) includes through restructuring fee waivers through other mechanisms.

Article 234 of Law Number 37 of 2004 is amended as follows:

Article 234

- (1) The Board appointed as referred to in Article 225 paragraph (2) must be independent and have no conflict of interest with the Debtor or Creditor.
- (2) The management as referred to in paragraph (1) who is proven not to be independent is subject to criminal and/or civil sanctions in accordance with laws and regulations.
- (3) Those who can become administrators as referred to in paragraph (1), are:
  - a. an individual domiciled in the territory of the Republic of Indonesia, who has special skills needed in order to manage the debtor's assets; and
  - b. Registered with the Ministry whose scope of duties and responsibilities in the field of law and laws and regulations.
- (4) The Management is responsible for his mistakes or negligence in carrying out management duties that cause losses to the Debtor's property.
- (5) The amount of the Administrator's service reward is determined by the court based on the guidelines set by the minister whose scope of duties and responsibilities in the field of law and laws and regulations after the delay of debt payment obligations ends and must be paid first from the debtor's assets.

(2 new verses)

- (6) The Minister whose scope of duties and responsibilities in the field of law and laws **and regulations may** provide exceptions related to the amount of remuneration for the Management's services as intended in paragraph (5), for Debtors who are state-owned enterprises that do not have financial capacity.
- (7) The exception as intended in paragraph (6) is proposed by the minister whose scope of duties and responsibilities are in the field of development of state-owned enterprises.

Technically, the proposal for Law Number 19 of 2003 can be proposed in the form of an application for an initiative permit by the Ministry of SOEs to the President through the Ministry of State Secretariat. The proposal for Law Number 37 of 2004 can be proposed in the form of an application for an initiative permit by the Ministry of Law and Human Rights to the President through the Ministry of State Secretariat. This is considering that the Ministry of SOEs is the initiator of Law Number 19 of 2003, and the Ministry of Law and Human Rights is the initiator of Law Number 37 of 2004.

Furthermore, the process of discussing the revision of Law Number 19 of 2003 and Law Number 37 of 2004 will involve the Ministry of SOEs, the Ministry of Finance, the Supreme Court, the Ministry of Law and Human Rights, and the Ministry of State Secretariat, as well as other ministries/institutions that are considered necessary to be involved. The discussion will go through the Inter-Ministerial Discussion (PAK) process stage at the Ministry of Originators, the harmonization process at the Ministry of Law and Human Rights, and the rounding process at the Ministry of State Secretariat.

The author realizes that the idea of revising Law Number 19 of 2003 and Law Number 37 of 2004 by including provisions on the ability of Discretion to provide special treatment/exceptions for Dhuafa SOEs, will cause *resistance* from related parties. *Resistance* will come from the Ministry of Finance, the Supreme Court, the Ministry of Law and Human Rights, and the Ministry of State Secretariat. *Resistance* will also come from other business entities that feel they are being treated discriminatory.

Apart from the risk of *resistance* that will arise, the author argues that the idea in Quadrant IV is an alternative to medium risk, with many resistance parties that are *uncontrollable*, but benefit in the form of the ability of Discretion to provide special treatment/exceptions for Dhuafa SOEs. However, it should be noted that the revision of Law Number 19 of 2003 and Law Number 37 of 2004 has a long time span, and a range of control that cannot be controlled because it involves many ministries/institutions.

## 5. Quadrant V

Quadrant V is an idea that has a high risk with a period of more than 1 (one) year in the implementation of the Discretion. The author calls Quadrant V a *high-risk high-return*

*quadrant*.<sup>17</sup> This is because there are many ministries/institutions involved and it takes a long time to be able to fight for the provision of special treatment/exemptions for Dhuafa SOEs. However, if successful, Dhuafa SOEs will benefit in the form of special treatment/exceptions with *a stronger* legal standing.

The related ministries/institutions include the Ministry of SOEs, the Ministry of Finance, the Supreme Court, the Ministry of Law and Human Rights, and the Ministry of State Secretariat. Systematic and massive coordination is needed to be able to accelerate the provisions of existing laws and regulations. The provisions of these laws and regulations include the provisions for restructuring in Article 73 of Law Number 19 of 2003 and the provisions for determining the amount of PKPU Management Service Remuneration in Article 234 of Law Number 37 of 2004.

Regarding the provisions of Article 73 of Law Number 19 of 2003 and Article 234 of Law Number 37 of 2004, it is necessary to revise it by including provisions for the provision of special treatment/exceptions for Poor SOEs. The revision of the provisions of Article 73 is carried out by adding 2 (two) new paragraphs, namely paragraph (3) and paragraph (4), while the revision of the provisions of Article 234 is carried out by adding 2 (two) new paragraphs, namely paragraph (6) and paragraph (7). The amendments to Article 73 of Law Number 19 of 2003 and Article 234 of Law Number 37 of 2004 are as follows:

Article 73 of Law Number 19 of 2003 is amended as follows:

Article 73

- (1) Restructuring with the intention of restructuring as intended in Article 72 paragraph (1) letter c and for rescue as intended in Article 72 paragraph (1) letter d, is carried out through:
    - a. mergers, mergers, acquisitions, and separations;
    - b. transfer of shares;
    - c. issuance of new shares taken by the Shares by SOEs; and/or
    - d. other mechanisms.
  - (2) Restructuring as intended in paragraph (1) is carried out while still paying attention to the interests of SOEs, shareholders, employees, and the community.
- (2 new verses)
- (3) In the event that the Restructuring as intended in paragraph (1) is carried out through the process of postponing debt payment obligations, SOEs receive special treatment.
  - (4) Special treatment as referred to in paragraph (3) includes waiving administrators' fees, postponement of debt payment obligations.

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<sup>17</sup> *High risk, high return* is a term that the author borrows from the principle in investment which states that the higher the risk taken in an investment, the greater the potential profit (*return*) that can be obtained, and vice versa. So, there is a positive correlation between risk and return, where high profit potential usually goes hand in hand with high potential loss as well.

Article 234 of Law Number 37 of 2004 is amended as follows:

Article 234

- (1) The Board appointed as referred to in Article 225 paragraph (2) must be independent and have no conflict of interest with the Debtor or Creditor.
- (2) The management as referred to in paragraph (1) who is proven not to be independent is subject to criminal and/or civil sanctions in accordance with laws and regulations.
- (3) Those who can become administrators as referred to in paragraph (1), are:
  - a. an individual domiciled in the territory of the Republic of Indonesia, who has special skills needed in order to manage the debtor's assets; and
  - b. Registered with the Ministry whose scope of duties and responsibilities in the field of law and laws and regulations.
- (4) The Management is responsible for his mistakes or negligence in carrying out management duties that cause losses to the Debtor's property.
- (5) The amount of the Administrator's service reward is determined by the court based on the guidelines set by the minister whose scope of duties and responsibilities in the field of law and laws and regulations after the delay of debt payment obligations ends and must be paid first from the debtor's assets.

(2 new verses)

- (6) The amount of remuneration for the Management's services as intended in paragraph (5) is excluded for Debtors who are state-owned enterprises that do not have financial capabilities.
- (7) The exception as intended in paragraph (6) is proposed by the minister whose scope of duties and responsibilities are in the field of development of state-owned enterprises.

Technically, the proposal for Law Number 19 of 2003 can be proposed in the form of an application for an initiative permit by the Ministry of SOEs to the President through the Ministry of State Secretariat. The proposal for Law Number 37 of 2004 can be proposed in the form of an application for an initiative permit by the Ministry of Law and Human Rights to the President through the Ministry of State Secretariat. This is considering that the Ministry of SOEs is the initiator of Law Number 19 of 2003, and the Ministry of Law and Human Rights is the initiator of Law Number 37 of 2004.

Furthermore, the process of discussing the revision of Law Number 19 of 2003 and Law Number 37 of 2004 will involve the Ministry of SOEs, the Ministry of Finance, the Supreme Court, the Ministry of Law and Human Rights, and the Ministry of State Secretariat, as well as other ministries/institutions that are considered necessary to be involved. The discussion will go through the Inter-Ministerial Discussion (PAK) process stage at the Ministry of Originators, the harmonization process at the Ministry of Law and Human Rights, and the rounding process at the Ministry of State Secretariat.

The author is aware that the idea of revising Law Number 19 of 2003 and Law Number 37 of 2004 by including provisions for providing special treatment/exceptions for Dhuafa SOEs, will cause *research* from related parties. *Resistance* will come from the Ministry of Finance, the Supreme Court, the Ministry of Law and Human Rights, and the Ministry of State Secretariat. *Resistance* will also come from other business entities that feel they are being treated discriminatory.

Regardless of the risk *of resistance* that will arise, the author argues that the idea in Quadrant V is an alternative with high risk, with many resistance parties that *are uncontrollable*, but benefits in the form of providing special treatment/exceptions for Dhuafa SOEs. However, it should be noted that the revision of Law Number 19 of 2003 and Law Number 37 of 2004 has a long time span, and a range of control that cannot be controlled because it involves many ministries/institutions.

There are similarities between Quadrant IV and Quadrant V, namely in terms of the laws and regulations proposed to be revised, namely Law Number 19 of 2003 and Law Number 37 of 2004, the time span is more than 1 (one) year, and involves many ministries. As for the differences, Quadrant IV is more moderate where the substance proposed to be revised is in the form of the ability of Discretion to provide special treatment/exceptions for Dhuafa SOEs, while Quadrant V is more extreme because it proposes provisions for providing special treatment/exceptions for Dhuafa SOEs.

## **CONCLUSION**

The implementation of the Discretionary Discretion on the amount of PKPU Management Service Remuneration for Dhuafa SOEs has not been implemented, considering that there is no adequate Discretion space in Law Number 19 of 2023 concerning SOEs; Law Number 37 of 2004 concerning Bankruptcy and PKPU; and Permenkumham Number 18 of 2021 concerning Guidelines for Service Rewards for Curators and Administrators.

## **ADVICE**

The Author's suggestion to the Government, especially the Ministry of SOEs, the Ministry of Finance, the Supreme Court, the Ministry of Law and Human Rights, and the Ministry of State Secretariat regarding the implementation of the Discretionary amount of PKPU Management Service Reward for Dhuafa SOEs, namely by proposing to revise Law Number 19 of 2023, Law Number 37 of 2004, and Permenkumham Number 18 of 2021.

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