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Legal Protection for Third Parties Acquiring Rights in the Management of State Receivables

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Abstract

The government has made various efforts to maximize state revenue, one of which is through issuing Government Regulation No. 28 of 2022 regarding the Management of State Receivables by the State Receivables Committee (Government Regulation 28/2022). According to this regulation, third parties who acquire rights from a debtor or debt guarantor can be held responsible for settling the debt, regardless of the reason. These rights can be seized and auctioned by the state, and the third party can face civil sanctions, travel bans, or even imprisonment. This research aims to examine the legal protection for third parties acquiring rights in the management of state receivables under Government Regulation 28/2022. The research uses a normative method with a descriptive approach. The findings indicate that protection for third parties remains limited due to unclear and vague provisions in Government Regulation 28/2022. This lack of clarity can lead to the abuse of authority by the state, potentially harming third parties acting in good faith. This study is expected to provide insights into the relevance of the regulation and offer recommendations to strengthen legal protections for third parties acquiring rights.

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Introduction

Government Regulation Number 28 of 2022 on the Management of State Receivables by the State Receivables Affairs Committee (Government Regulation 28/2022), issued on August 31, 2022, is one of the implementing regulations of Law Number 49 Prp. of 1960 on the State Receivables Affairs Committee (UU PUPN).

On the Article 1, paragraph (1) of Government Regulation 28/2022 states:

“State Receivables refer to a sum of money that must be paid to the state or other public legal entities, for which the state holds the right to collect, based on laws and regulations, agreements, or other causes”.

Government Regulation 28/2022 defines the parties related to the obligation of state receivables payment. Article 1, paragraph (4) states that the debtor refers to an entity and/or individual who is indebted based on regulations, agreements, or any other cause. Furthermore, paragraph (5) defines the guarantor as an entity and/or individual who guarantees the settlement of part or all of the debtor's obligations. Meanwhile, paragraph (6) defines the “Party Acquiring Rights” as an entity or individual who, due

to an act, legal relationship, and/or legal event, has received a transfer of ownership of money, securities, and/or goods from the debtor or guarantor.

Article 4 paragraph (3) Government Regulation 28/2022 stipulates that if the debtor as referred to in paragraph (1) or the guarantor as referred to in paragraph (2) fails to fulfill their obligations or can no longer be located, the debt may be collected from the Party Acquiring Rights, including family members related by blood in the ascending, descending, or collateral line up to the second degree; and/or from the spouse.

Thus, Government Regulation 28/2022 grants broad authority to the State Receivables Affairs Committee (PUPN) as the state's representative to collect debt repayment not only from the debtor or guarantor but also from third parties acquiring rights. These third parties may include family members of the debtor or guarantor related by blood in the ascending, descending, or collateral line up to the second degree; and/or the spouse, as well as other parties who have acquired rights from the debtor or guarantor.

Hamdan Zoelva, Chief Justice of the Constitutional Court for the 2013–2015 period, stated in a discussion titled *"Disharmony & Overlapping of a Government Regulation"*—organized by the Central Executive Board Ferari (Federation of Advocates of the Republic of Indonesia) in Jakarta on Monday, August 21, 2023—that Government Regulation 28/2022 violates the principle of due process of law, which requires legal proceedings to be conducted fairly and in accordance with established rules. This violation poses a risk of legal uncertainty, as law enforcement officials may act based on their own interpretations, creating opportunities for abuse of power. The regulation allows debt collection from shareholders, directors, commissioners, family members, heirs, and other parties who acquire rights from the debtor or guarantor, significantly increasing the likelihood of disputes and resistance from affected parties. Moreover, third parties held liable for debt repayment may face civil sanctions, including ineligibility for bank credit, inability to open bank accounts, restrictions on establishing or managing companies, denial of public services, refusal of building permits (IMB), driver's license (SIM) restrictions, and more severe penalties such as travel bans and coercive detention. Additionally, Article 77 of Government Regulation

28/2022 explicitly prohibits debtors, guarantors, or any party acquiring rights from pursuing any legal remedies—whether in court or through alternative dispute resolution—regarding the validity of state receivables that must be settled.¹

A similar opinion to Hamdan Zoelva was also expressed by several legal experts and academics, including Dewi Cahyandari, an Administrative Law Expert from the Faculty of Law, Brawijaya University, Malang, and Sumali, a former Ad Hoc Corruption Court Judge and lecturer at the Faculty of Law, Muhammadiyah University, Malang. In a public discussion forum themed “*Protection of Citizens’ Rights from State Arbitrariness: Examining the Legal Construction of Government Regulation No. 28 of 2022*,” they argued that, from a legal perspective, Government Regulation No. 28/2022 is legally flawed—both formally and materially—requiring revision by the government. Several articles in Government Regulation 28/2022, including Article 1 on “parties acquiring rights” and the qualifications of “debtors,” contradict the Government Regulation in Lieu of Law No. 49 of 1960 on the State Receivables Affairs Committee (UU PUPN), the Civil Code (KUH Perdata), and Law No. 39 of 1999 on Human Rights (UU HAM). This regulation has significant consequences, including potential harm to heirs of debtors and other good-faith right holders. The state may even revoke civil rights such as ID cards (KTP), driver’s licenses (SIM), and passports. Thus, emphasizing human rights protection should be a priority, yet this regulation lowers the standard of human rights protection.² Similarly, legal expert and former Constitutional Court judge, I Gede Palaguna, stated that Government Regulation 28/2022 deserves a judicial review, as it contradicts the principles of justice.³

Article 1 paragraph (1) of Government Regulation 28/2022 stipulates that state receivables encompass all financial obligations that must be fulfilled by individuals,

¹ Roy Carlos Fajarta, ‘Mantan Hakim MK: PP Nomor 28 Tahun 2022 Tentang Piutang Negara Langgar Due Process Of Law’ *SINDOnews.com* (Jakarta, 21 August 2023) 1 <<https://nasional.sindonews.com/read/1181151/13/mantan-hakim-mk-pp-nomor-28-tahun-2022-tentang-piutang-negara-langgar-due-process-of-law-1692594521>>.

² Agus Yuwono, ‘Pengamat Dan Akademisi Tegaskan Pp Nomor 28 Tahun 2022 Sangat Layak Untuk Di Uji Materi’ *radaramalang.com* (Malang, 21 August 2023) 1 <<https://radaramalang.jawapos.com/pendidikan/812755045/diskusi-publik-akademisi-malang-analisis-pp-28-2022-dari-perspektif-hukum>>.

³ Ronaldus Nampu, ‘Mantan Hakim MK Dewa Palaguna Nilai PP Nomor 28-2022 Perlu Uji Materi’ *bali.antaraneews.com* (Denpasar, 18 August 2023) 1 <<https://bali.antaraneews.com/berita/322989/mantan-hakim-mk-dewa-palaguna-nilai-pp-nomor-28-2022-perlu-uji-materi>>.

legal entities, or other parties to the state, which holds the right to collect them. The process of managing state receivables involves several parties, including:

- a. The state as the creditor or the holder of the collection rights, which includes the Central Government, Regional Governments, ministries, and other public legal entities categorized as state financial managers;
- b. The debtor, as the party owing the debt, which may be an individual or a legal entity;
- c. The guarantor, as the party guaranteeing the debtor's payment, which may take the form of a personal guarantee (*Borgtocht*) or a corporate guarantee;
- d. Other parties who have acquired rights from the debtor or guarantor;
- e. The State Receivables Affairs Committee (PUPN) as the government's representative in the state receivables collection process, with its vertical agency, the State Asset and Auction Service Office (KPKNL), serving as the technical executor.

The definition of a party who has acquired rights, as stated in Article 1 point 6 of Government Regulation 28/2022, states:

"A party who has acquired rights refers to an individual or legal entity that has received a transfer of ownership from the debtor or guarantor due to an act, legal relationship, or legal event".

In response to the assessment that dozens of articles in Government Regulation No. 28/2022 are considered problematic and contradictory to higher-level legislation, including the phrase "party who has acquired rights" in Article 1 point (6), on September 5, 2023, the Central Executive Board of the Federation of Advocates of the Republic of Indonesia (DPP Ferari) filed a judicial review with the Supreme Court, which was registered under Case No. 40 P/HUM/2023. However, in its decision on January 9, 2024, the Supreme Court rejected the petition based on various considerations.

Specifically regarding the phrase "party who has acquired rights," the Court stated that this phrase is closely related to the phrase "has received a transfer," meaning that the primary responsibility remains with the debtor. However, since there has been a transfer of assets such as money, land, buildings, securities, or other goods from the debtor to the "party who has acquired rights," that party now holds limited liability for what has been transferred. If the "party who has acquired rights" acts in bad faith by refusing to return the assets or conspires with the debtor to conceal them, they may be subject to sanctions under applicable laws.

The Court concluded that this phrase is not contradictory but aligns with existing regulations, including the Law on State Receivables Affairs Committee (UU

PUPN), Law No. 1 of 2004 on State Treasury, and Government Regulation No. 38 of 2016 on Procedures for Claims for State/Regional Losses Against Non-Treasurer State Officials or Other Officials. It must be understood in the context of asset transfers or concealment by the debtor or guarantor without violating contractual principles under the Civil Code.⁴

The judicial consideration ruling did not address the potential legal issues arising from the regulation, as it failed to mitigate the risk of subjective interpretation and abuse of authority by the state. The urgency of legal protection for third parties who acquire rights is a crucial aspect in ensuring justice and legal certainty throughout the state receivables management process.

Third parties, such as individuals or legal entities receiving the transfer of receivables rights from the debtor, are entitled to clarity regarding their legal position in the state's debt collection process. Without adequate legal protection, third parties may face uncertainty in exercising or utilizing their rights and obligations and become vulnerable to potentially harmful actions, such as asset seizure or auctioning by the state without prior legal proceedings in court.

This study focuses on legal protection issues for third parties who acquire rights in the management of state receivables under Government Regulation 28/2022. The objective of this research is to analyze how legal protection is granted to third parties who acquire rights based on Government Regulation 28/2022. Through this analysis, the study seeks to identify existing weaknesses and propose recommendations for normative improvements, with the hope of enhancing protection for third parties who acquire rights. This, in turn, is expected to ensure that the management of state receivables is conducted more fairly, transparently, and efficiently.

To date, there has been no research that specifically discusses the legal protection of third parties acquiring rights in the process of managing state receivables. The closest study on this topic was conducted by Amselnius Siregar and his colleagues in October 2023, titled *"Theoretical Review of Normative Antinomy Between Government Regulations and*

⁴ Mahkamah Agung RI, 'Salinan Putusan Perkara Uji Materil No. 40 P/HUM/2023, Tanggal 09 Januari 2024' (2023).

Laws Related to the Management of State Receivables." Their study concluded that in the formulation of Government Regulation 28/2022, the government violated the principle of legality in a legal state, as the regulation exhibits normative antinomy with several higher-ranking laws. Consequently, parties who feel aggrieved should be able to file a judicial review against this regulation.⁵

Moreover, existing literature tends to focus more on the mechanisms and effectiveness of state receivables management processes carried out by the Directorate General of State Assets of the Ministry of Finance. This results in a gap in understanding how the rights of third parties who acquire rights should be protected in the practice of managing state receivables. Therefore, an analysis specifically highlighting the legal relationships and legal protections for third parties under the provisions of Government Regulation 28/2022 is necessary. This study aims to fill that gap and is expected to make a significant contribution to the development of legal literature in the practice of state receivables management.

Research Method

This study uses a normative juridical research method, focusing on examining legal aspects related to the legal protection of third parties who acquire rights in the management of state receivables under Government Regulation 28/2022. Statutory approach and a conceptual approach are used in this research; the statutory approach is used to analyze relevant laws and regulations, particularly Government Regulation 28/2022 and the State Receivables Law (UU PUPN), while the conceptual approach is employed to map out relevant legal concepts to construct legal arguments by examining the underlying legal principles related to the research subject. Through these approaches, a legal framework is established to address the legal issues concerning the protection of third parties acquiring rights in the management of state receivables.

The data collection technique used in this study is a literature review, which involves searching for and analyzing legal literature, jurisprudence, and other relevant laws and regulations as primary data sources to provide an in-depth understanding of

⁵ Amselnius Siregar and others, 'The 6th Conference on Innovation and Application of Science and Technology' (CIASTECH 2023).

the issue under investigation. This technique yields secondary data that can effectively address the research problem.

The secondary data used in this research comprise information from previous research, documents, and literature produced by other parties, such as books, papers, and other available documents. These data are categorized into two types of legal materials: primary and secondary legal materials. Primary legal materials are derived from laws and regulations directly related to the research topic, while secondary legal materials include references from books, papers, articles, and other sources accessible online.

A qualitative analysis model is applied in this research based on data collection, analysis, and interpretation in a narrative form to gain a deeper understanding of the research problem.

Legal Protection Theory

In Article 1, Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is stated that Indonesia is a state based on the rule of law, Every aspect of national and state activities must be grounded in clear legal foundations to ensure legal certainty and protection. It is the state's duty to guarantee that every citizen has the right to legal certainty and protection.^{6,7}

The primary element of a rule-of-law state is the guarantee of legal protection. The state must ensure and strive to protect the legal rights of its citizens.⁸ The presence of law in society serves to regulate and harmonize various interests in social life. Legal protection refers to efforts to safeguard legal subjects through various legal instruments, both preventive and repressive, in written and unwritten forms.⁹ This

⁶ Dicky Fauzi Ahmad, 'Transformasi Birokrasi Mempermudah Perizinan Usaha Dengan Online Single Submission (OSS)' (2024) 1 *Jurnal Globalisasi Hukum* 155 <<https://doi.org/10.25105/jgh.v1i1.19850>>.

⁷ Helena Sumiati and Bagio Kadaryanto, 'Kepastian Hukum Sertifikat Hak Milik Atas Tanah Dalam Hukum Pertanahan Indonesia' (2021) 7 *Yustisia Merdeka* 10 <<http://yustisia.unmermadiun.ac.id/index.php/yustisia>>.

⁸ Jonathan Elkana and Soritua Aruan, 'Perlindungan Data Pribadi Ditinjau Dari Teori Perlindungan Hukum Dan Teori Perlindungan Hak Atas Privasi' (2024) 1 *Jurnal Globalisasi Hukum* 1 <<https://doi.org/10.25105/jgh.v1i1.19499>>.

⁹ Aida Nur Hasanah and others, 'Perlindungan Hukum Bagi Kreditur Pada Gugatan Actio Pauliana' (2023) IX *POLITICA: Jurnal Hukum Tata Negara dan Politik Islam* 26 <<https://journal.iainlangsa.ac.id/index.php/politica/article/view/4574>>.

reflects the function of law, which encompasses the concepts of justice, order, certainty, and utility. Generally, legal protection is provided to legal subjects when they are involved in a legal event.¹⁰

The elements of legal protection according to Siagian (2020) are:¹¹

1. Protection from the government to the society;
2. Assurance of legal certainty from the government;
3. Close relation to citizen's rights;
4. Firm sanctions for legal violations.

According to Rahardjo, the main goal of law is to ensure justice for all members of society. The Government's obligation is to provide comprehensive legal regulations and ensure their proper implementation. In conclusion, the existence of law is to maintain balance and order in society.¹² To protect rights and interests of one group, it is often necessary to limit the rights and interests of another. This means that the law must act as a mediator in conflicts of interest. In other words, the law holds the highest authority in determining which interests should take precedence and how social life should be regulated.

The law must also anticipate and prevent future problems and also as the function to adapt to existing changes. It also plays a crucial role in protecting those who are vulnerable and lack significant power.¹³

On the other hand, Hadjon divided the legal protection into preventive protection, which aims to prevent rights violations, and repressive protection, which provides solutions after a violation has occurred.¹⁴ According to Hadjon, two types of legal protection are; *First*, Preventive legal protection, which aims to prevent legal violations. This form of protection is generally outlined in legislation that establishes boundaries and guidelines for society. Its purpose is to prevent legal issues from

¹⁰ Farahwati, 'Hakekat Hukum Untuk Mewujudkan Aspek Hukum Yang Berkeadilan' (2019) 4 Hakekat hukum untuk mewujudkan aspek hukum yang berkeadilan 1 <<http://ejurnal.untag-smd.ac.id/index.php/LG/article/view/4422>>.

¹¹ Rikha Y. Siagian, 'Unsur-Unsur Perlindungan Hukum' *www.hukumonline.com* (Jakarta, 12 August 2023) 1 <<https://www.hukumonline.com/berita/a/perlindungan-hukum-lt61a8a59ce8062/?page=all>>.

¹² Satjipto Rahardjo, *Ilmu Hukum* (PT Citra Aditya Bakti 2014).

¹³ Annisa Justisia Tirtakoesoemah and Muhammad Rusli Arafat, 'Penerapan Teori Perlindungan Hukum Terhadap Hak Cipta Atas Penyiaran' (2019) 18 Pena Justisia: Media Komunikasi dan Kajian Hukum 4.

¹⁴ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia (Edisi Khusus)* (Peradaban 2007).

arising, requiring the government to exercise caution in decision-making. *Second*, Repressive legal protection, which is provided after a legal violation has occurred. Sanctions such as fines or imprisonment are imposed as consequences of the violation. This form of protection aims to resolve disputes arising from legal violations and is typically handled by the courts.¹⁵

To fulfilling the fundamental rights of society, the study of legal protection theory becomes highly relevant in the context. Specifically this theory analyzes the legal framework designed to safeguard the interests of individuals or groups in vulnerable positions, whether economically or legally disadvantaged.¹⁶

State Debt Management Process

In the context of national financial administration, the management of state debt has a complex and strategic dimension. This complexity arises from the financial benefits of state debt, both in terms of nominal value and other related interests.¹⁷ The state debt management not only impacts financial aspects but is also closely linked to broader national development objectives.¹⁸

According to the State Receivables Affairs Committee Law (UU PUPN), the State Receivables Affairs Committee (PUPN) is responsible for managing state receivables that have been entrusted to it by central or regional government agencies, institutions, or entities that are directly or indirectly controlled by the state.¹⁹ The committee that is responsible for managing state receivables originating from government institutions or state-controlled entities is the State Receivables Affairs Committee (PUPN) as an inter-agency. The membership composition of PUPN includes representatives from the

¹⁵ Ibid, 4.

¹⁶ Yuyut Prayuti and Dede Husen, 'Perlindungan Hukum Terhadap Konsumen Produk Elektronik Berlabel SNI Menurut UU Perlindungan Konsumen', vol 1 (2018) <http://www.bsn.go.id/main/sni/isi_sni/24>.

¹⁷ Wilna Nur, 'Tinjauan Atas Pelaksanaan Optimalisasi Piutang Negara Dengan Mekanisme Crash Program Di KPKNL Makasar' (2022).

¹⁸ Ambo Jonathan Live Gultom, Benny Riyanto and Moch Djais, 'Penyelesaian Piutang Negara Di Wilayah Hukum Kantor Pelayanan Kekayaan Negara Dan Lelang Semarang' (2016) 5 Diponegoro Law Review I 5 <<https://ejournal3.undip.ac.id/index.php/dlr/article/view/11304>>.

¹⁹ Muhamad Arifianto, 'Kewenangan Panitia Urusan Piutang Negara Ditinjau Dari Teori Sistem Hukum' (2023) 1 Jurnal Hukum, Politik dan Ilmu Sosial 198 <<https://doi.org/10.55606/jhpis.v1i1.1748>>.

Ministry of Finance, the National Police, the Attorney General's Office of the Republic of Indonesia, and regional government bodies.²⁰

Except in circumstances when the Minister of Finance has issued a special policy stressing the need of PUPN's presence in a particular province, PUPN consists of a central committee based in Jakarta and branch committees in the provinces. The Directorate General of State Assets (DJKN), as a first-echelon unit within the Ministry of Finance, is responsible for formulating and implementing policies related to state receivables as stated in Minister of Finance Regulation No. 102 of 2017. This directorate is led by the Director General of State Assets and operates through regional offices and the State Assets and Auction Service Office (KPKNL) as the executing entity, which is accountable to the regional office.²¹

PUPN is responsible for managing state receivables originating from government institutions and state-controlled enterprises. Before the Constitutional Court Decision No. 77/PUU-IX/2011, issued on September 25, 2012, PUPN had the authority to receive and manage state receivables handed over by state-owned banks (BUMN/D). Since such receivables are no longer considered as state receivables that PUPN needs to handle following this Constitutional Court ruling, PUPN no longer has the obligation to handle or monitor receivables or installment payments from credit issued by state-owned banks (BUMN/D).²² These include receivables from state-owned banks which are no longer categorized as state receivables, meaning their resolution must follow civil lawsuit mechanisms rather than the state receivables management mechanism under PUPN.²³

State receivables managed by PUPN and handled by KPKNL as its vertical operational agency are non-performing state receivables, which must be legally certain in terms of existence

²⁰ Setyo Budi Pramono, 'Ekspektasi Peran Aktif Anggota PUPN Dalam Penyelesaian Pengurusan Piutang Negar' *www.djkn.kemenkeu.go.id* (Jakarta, 15 February 2021) 1 <www.djkn.kemenkeu.go.id/kpknlbontang/baca-artikel/13693/Ekspektasi-Peran-Aktif-Anggota-PUPN-Dalam-Penyelesaian-Pengurusan-Piutang-Negara>.

²¹ Wijanarko Gatot, 'Tanggung Jawab Kantor Pelayanan Kekayaan Negara Dan Lelang Samarinda Thdp Penyelesaian Piutang Macet Tanpa Jaminan' (2020) *Jurnal Ilmu Hukum* 8 <<http://ejurnal.untag-smd.ac.id/index.php/DD/article/view/4663>>.

²² Muhammad Yusni, 'Implikasi Putusan Mahkamah Konstitusi Nomor 77/PUU-IX/2011 Yang Menghapus Kewenangan Panitia Urusan Piutang Negara (PUPN) Terhadap Mekanisme Penyelesaian Utang Piutang Pada Bank BUMN/BUMD' (2022) 3 *SOSEK* 1 <<http://jurnal.bundamedia grup.co.id/index.php/sosek>>.

²³ Pandoman Agus, *Hukum Piutang Negara* (Estri Novita ed, 2015).

and amount. Therefore, a thorough examination must be conducted beforehand, including verifying the amount of non-performing receivables, the physical condition of collateral, and the debtor's or guarantor's assets. Before transferring receivables to KPKNL, the relevant government institution or state entity must first attempt to collect the debt at least three times. If these collection efforts fail, only then can the receivables be classified as non-performing receivables and transferred to KPKNL. The entities authorized to transfer receivables include government institutions, Public Service Agencies (BLU), Regional Public Service Agencies (BLUD), State Institutions, State Commissions, and other legal entities established under statutory regulations. In general, the state receivables management process consists of administration, collection by ministries/institutions, management by PUPN, and settlement.²⁴

One of the sources of state receivables from obligors and debtors involved in the Bank Indonesia Liquidity Assistance (BLBI) program that the government is actively pursuing is receivables. The BLBI case originated from the 1997-1998 monetary crisis, which forced the government to provide liquidity assistance to banks on the verge of bankruptcy. However, this assistance was misused by the banks and related parties, causing hundreds of trillions in state losses. The government has taken various measures to resolve this issue, with the latest initiative being the establishment of the BLBI Task Force (Satgas BLBI) through Presidential Decree No. 6 of 2021. This task force is responsible for recovering and reclaiming state assets that were misappropriated. In conducting its duties, The BLBI Task Force collaborates with various agencies, including the Ministry of Finance, the Attorney General's Office, and the National Police, to track, seize, and manage assets related to the BLBI case.²⁵ The BLBI Task Force, whose term is set to end in December 2024, is expected to be replaced by a special committee for BLBI debt recovery.²⁶

²⁴ Wijanarko Gatot, 'Tanggung Jawab Kantor Pelayanan Kekayaan Negara Dan Lelang Samarinda Thdp Penyelesaian Piutang Macet Tanpa Jaminan' (2019) 5 *Journal Of Law* 3 <<http://ejurnal.untag-smd.ac.id/index.php/DD/article/view/4663>>.

²⁵ Maulana; Sulthan and Anita Zulfiani, 'Analisis Efektivitas Perampasan Aset Dalam Kasus Bantuan Likuidasi Bank' [2024] *ResearchGate* 5 <<https://www.researchgate.net/publication/381637099%0AAalisis>>.

²⁶ *IdnTimes*, 'Satgas BLBI Bakal Diganti Jadi Komite Khusus, Dirjen KN: Masih Proses!' *www.idntimes.com* (Jakarta, 8 October 2024) 1 <<https://www.idntimes.com/business/economy/triyan-pangastuti/satgas-blbi-bakal-diganti-jadi-komite-khusus-dirjen-kn-masih-proses>>.

As a next step to support the resolution of the BLBI case after the establishment of the BLBI Task Force (Satgas BLBI), the issuance of Government Regulation No. 28 of 2022 has strengthened the role and function of PUPN through. This regulation expands PUPN's authority in the debt collection process from obligors or debtors by introducing civil sanctions and public service suspension as enforcement measures to ensure that obligors, debtors, or other related parties fulfill their obligations to the state. PUPN now has a stronger legal foundation to take firm action against BLBI obligors who are still in arrears, which is expected to accelerate the recovery of state funds, with the implementation of Government Regulation 28/2022.²⁷ However, challenges in the recovery of state receivables from BLBI funds always remain. One of the challenges is the existence of legal disputes during the debt collection process carried out by the BLBI Task Force (Satgas BLBI) and PUPN.²⁸

PUPN is authorized to manage state receivables after the receivables are classified as non-performing, with a definite amount that has not been successfully collected, as stated in the PUPN Law and Government Regulation No. 28/2022. In carrying out its duties it has the following authorities:²⁹

1. Issuing a Receipt Letter, a Rejection Letter for State Receivables administration, or a Return Letter for State Receivables administration;
2. Creating a Joint Statement regarding the amount of debt with the debtor. The Joint Statement has the same enforceability as a civil court ruling, bearing the phrase, "In the name of Justice Based on the Almighty God";
3. Issuing a Decree on the Determination of State Receivables (PJPN) and/or a Notice of Correction or Change in the Amount of State Receivables;
4. Issuing an Enforcement Letter, which has the same enforceability as a civil court ruling with the phrase, "In the name of Justice Based on the Almighty God";
5. Issuing an Order of Seizure, Request for Equivalent Seizure, Order for Seizure Appointment, Order for Sale of Seized Goods, Approval Letter, and/or Rejection Letter for sale without auction;
6. Determining the auction limit value, the sale value without auction, or the redemption

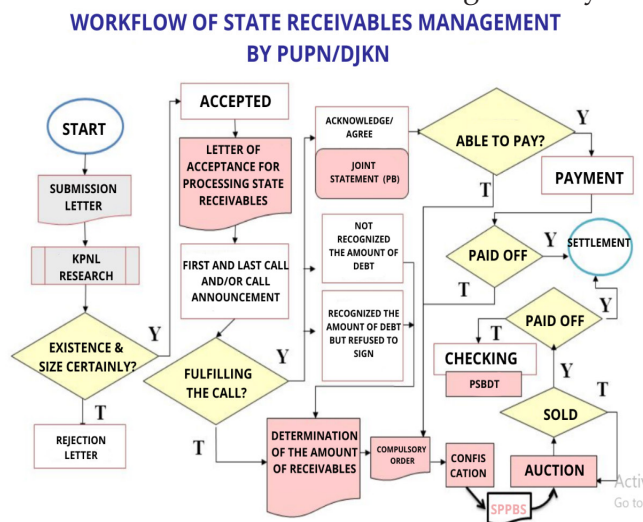
²⁷ Sulthan and Zulfiani (n 25).

²⁸ Aida Ardini, 'Legal Construction For The Obligors Of The Bank Of Indonesia Liquidity Assistance Funds (Blbi) In Returning State Assets That Guarantee Legal Certainty And Justice' (2022) 1 Journal of World Science 4 <<https://jws.rivierapublishing.id/index.php/jws>>.

²⁹ Novida Helen Bariang and others, 'Pengurusan Piutang Negara Pada Kementerian/Lembaga Dalam Perspektif Hukum Perdata (Studi Pada KPKNL Medan)' (2022) 9 Jurnal Ilmiah Penegakan Hukum 112 <<http://ojs.uma.ac.id/index.php/gakkum>>.

- value below the collateral rights;
7. Issuing a Statement of Completion of State Receivables Management (SPPPNL), Statement of Completion of State Receivables Management (SPPPNS), or Determination of State Receivables Temporarily Uncollectible (PSBDT);
 8. Issuing Approval or Rejection Letters for the Withdrawal of State Receivables, Approval or Rejection Letters for Forced Agency Plan;
 9. Creating a request letter for preventive action against an individual to the Immigration authorities;
 10. Creating a recommendation letter for civil action sanctions and cessation of public services to the relevant authority;
 11. Issuing a request for permission to execute forced agency actions to the Head of the High Prosecutor's Office, Forced Agency Order, Forced Agency Extension Order, Permission to Leave Forced Agency, and/or Forced Agency Release Order;
 12. Issuing a Statement of Revocation of Temporarily Uncollectible State Receivables (PSBDT), Statement that State Receivables Have Been Permanently Written Off;
 13. Issuing a request letter to OJK (Financial Services Authority) for information regarding customer deposits from banks;
 11. Issuing a request for permission to execute forced agency actions to the Head of the High Prosecutor's Office, Forced Agency Order, Forced Agency Extension Order, Permission to Leave Forced Agency, and/or Forced Agency Release Order;
 12. Issuing a Statement of Revocation of Temporarily Uncollectible State Receivables (PSBDT), a Statement that State Receivables Have Been Permanently Written Off; and
 13. Issuing a request letter to FSA (Financial Services Authority) for information regarding customer deposits from banks.

Below is the workflow for State Receivables Management by PUPN/DJKN:³⁰



Source: <https://slideplayer.info/slide/2798368/>

³⁰ Nur Wilna, 'Tinjauan Atas Pelaksanaan Optimalisasi Piutang Negara Dengan Mekanisme Crash Program Di KPKNL Makassar' (Politeknik Keuangan Negara STAN 2022).

The explanation is as follows:

1. State Receivables Submission's Stage

As the owners of the receivables, Government agencies/institutions submit the State Receivables Submission Letter for the state receivables' management accompanied by a summary and supporting documents to the State Receivables Affairs Committee (PUPN) through the local State Assets and Auction Service Office (KPKNL). The attached documents include credit agreements, debt acknowledgment deeds, billing evidence, as well as correspondence related to collateral and other relevant documents.

2. Acceptance or Rejection of State Receivables Management's Stage

KPKNL reviews the State Receivables Submission Letter, the receivables are calculated, including principal debt, interest, fines, and other costs. The criteria for state receivables submission require the debt status to be definitive, and the amount to be certain. The results of this review are compiled into a Case Review Summary (RHPK), which includes KPKNL's or the Branch Committee's recommendations regarding the continuation of the receivables management process. A rejection letter is issued and the process is discontinued if the debt does not meet the criteria. Conversely, if the criteria are met, the receivables management is accepted, followed by the issuance of the State Receivables Acceptance Statement (SP3N), and the process continues.

3. Summoning the Debtor and/or Guarantor's Stage

KPKNL will send a summons to the debtor and/or guarantor to appear at KPKNL to discuss settlement once the SP3N is issued. A final summons will be issued if the summons is not honored within seven working days. KPKNL will issue a summons through electronic or print media if the whereabouts of the debtor and/or guarantor are unknown.

4. Joint Statement (PB) / Determination of State Receivables Amount (PJPB)

KPKNL will verify the data regarding the receivables and negotiate the settlement scheme with the debtor if the debtor responds to the summons. Any agreement reached will be documented in a Joint Statement based on the Minutes of Clarification.

5. A Compulsory Order's Issuance

KPKNL will issue a Compulsory Order which requires full settlement of the debt within 24 hours after notification if the debtor fails to comply with the warnings in the Joint Statement. The Compulsory Order may be issued to the debtor or guarantor if, after proper summoning, they fail to appear to fulfill their obligation to settle the state debt.

6. Asset Seizure of the Debtor/Guarantor or Rights Holder's Stage

KPKNL will issue a Seizure Order for the collateral or the debtor's/guarantor's assets if the debt remains unpaid within 24 hours of the Compulsory Order. KPKNL may trace other assets, including those transferred to third parties by the debtor or guarantor, if the debt is still not settled even after asset seizure. At this stage, sanctions may be imposed if KPKNL determines that the debtor/guarantor/rights holder is acting in bad faith or uncooperative in fulfilling their debt obligations, in the form of Civil Restrictions and/or Public Service Restrictions as stipulated in Regulation of the Minister of Finance of the Republic of Indonesia No. 9/PMK.06/2023 concerning the Implementation Guidelines for Civil and/or Public Service Actions in the Management of State Receivables by the State Receivables Affairs Committee (Regulation of the Minister of Finance (PMK) 9/2023), which serves as the technical guideline for Article 51 of Government Regulation No. 28/2022.³¹

Article 1, paragraph (5) of PMK 9/2023 states that "Civil action is the restriction of rights and services by financial service institutions against the debtor/guarantor/rights holder." Furthermore, Article 1, paragraph (6) of PMK 9/2023 states that "Public service action is the restriction of rights and services by the government as a provider of public services against the debtor/guarantor/rights holder".

Based on these provisions, it shall be concluded that civil action refers to specific restrictions imposed by financial institutions, while public service action refers to broader restrictions imposed by public service providers. Both actions are aimed at

³¹ Wulandari Basukhi, Yuniarto and Mei, "Tindakan Keperdataan Dan Atau Tindakan Layanan Publik Upaya Pengembalian Hak Negara" *www.djkn.kemenkeu.go.id* (Jakarta, 29 May 2023) 1 <<https://www.djkn.kemenkeu.go.id/artikel/baca/16155/Tindakan-Keperdataan-danatau-Tindakan-Layanan-Publik-Upaya-Pengembalian-Hak-Negara.>>.

debtors, guarantors, and third parties who have obtained rights from them.

7. Auction Sale of Seized Assets Belonging to the Debtor/Guarantor or Rights Holder.
KPKNL will auction the seized assets if, after seizure, the debtor is still unable to settle the debt. However, KPKNL may impose other sanctions, including civil sanctions, public service restrictions, travel bans, or a Body Compulsory Order in accordance with prevailing regulations if the collateral or assets do not meet the requirements for auction/sale as per applicable regulations
8. Temporarily Uncollectible State Receivables Designation (PSBDT).
If there are outstanding receivables, but the collateral or other assets have been sold or no longer hold economic value, a PSBDT (Temporarily Uncollectible State Receivables Designation) will be issued. PSBDT may also be issued if the debtor lacks financial capacity or if their whereabouts are unknown.

Legal Protection for Third Parties Acquiring Rights Based on Government Regulation No. 28/2022

Article 1, paragraph 4 of Government Regulation No. 28/2022 defines the debtor as an entity and/or individual who is indebted under regulations, agreements, or any other cause. While, the parties who may be held liable for debt repayment include:

1. Debtors, which include;
 - a. Individuals as the indebted party;
 - b. Legal entities, where those responsible include all directors, commissioners, and shareholders involved in using the company for personal gain, engaging in unlawful acts by the company, or directors, commissioners and shareholders, or unlawfully utilizing the company's assets which result in insufficient company assets to pay debts;
 - c. Business entities that are not legal entities, including their management and partners;
 - d. Business entities in the form of joint operations, including chairpersons, responsible parties, and capital owners;
 - e. Heirs;
 - f. Executors of wills;
 - g. Administrators of inherited property;
 - h. Guardians.
2. Guarantors, which refer to entities and/or individuals guaranteeing the settlement

of part or all of the debtor's obligations. This includes personal guarantors (*Borgtocht*) and corporate guarantors (Article 1, paragraph 5).

3. Parties Acquiring Rights from the debtor or guarantor, as defined in Article 1, paragraph 6, which states "A Party Acquiring Rights is an individual or entity that, due to an act, legal relationship, and/or legal event, has received the transfer of ownership of money, securities, and/or goods from the Debtor/ Guarantor".

The third parties acquiring rights must still be afforded legal protection although they may be held responsible for the repayment of debts owed by the debtor or guarantor. The protection of third parties acquiring rights under Government Regulation No. 28/2022 must guarantee that their rights are not unilaterally violated, both preventively and repressively, in the process of managing state receivables. The parameters of such protection include guarantee of the certainty and security of the rights of third parties acquiring rights, clarity regarding their involvement and responsibilities, and access to dispute resolution mechanisms as part of repressive legal protection. Legal protection must ensure that third parties acquiring rights from debtors or guarantors who act in good faith are not subjected to excessive legal actions, such as confiscation, unauthorized auctions, or even other civil actions leading to bodily force even though they are accountable within the scope of the transfer. Transparency and fairness in the execution of state receivable management is another key parameter, including clarity on the role and involvement of third parties acquiring rights and their access to fair judicial or dispute resolution processes.

Many parties consider that Government Regulation No. 28/2022 contains many weaknesses, as it tends to ignore the protection of the rights of debtors/guarantors, and third parties acquiring rights, while instead prioritizes the efforts to maximize state revenue target to fund government needs, including infrastructure development and state debt repayment. As a result, legal protection for debtors tends to be disregarded, whether debtors, guarantors, or third parties acquiring rights. Other parties acquiring rights from debtors or guarantors are treated as debtors, making them subject to the same obligations and sanctions imposed under Government Regulation No. 28/2022 which can also be unilaterally imposed and applied to other parties who obtain rights.

The primary and most fundamental issue regarding the protection of parties acquiring rights under Government Regulation No. 28/2022 lies in the scope of Article 1, point 6, which defines “parties acquiring rights” without clear limitations. This lack of boundaries allows for subjective interpretation, meaning that anyone who has acquired rights could be subjected to the provisions of Government Regulation No. 28/2022.

The only form of legal protection for parties acquiring rights under Government Regulation No. 28/2022 appears in Article 4, paragraph (3) and its explanatory notes. Article 4, paragraph (3) states that:

“If the debtor as referred to in paragraph (1) or the guarantor as referred to in paragraph (2) fails to fulfill their obligations or their whereabouts are unknown, the debt may be collected from the party acquiring the rights, including: a. family members related by blood in the ascending, descending, or lateral line up to the second degree; and/or b. spouse”.

Furthermore, the explanatory section of Article 4, paragraph (3) states:

“The expansion of debtors/guarantors to include parties acquiring rights is necessary to prevent the transfer of assets in a manner that harms the recovery of state claims”.

Through the explanation of Article 4, it provides a more focused interpretation of the phrase party acquiring rights. It refers specifically to parties who can be held accountable because they obtained those rights with the intent to conceal the assets or property of the debtor or guarantor, thereby affecting their ability to fulfill debt repayment obligations to the state. In other words, third parties who acquire rights without the intent to conceal the assets or property of the debtor or guarantor are not included in the category of “parties acquiring rights” as defined in Article 1, paragraph (6) of Government Regulation No. 28/2022.

However, in practice, the implementation of state receivables collection may differ significantly. The State Receivables Affairs Committee (PUPN) can easily and subjectively declare that a third party’s acquisition of rights was intended to conceal the assets or property of the debtor or guarantor. This risk is even greater when the party acquiring the rights is a family member, close relative, or affiliated company of the debtor or guarantor, as interactions between them are highly plausible. Furthermore, under the authority granted by the PUPN Law and Government Regulation No. 28/2022, third parties acquiring rights can be directly and unilaterally subjected to debt repayment

demands, asset seizures, auctions, travel bans, and other sanctions, all without the need for prior legal proceedings. Article 77 of Government Regulation No. 28/2022 explicitly states that parties acquiring rights cannot pursue any legal remedies and even any attempts at self-defense against the debt collection process are restricted.

Government Regulation No. 28/2022 fails to reflect legal protection for third parties acquiring rights. On the contrary, it demonstrates the opposite, as it contains provisions that potentially violate the rights of debtors, guarantors, and third parties acquiring rights in several articles of the provisions. Several articles within Government Regulation No. 28/2022 conflict with higher-ranking laws and regulations.

Article 24 (1) of Government Regulation No. 28/2022, which authorizes the blocking of assets or property belonging to third parties acquiring rights, contradicts Article 1338 of the Indonesian Civil Code. Legally, an agreement is only binding upon the parties who enter into it, a principle known as *Pacta Sunt Servanda*. This principle asserts that a contract has binding legal force for the involved parties. It means that they are obligated to fulfill all commitments stipulated in the agreement.³²

In addition to violating the principle of *Pacta Sunt Servanda* as stipulated in Article 1338 of the Indonesian Civil Code, Article 24 (1) of Government Regulation No. 28/2022 also directly contradicts the principle of personality in contractual law, as defined in Articles 1315 and 1340 of Indonesian Civil Code. *The principle of personality* is a fundamental tenet of contract law, Article 1315 of Indonesian Civil Code states that,

" In general, a person cannot enter into a binding agreement or contract on behalf of others, except for themselves".

Article 1340 of Indonesian Civil Code further reinforces *the principle of personality* by stating:

"An agreement is only binding between the parties who enter into it. An agreement cannot harm third parties; nor can it benefit third parties, except in cases specified under Article 1317".

³² Nina Wulandari, 'Perlindungan Hukum Bagi Debitur Bank Dalam Perjanjian Kredit Pemilikan Rumah (KPR)' (2024) 1 Jurnal Globalisasi Hukum 5 <<https://e-journal.trisakti.ac.id/index.php/globalisasihukum/issue/view/1187>>.

There is an exception to the *principle of personality* as regulated in **Article 1317 of the Indonesian Civil Code**, which states:

“An agreement may also be made for the benefit of a third party if an agreement entered into for oneself or a grant made to another contains such a condition. Anyone who has stipulated such a condition may not revoke it if the third party has declared their intention to exercise the condition”.

The provision in Article 1317 of Indonesian Civil Code means that a person may enter into an agreement for the benefit of a third party, provided that a specific condition is stipulated. This exception is known as a promise for a third party (*derden beding*). For example, a father named X enters into an equity participation agreement in a business owned by Y, with the stipulation that the profits allocated to X will be transferred to his child, Z, as the third party beneficiary.

Additionally, in **Article 1318 of Indonesian Civil Code**, it does not only regulate agreements made for oneself but also for the benefit of one's heirs and those who acquire rights from them. Article 1318 of Indonesian Civil Code states:

*“A person is deemed to obtain something under an agreement **for themselves, for their heirs, and for those who acquire rights from them**, unless it is expressly stated or is evident from the nature of the agreement that this was not the intention”.*

From the exceptions outlined above, it is evident that the *principle of personality* in agreements does not apply when an agreement is made by one person for another who has authorized them to act legally on their behalf or when the person has the legal authority over them. Thus, Article 24(1) of Government Regulation No. 28/2022, which extends the applicability of agreements to third parties who acquire rights, despite their lack of involvement in the agreement's creation and their absence as a stipulated party, contradicts the principle of personality in agreements as set forth in Articles 1315 and 1340 of Indonesian Civil Code.

If the debtor later fails to fulfill the obligations agreed upon, the creditor has the right to issue a formal notice (*somasi*) or a warning letter demanding the debtor to fulfill their obligations. According to Article 1131 of Indonesian Civil Code, “All assets belonging to the debtor, both movable and immovable, whether present or future, shall serve as collateral for an obligation.” This means that the settlement of debts should primarily be

pursued through the execution of the debtor's assets that have been pledged, which may be seized to satisfy the debtor's obligations.³³

The principle of fairness plays a crucial role in determining legal protection for the parties involved in the context of contract law.³⁴ Article 1315 of the Indonesian Civil Code reaffirms that a person cannot enter into an agreement on behalf of anyone other than themselves. A legal subject cannot conclude an agreement for another legal subject. It means that an agreement cannot grant benefits or impose losses on a third party who was not involved in its formation, unless explicitly stipulated within the agreement.

Article 1340 of Indonesian Civil Code is further reinforced this principle, which states *"An agreement only applies between the parties who enter into it. An agreement cannot be detrimental to a third party; an agreement cannot confer benefits upon a third party except in cases provided for in Article 1317."* Article 1317 of Indonesian Civil Code requires that a person may only enter into an agreement for the benefit of a third party if such a condition has been explicitly determined within the agreement. Thus, subjecting a third party who acquires rights to be bound by and held accountable for an agreement they did not participate in, as intended by Government Regulation No. 28/2022, contradicts Indonesian Civil Code. Moreover, in the context of loan agreements, the debtor's liability is limited to their own property rights. The inclusion of "the Party Acquiring Rights" in Government Regulation No. 28/2022 is essentially intended to hold such a party accountable for the debtor's obligations. The introduction of the phrase "the Party Acquiring Rights" without a clear and comprehensive explanation in Article 1(6) of Government Regulation No. 28/2022 could significantly impact property rights. It may even lead to the loss of property rights of an uninvolved party, as their assets could be used to settle the debtor's obligations.

Another conflict arises between Article 24(1) of Government Regulation No. 28/2022, which regulates the blocking of assets or property belonging to another party

³³ Excha Restya Safira, 'Perlindungan Hukum Kreditur Terhadap Debitur Yang Menggunakan Prinsip Cross Default Dan Collateral Dalam Perjanjian Kredit' (2024) 1 Jurnal Globalisasi Hukum 275 <<https://e-journal.trisakti.ac.id/index.php/globalisasihukum/article/view/21034>>.

³⁴ Hari Purwanto, 'Analisa End User License Agreement (EULA) Sebagai Bentuk Perjanjian Baku Dalam Aplikasi Won By BWS' (2024) 1 Jurnal Globalisasi Hukum 143 <<https://e-journal.trisakti.ac.id/index.php/globalisasihukum/article/view/19849>>.

who acquires rights, and Law No. 39 of 1999 on Human Rights. The principle of the rule of law in the 1945 Constitution establishes a fundamental principle that every individual has inherent human rights, and the state is obligated to protect, promote, fulfill, and respect these rights, as stipulated in Article 28I (4) of 1945 Constitution. One of the recognized human rights is the right to ownership, as outlined in Article 29 (1) of Human Rights Law, which states that every person has the right to protection of themselves, their family, honor, dignity, and property. Ownership rights, in principle, are inherent to an individual and cannot be revoked without the owner's consent. Furthermore, Article 36 (1) of Human Rights Law affirms that *"Every person has the right to own property, either individually or jointly with others, for the development of themselves, their family, nation, and society in a lawful manner."* Article 36 (2) further states, *"No one shall be arbitrarily deprived of their property in an unlawful manner."* However, the phrase *"the Party Acquiring Rights"* in Article 1 (6) of Government Regulation No. 28/2022 and its related provisions allow the confiscation of property belonging to third parties who are not involved in a debt to the state, including those who are neither guarantors nor liable for the debt. Instead of ensuring legal protection, this provision poses a risk of violating human rights. Therefore, including *"the Party Acquiring Rights"* as a party liable for a debtor's debt, along with the imposition of sanctions against them, clearly contradicts Human Rights Law.

Furthermore, Article 77 of Government Regulation No. 28/2022, which states that the debtor, guarantor, the party acquiring rights, or any other third party has no right to pursue legal remedies regarding the validity or legitimacy of State Receivables, whether in court or out of court, is considered a violation of the rule of law principle. The rule of law aims to protect the fundamental rights and freedoms of citizens, ensure public welfare, and prevent the arbitrary exercise of power. To prevent citizens from becoming victims of state authority's arbitrary actions, the availability of legal remedies is an essential element of protecting citizens' rights against unfair governmental actions. Therefore, legal remedies must be available as a means of protection, ensuring that rightful claimants can defend their rights in the event of a legal violation. Additionally, this provision directly contradicts a higher legal norm, namely Article 17 of the Human Rights Law, which explicitly states every person, without discrimination, has the right to

justice by submitting petitions, complaints, or lawsuits in civil, criminal, or administrative proceedings before an impartial and independent court.³⁵

It can be concluded that legal protection for parties acquiring rights under Government Regulation No. 28/2022, based on the above explanation, is highly inadequate. In the author's view, the root of the issue lies in the lack of clarity in the formulation of Article 1, point 6 of Government Regulation No. 28/2022 which fails to clearly define the limits of the phrase "third party acquiring rights." This leads to subjective interpretation and potential abuse of authority in the enforcement process, particularly in pursuit of state receivables collection targets. To prevent arbitrary actions by the state, the protection for third parties acting in good faith must be reinforced. Therefore, it is essential to clarify and specify the definition of "parties acquiring rights in good faith" in the legal norms, accompanied by detailed criteria or parameters to assess the presence of good faith. As a comparison, bankrupt debtors often take legal actions to shield their assets from creditor claims in legal relationships resulting in bankruptcy, where creditors and debtors are involved. Before a bankruptcy ruling is issued, a debtor acting in bad faith typically transfers assets to another party. Creditors may suffer losses as they lose the opportunity and right to recover debts from the debtor if such asset transfers are allowed to stand.³⁶ Similarly, a clear example of bad faith where company directors transferring corporate assets to ensure that no assets remain for creditors to execute in the event of legal action.³⁷ Bankruptcy law provides creditors with the legal remedy of "*actio pauliana*" to protect creditors' interests, which allows them to challenge and annul fraudulent asset transfers conducted by the debtor to evade obligations.

Citing Tumbuan in Syahrin (2017), Sjahdeini argues that Article 41 of the Law on the Commission for the Supervision of Business Competition outlines at least five conditions that must be met in order for a creditor to invoke *actio pauliana* against a

³⁵ Syofina D.P. Aritonang, 'Harmonisasi Pengaturan Pengurusan Piutang Negara- Perspektif Teori Kewenangan dan Teori Peraturan Perundangan' (2024) Vol. 28. Reformasi Hukum 6.

³⁶ Jus'an Ismail and Elfrida Ratnawati, 'Actio Pauliana Sebagai Model Upaya Hukum Oleh Kreditor Terhadap Pengalihan Harta Kekayaan Debitor Sebelum Putusan Pernyataan Pailit' (2024) 6 *Ensiklopedia of Journal* 5 <<https://jurnal.ensiklopediaku.org/ojs-2.4.8-3/index.php/ensiklopedia/article/view/2082>>.

³⁷ Ambo Dalle and Elfrida Ratnawati, 'Itikad Buruk Direksi Perseroan Terbatas Dalam Sengketa Utang Piutang Yang Berakibat Kepailitan' (2023) 7 *Jurnal Ilmu Sosial dan Pendidikan (JISIP)* 5 <<http://dx.doi.org/10.58258/jisip.v7i1.4291>>.

debtor's actions, as follows:³⁸

1. The sale of goods at a price below market value;
2. The donation or gifting of goods to another party;
3. The legal action causes harm (prejudice) to the creditor's interests;
4. It can be proven that the debtor, whether intentionally or due to negligence, knew or should have known that the legal action would cause harm to the creditor;
5. The other party involved in the legal act (the other party) knew or should have known that the legal action would harm the creditor when carrying out such legal action.

The application of *actio pauliana* to legal actions performed within an affiliated relationship requires both a temporal element and knowledge in the context of Article 42 of the Law on the Commission for the Supervision of Business Competition. Specifically, if the legal action to transfer assets or harm the creditor occurs within one year before the bankruptcy declaration, it is legally presumed to be done with the intent to evade obligations to creditors. This presumption can be overturned if the debtor and the related party can prove that the legal action was performed under circumstances that did not harm the creditor.

Article 44 of the Law on the Commission for the Supervision of Business Competition regulates *actio pauliana* related to gifts, which states that:

"unless proven otherwise, the debtor is considered to have known or should have known that the gift would harm the creditor if the gift was made within one year before the bankruptcy ruling".

This implies that, the curator is not obligated to prove that the gift harmed the creditor and is deemed to have known that it would cause harm if the gift was made within the one-year period before the bankruptcy ruling.

As for what can be done against an action classified under *actio pauliana*, Article 41 of the Law on the Commission for the Supervision of Business Competition clearly states that such actions can be annulled by the curator. Furthermore, the consequence if the *actio pauliana* lawsuit is granted is that the third party who acquired the rights being contested through *actio pauliana* must:

1. Return the goods/assets they obtained from the debtor's property before the debtor

³⁸ Alvi Syahrin, 'Actio Pauliana: Konsep Hukum Dan Problematikanya' (2017) 4 Lex Librum: Jurnal Ilmu Hukum 7 <<https://lexlibrum.id/index.php/lexlibrum/article/view/97>>.

declared bankruptcy; or

2. If the price/value of the goods/assets has decreased, the party must return the goods/assets and compensate for the difference in value; or
3. If the goods/assets are no longer available, they must compensate for the value of those goods.

There is a norm conflict between Article 1341 of the Indonesian Civil Code and Article 47 of the Law on the Commission for the Supervision of Business Competition regarding the legal subject entitled to file the lawsuit. Article 1341 of the Indonesian Civil Code grants the right to any creditor to file a lawsuit, while Article 47 of the Law on the Commission for the Supervision of Business Competition limits the legal subject to only the curator being able to file an *actio pauliana* lawsuit. Based on the principle of *lex specialis derogat lex generalis* and *lex posteriori derogat lex priori*, the provisions of Article 47 of the Law on the Commission for the Supervision of Business Competition, as a more specific and later regulation, supersede the provisions of Article 1341 of the Indonesian Civil Code. Therefore, in bankruptcy cases, only the curator has the legal standing to file an *actio pauliana* lawsuit”.

As an effort to prioritize and ensure legal protection for the party acquiring the rights to the assets of the guarantor or debtor who owes the state, the application of the main requirements of *actio pauliana* in bankruptcy, as previously explained, is highly relevant to be applied to the condition of the third party acquiring rights as regulated in Government Regulation No. 28/2022 on the Management of State Receivables. Currently, there are no specific conditions or requirements that limit the PUPN (State Receivables Management Office) from holding the third party who acquires rights from the guarantor or debtor accountable, except for non-technical interpretations such as “the transfer of rights has occurred” and “lack of good faith,” based on the subjective interpretation of the PUPN, without any clear and definite parameter explanation as stipulated in the *actio pauliana* provisions in bankruptcy. Additionally, within the state receivables management regime, the PUPN can, without going through litigation or a court decision, directly summon, process, impose garnishment, and apply other sanctions to the third party who acquired rights from the guarantor or debtor based on

the PUPN's subjective assessment that a transfer of rights has occurred and that these parties acted in bad faith in fulfilling the obligation to pay debts to the state. Ideally, Government Regulation No. 28/2022 should establish certain requirements to be fulfilled by debtors and parties receiving rights transfer to ensure that they are not involved in actions that could potentially harm the state's finances (receivables). In *actio pauliana*, the curators seek the annulment of the transaction through a court decision, where the judge will examine, consider, and decide whether the action meets the requirements for annulment.

Furthermore, there is a need for clarification that the third party who acquires rights, who feels harmed during the state receivables collection process, can file legal actions in accordance with applicable regulations. Therefore, the provisions of Article 77 of Government Regulation No. 28/2022, which disallows any legal action by third parties acquiring rights, must be disregarded. This is in order to create certainty and legal protection. Legal certainty is crucial as it plays a key role in supporting the economic stability of a country. To ensure that the law provides certainty for economic actors, the government has the responsibility to enforce the law in an orderly and authoritative manner. Therefore, it is expected that the law in the future can function as a guide, a leader, and create a conducive environment for societal life.³⁹ If the aim is to encourage investors to invest in Indonesia, clear legal frameworks must be in place, meaning there should be no regulations in conflict with each other that create uncertainty.⁴⁰

Conclusion

Under Government Regulation No. 28/2022, legal protection for third parties acquiring rights in the management of state receivables is very minimal. The ambiguity of the norm in Article 1, number 6, is the main issue which does not clearly explain the phrase "party acquiring rights." It could encompass anyone and any reason as long as

³⁹ Rizki Mualif and Elfrida Ratnawati, 'Aspek Kepailitan Dan Penundaan Kewajiban Pembayaran Utang Dalam Pembangunan Ekonomi Nasional' (2023) 5 *Unes Law Review* 8 <<https://review-unes.com/index.php/law/article/view/491>>.

⁴⁰ Fauzi Ahmad, 'Transformasi Birokrasi Mempermudah Perizinan Usaha Dengan Online Single Submission (OSS)' (2024) 1 *Jurnal Globalisasi Hukum* 155.

there is a transfer of rights. Furthermore, there is no further explanation regarding the "party acquiring rights" in the regulation. This could lead to subjective interpretation and the abuse of power in achieving state receivables collection targets. To prevent arbitrary actions by the state, the protection for third parties acting in good faith must be emphasized.

Therefore, the formulation of the norm in Article 1, number 6 of Government Regulation No. 28/2022 should be reformed clearly regarding the phrase "other parties acquiring rights,²" reflecting an effort to provide legal protection for third parties acquiring rights in good faith. Additionally, a detailed description of the requirements and conditions should be provided to serve as parameters for assessing the good faith of third parties who have acquired rights from the debtor or debt guarantor. The application of the key requirements of *actio pauliana* in bankruptcy is highly relevant to the description of the conditions for third parties acquiring rights in the regulations concerning state receivables management, particularly in Government Regulation No. 28/2022. Next, third parties who feel their interests are harmed should be able to take legal action without limitations or obstacles, thus reflecting the realization of legal protection.

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