SUBMISSION OF DEBT PAYMENT OBLIGATION WITH INSURANCE COMPANIES THAT HAVE CERTAINTY OF LEGAL CERTAINTY

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Abstract *: The authority to apply for PKPU to insurance companies is absolutely given to OJK in accordance with laws and regulations, aiming to build a level of public trust in insurance companies as a risk management institution that manages public funds. The PKPU application process for an insurance company can be submitted by a customer by submitting a PKPU application to the OJK, so that the OJK submits the PKPU application to the Commercial Court. OJK was given 30 (thirty) days to accept or reject the PKPU application. If OJK does not stipulate and/or make a decision, then the application is considered legally granted (fictional positive). The form of a positive fictitious determination is regulated in a Presidential Regulation. However, until now the Presidential Regulation has not existed, giving rise to legal uncertainty. The legal protection for PKPU applications for insurance companies can be seen through 2 means, namely: 1). As a preventive facility, the government through the OJK has a high responsibility as a guarantor for the interests of all parties involved in maintaining the insurance business, to maintain trust in the public, especially customers of insurance companies and guarantee and actively participate in protecting customers rights in relation to their civil rights. 2). Repressive means, namely the prosecution of the rights of customers through a litigation process, including PKPU applications that cannot be submitted directly by the customer as a creditor, but must be submitted to the OJK, considering that insurance companies do not only protect customer funds, some third party funds.*

Keywords*: PKPU, Insurance Company, OJK*

INTRODUCTION

Basically the PKPU award is meant to propose a peace plan, either in the form of an offer to pay off the debt in whole or in part on the debt or to restructure (reschedule) the debt. Therefore, the PKPU application is an opportunity to pay off or carry out obligations on debts so that they are not declared bankrupt.[1]

If you look at the history of the development of bankruptcy law, especially before the enactment of Law no. 37 of 2004, the bankruptcy law at that time was the Law of the Republic of Indonesia Number 4 of 1998 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 1998 concerning Amendments to the Law on Bankruptcy to Become Laws, did not specifically regulate submitting bankruptcy and PKPU requests to insurance companies. This means that whoever it is, as long as it meets

[1]Jono, *Bankruptcy Law* , Sinar Graphic, Jakarta, 2015, p. 170 .

the requirements for the granting of a bankruptcy application, can submit a request for bankruptcy and PKPU.

One of the basic considerations for filing a bankruptcy application or PKPU against an insurance company is that the company's financial condition is in an unhealthy state. [2]The insurance company bankruptcy case that caught the public's attention at that time was the bankruptcy of PT. Prudential Life Assurance (Prudential) at the request of one of its customers, even though the Indonesian Supreme Court later canceled the bankruptcy decision at the cassation level.

Insurance is a mutual agreement. The parties to the insurance are parties who act actively in carry out the insurance, namely the Insurer and the Insured. PartyThe insurer is a party that binds itself to accept the transfer of risk from insured. guarantor in this thing is company insurance, whereas insured in matter This Can person personal or body business.[3]

It was only then that insurance company bankruptcy was confirmed in Law no. 37 of 2004, as stipulated in Article 2 paragraph (5) of Law no. 37 of 2004 that the authority to apply for bankruptcy against insurance companies can only be submitted by the Ministry of Finance. In line with the establishment of the Financial Services Authority (OJK), the Law of the Republic of Indonesia Number 21 of 2011 concerning Financial Services Authority (hereinafter referred to as Law No. 21 of 2011) and the Law of the Republic of Indonesia Number 40 of 2014 concerning Insurance (hereinafter referred to as the Law No. 40 of 2014) this authority was transferred to OJK.

The background for this transition is to build the level of public trust in insurance companies as risk management institutions that manage public funds. Another reason for transferring the authority of insurance company bankruptcy applications to the OJK is also in line with one of the backgrounds for the formation of the OJK itself, namely the formation of an authority that has full control over financial sector supervision as well as eliminating the negative sensitivity or stigma that previously existed that insurance companies have a tendency to to hide behind authority.

The existence of the OJK is in accordance with the purpose of its establishment, namely to regulate, supervise and protect all financial institutions in Indonesia. Especially in insurance companies, their presence is expected to be a protector for customers, supervisors for insurance companies.[4]

The existence of the OJK is expected to provide protection and certainty for authorities in resolving issues of financial obligations of insurance companies to their creditors, including accommodating settlement mechanisms through bankruptcy or PKPU. UU no. 21 of 2011 and Regulation of the Financial Services Authority Number 28/POJK.05/2015 concerning Dissolution, Liquidation and Bankruptcy of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies and Sharia Reinsurance Companies (hereinafter referred to as POJK No. 28 of 2015) have regulated the procedures way for

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[2] Sherlin Indrawati, "Legal Aspects of Insurance Company Bankruptcy", *Journal of Legal Opinion* , Issue 5, Volume 3, Year 2015, p. 3.

[3]Rudyanti Dorotea Tobing, *Law Consumer And Public (A Flower Rampant),* Mediatama, yogyakarta, 2015, p. 78 .

[4]Alwi, "Juridical Review of Bankruptcy Filing Efforts against Insurance Companies by Insurance Customers," *Indonesian Educational Research Journal* , Vol. 7 No. 4 2021, p. 724.

creditors who wish to settle payment of obligations by the insurance company through the PKPU/Bankruptcy route.
The problem is when faced with the worst situation where there may be an insurance company that deliberately commits fraudulent practices, causing losses to the insureds or their creditors. Or it could also be, for example, that the incident of default by the insurance company to its creditors was massive and widespread and the company's financial condition was not at all supportive so that the dispute settlement scheme through peace or civil court would not be effective. In such a situation, what if the OJK continues to refuse to process insurance company bankruptcy or even the OJK does not respond to customer requests.
Applications for Bankruptcy and PKPU of Insurance Companies submitted by customers occurred at the end of 2020, according to the decision of the Commercial Court at the Central Jakarta District Court No. 389/Pdt.Sus-PKPU/2020/PN-Niaga.Jkt.Pst. which granted the PKPU request submitted by a customer against a life insurance company, PT. Kresna Life Insurance (Kresna). Kresna's PKPU decision seems to set a new precedent that PKPU applications against insurance companies submitted by creditors without going through the OJK can in fact be granted. However, it turns out that this impression cannot be said to be proven true because in the not too distant future, the Commercial Court at the Central Jakarta District Court passed Decision No. 45/Pdt.Sus-Bankrupt/2020/PN.Niaga.Jkt.Pst. rejected the bankruptcy application against PT. AIA for the application submitted by its former marketer on the grounds that the authority to file a bankruptcy application only belongs to the OJK. If so, the basis on which the Court decided that Kresna's PKPU was granted becomes important to examine.
One of the arguments of the PKPU Kresna Petitioner is that there was no response given by the OJK to the application for a PKPU Kresna permit, so that based on Article 53 of the Law of the Republic of Indonesia Number 30 of 2014 concerning Government Administration (hereinafter referred to as Law No. 30 of 2014) it is considered that the OJK has granted it. the said permit application for not responding within 10 (ten) working days. Considering that the issue of the legal standing of the customer in the PKPU application against the insurance company should have been a crucial issue, however, in the process of answering the question at the Commercial Court, it turned out that Kresna was not really concerned about this matter and tended to leave the decision entirely to the Panel of Judges.
The applicant's argument which was later confirmed by the Commercial Court in PKPU Kresna is known in the practice of State Administrative Law as a positive fictitious doctrine, which simply means that if the government does not respond to a request within a certain time limit, then the application is considered granted. However, the positive fiction does not stop there. If referring to Article 53 of Law no. 30 of 2014, the use of a positive fictitious mechanism as a basis for filing a bankruptcy application or PKPU by creditors against insurance companies can be quite unfounded. However, the appropriate mechanisms and procedures must comply with Article 51 paragraph (2) of the Insurance Law and Article 54 paragraph (1) of OJK Regulation Number 28/POJK.05/2015 (POJK 28/2015) which stipulates that OJK is given 30 (thirty) days to issue a decision whether to approve or reject the application for bankruptcy/PKPU against the insurance company. In relation to Kresna's PKPU, the fact is that the OJK trial has passed the 30-day period of issuing a decision on the applicant's request to submit a PKPU against Kresna whose content rejects the application, so that OJK is considered not to have responded to a request or to have acted positively fictitious.

The next issue is how to enforce a positive fictitious application so that a bankruptcy or PKPU application can be filed. Do you first go through the state administrative court process or can you directly apply for bankruptcy or PKPU to the Commercial Court. If you look at the judge's considerations in PKPU Kresna that is fictitious positive without having to go through the State Administrative Court because the customer's request is considered legally granted as stipulated in Article 53 paragraph (3) of Law No. 30 of 2014.

RESEARCH METHODS

The type of research used in this study is normative juridical legal research, legal research conducted by examining secondary data, namely data obtained from various existing information. The technique of collecting legal materials is done by identifying and inventorying positive laws and researching library materials.

The approach used in this type of research is the statutory approach (*Statue Approach*), case approach *(Case Approach*), and conceptual approach (*conceptual approach*). Analysis of legal materials is carried out by carrying out legal interpretations (interpretations) grammatically and systematically, then compiled using legal construction methods .

DISCUSSION

PKPU Application Against Insurance Companies Without Approval or Rejection from OJK on Creditor Applications

Application for postponement of debt payment obligations (PKPU) in Dutch is *Surseance Van Betaling* , and in English, *Suspension of Payment* , is an idea in commercial law that allows debtors in good faith to submit requests to suspend their debt payment obligations. [5]PKPU has the intention of enabling debtors to continue their business in the midst of debt repayment difficulties and to prevent bankruptcy. In other words, bankruptcy *should* be an *ultimum remedium (the last resort)* not a *primum remedium (the first resort)* in settling these debts.[6]

Arrangements regarding PKPU and bankruptcy actually existed during the Dutch colonial period, namely *the Faillissement Verordening Staatsblad* of 1905 No. 217 jo *Staatsblad* Year 1906 No. 348 (F.V.). However, the monetary crisis that occurred in Indonesia in 1997-1998 was detrimental to the national economy. For this reason, the government has made a number of legal efforts, one of which is by making Government Regulation in Lieu of Law No. 1 of 1998 concerning Bankruptcy which was subsequently stipulated to become Law no. 4 of 1998 concerning Bankruptcy (hereinafter referred to as Law No. 4 of 1998). At first, bankruptcy was not of interest to the public in the loan settlement process, but after the enactment of Law no. 4 of 1998, the interest of business actors in the procedure

[5] Stevie G. Tampemawa, "Procedures and Procedures for Suspension of Obligations for Payment of Debt (PKPU) According to Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt", *Lex Privatum* , Volume 7, Number 6 (July-September 2019): hl m . 6

[6] Muhammad Rizaldi Hendriawan, et al., "Suspension of Debt Payment Obligations to Prevent Debtors from Going Bankrupt Due to the Covid-19 Pandemic Based on Bankruptcy Law", *Dynamics: Scientific Journal of Legal Sciences,* Volume 27, Number 2 (January 2021): p lm . 289.

for settlement of problem loans soared, as in the bankruptcy application at the Central Jakarta Commercial Court where 100 cases were filed in 1999.[7]

The Commercial Court faced many obstacles in its development. This makes business actors disappointed so that the bankruptcy process to resolve problem loans is less attractive to business actors. This disappointment was evident in the bankruptcy case of PT. Life insurance Manulife Indonesia (PT. AJMI), which at the time of its bankruptcy, was an insurance company whose 51 percent shares were held by Manulife Financial Corporation from Canada actually had a fairly healthy financial condition. Although in the end the decision was overturned by the Supreme Court. The Manulife case is seen as evidence of the weakness of Law no. 4 of 1998 in determining the terms of bankruptcy.[8]

Weaknesses of the law No. 4 Year 1998, became the basis for the issuance of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as Law No. 37 of 2004), this latest law has a wider scope when compared to the Law No. 4 Year 1998. In addition, Law no. 37 of 2004 also strictly limits the definition of "debt" and "maturity".[9]

Side positive birth shrimp new bankruptcy ie UU no. 37 of 2004 is the addition of Article 2 paragraph (5) which state that in matter debtor is Company Insurance, Company reinsurance, Fund Pension, or Body Business Owned by Country Which move in the field of public interest, application statement bankrupt only can filed by the Minister of Finance. That too The same case with Chapter 223 Which stated among other things that in matter debtor Company Insurance then that can apply for a delayobligation payment debt is as meant in Article 2 verses a paragraph (5) namely the Minister of Finance.

Along with the development of activities in the financial services sector, an institution called the Financial Services Authority (OJK) was formed in 2011 through Law Number 21 of 2011 concerning the Financial Services Authority (hereinafter referred to as Law No. 21 of 2011), then the authority of the Minister of Finance in filing for bankruptcy/PKPU is transferred to the OJK, as Article 55 paragraph (1) of Law No. 21 of 2011 stipulates that since December 31 2012, there has been a transfer of functions, duties and authorities in terms of regulation and supervision of financial services businesses in the Capital Markets, Insurance, Pension Funds, Financing Institutions and other Financial Services Institutions sections which were originally under the authority of the Minister of Finance , Capital Market and Financial Institution Supervisory Agency to OJK. The transfer of authority is meant to ensure that the needs of all groups are guaranteed to create a trading system that is equivalent to the financial services sector.

The authority of the OJK is also emphasized in Article 50 of Law no. 40 of 2014 that an application for a bankruptcy statement can only be submitted by the OJK, even though that article only mentions a bankruptcy application, in practice it is also interpreted as a bankruptcy request or PKPU. In addition to these regulations, OJK's authority in

[7] Theresia Endang Ratnawati, "A Study of the Bankruptcy Case Settlement Process and Suspension of Debt Payment Obligations at the Central Jakarta Commercial Court", *Journal of Dinamika Hukum,* Volume 9, Number 2 (2009): p. 146.

[8] Nina Noviana, "Basic Changes in Bankruptcy Regulations According to Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations", *Journal of Law and Development,* Year 36, Number 2 (April-June 2006): p . 130 .

[9] Ratibulava, "Legal Protection of Bankrupt Debtors for Protracted Management and Settlement of Bankruptcy Assets by the Curator", *Jurisdiction,* Volume 3, Number 5 (2020) , p. l. 1885.

submitting PKPU applications is emphasized in Law of the Republic of Indonesia Number 4 of 2023 concerning Development and Strengthening of the Financial Sector (hereinafter referred to as Law No. 4 of 2023).
Birth of Law No. 4 of 2023 amending and/or adding several articles to Law no. 21 of 2011, among others, Article 8B which stipulates that the Financial Services Authority is the only party authorized to submit requests for bankruptcy statements and/or requests for postponement of debt payment obligations to debtors who are, among others, insurance companies. Based on these provisions, the element of legal certainty regarding the authority to apply for PKPU has been clearly regulated, in accordance with the theory of legal certainty " the availability of clear (clear) rules, consistent and easy to obtain, issued by and recognized by the state (power).
The process for submitting PKPU applications submitted by creditors as stipulated in Article 51 of Law no. 4 of 2023, the following is an excerpt of the article:
The creditor submits a request to the Financial Services Authority to apply for a declaration of bankruptcy or postponement of debt payment obligations to the commercial court.
The Financial Services Authority approves or rejects the application submitted by the creditor as referred to in paragraph (1) no later than 30 (thirty) days from the receipt of the complete application.
In the event that the Financial Services Authority rejects the application submitted by the creditor as referred to in paragraph (2), the refusal must be made in writing accompanied by reasons.
Further provisions regarding procedures and requirements for applications from creditors as referred to in paragraph (1), paragraph (2), and paragraph (3) are regulated in the Financial Services Authority Regulation.

Regarding the procedures and requirements for applications from creditors, it is further regulated in the Financial Services Authority Regulation Number 28/POJK.05/2015 Concerning Dissolution, Liquidation and Bankruptcy of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies and Sharia Reinsurance Companies (hereinafter referred to as POJK). No. 28 of 2015). Creditors, based on their assessment that the company meets the requirements for being declared bankrupt in accordance with the bankruptcy law , can submit a request to the OJK so that the OJK submits a request for a declaration of bankruptcy of the company concerned to the commercial court (*Vide* Article 52 paragraph (1)).
Furthermore, the OJK examines the application and evidence submitted by the creditor, and gives approval or refusal to submit a PKPU application no later than 30 days. If the OJK rejects the creditor's application, the OJK may advise the creditor to resolve disputes with the Company through alternative dispute resolution institutions or civil courts, facilitate amicable out-of-court dispute resolution or take other actions that can help resolve disputes. If the OJK approves the creditor's application, the OJK will immediately submit a request for a PKPU statement to the commercial court (*Vide* Article 55 POJK No. 28 of 2015).
If the OJK does not stipulate and/or make a decision and/or take action on the application submitted by the creditor, then based on Article 53 paragraph (3) of Law no. 30 of 2014 the request is deemed legally granted (fictional positive). Positive fiction applies according to developments or changes to trigger the government to be more active in carrying out its duties and functions as a public servant. In order to obtain a decision on acceptance of an application (fictional positive), the applicant or creditor submits an

application to the State Administrative Court and the Court is required to decide on the application no later than 21 (twenty one) working days after the application is filed. After the decision is received, the Agency and/or Government Official is obliged to issue a Decision to implement the Court's decision no later than 5 (five) working days after the Court's decision is stipulated.

The form of a positive fictitious designation has been changed with the enactment of Law of the Republic of Indonesia Number 6 of 2023 concerning Stipulation of Government Regulations in lieu of Law Number 2 of 2022 concerning Job Creation to become Law (hereinafter referred to as Law No. 6 of 2023), it is determined that the form stipulation of Decisions and/or Actions deemed legally granted (4) is regulated in a Presidential Regulation. If you look at the provisions in the amendment to Article 53 of Law no. 6 of 2023 , then the positive fiction is still valid, but the applicant or creditor no longer submits an application to the State Administrative Court to obtain a decision on accepting the application, but must see the provisions or procedures as stipulated in the Presidential Regulation. In line with these regulations, the Supreme Court has issued Circular Letter Number 5 of 2021 concerning Enforcement of the Formulation of the Results of the 2021 Supreme Court Chamber Plenary Meeting as a Guideline for the Implementation of Duties for the Court (hereinafter referred to as Sema No. 5 of 2021), as determined in the Legal Formulation of the Tata Chamber State Enterprises, that in relation to positive fictitious applications it is no longer the authority of the State Administrative Court.

Based on the description above, it is known that the authority to apply for PKPU for insurance companies and the process for submitting PKPU applications to the OJK. Therefore, analyzing cases of PKPU applications submitted by customers or creditors of PT. Kresna Life Insurance (AJK) which was granted by the Commercial Court, Decision Number 389/Pdt.Sus-PKPU/2020/PN-Niaga.Jkt.Pst, taking into account the application the creditor/customer has made an application to OJK, on the one hand the customer has made efforts according to P OJK No. 28 of 2015 and in Law no. 30 of 2014 is known as positive fiction (the government's silence is considered to be in favor).

The Commercial Court judge has decided that OJK has been slow to respond to requests from AJK customers or creditors or has passed the time limit as stipulated in the laws and regulations, so that in consideration of the PKPU decision the positive fictitious validity becomes the basis for the AJK PKPU application being granted. If you look at one of the principles in carrying out OJK duties, namely the principle of legal certainty, namely the principle of a rule of law that prioritizes the basis of laws and regulations and justice in every policy on the implementation of the Financial Services Authority, then OJK should be able to respond or play an active role in requests from customers by providing consideration in accordance with the rule of law.

If you look at the PKPU AJK case before the enactment of Law no. 6 of 2023 it turns out that there are still procedures that are not carried out by the creditors, namely taking legal action against the Administrative Court to obtain a decision on acceptance of the application (fictional positive), so that based on the TUN decision, the OJK is obliged to implement the decision within 5 days. In fact, the creditor did not take the legal action and immediately submitted a PKPU application to the Commercial Court on behalf of the creditor. Therefore, the act of submitting a PKPU application to the Commercial Court directly cannot be used because there is no legal basis that can replace the OJK as a PKPU applicant, both contained in Law no. 37 of 2004 and in Law no. 40 of 2014. Therefore there are still administrative steps that are lacking, namely through PTUN.[10]

After the enactment of Law No. 6 of 2023, arrangements regarding positive fictitious are regulated by Presidential Regulation. This indicates that the request for a positive fictitious decision is no longer the absolute competency of the Administrative Court. However, the problem is that until now the Presidential Regulation has not been issued, so there is a legal vacuum. As a result, creditors have not been able to adjust their behavior to the rules for PKPU applications against insurance companies. It has been proven that there are still PKPU or bankruptcy applications against insurance companies submitted directly by creditors or customers, including the PT. Prudential Life Assurance, PT. Kresna Life Insurance, PT. Adisarana Wanaartha Life Insurance and PT. Jiwasraya Insurance.

Although fictitious positives cannot be filed again as a basis for a lawsuit at the Administrative Court, to address the legal vacuum of positive fictitious determinations, customers can file a lawsuit for unlawful acts by government bodies or officials (onrechtmatige overheidsdaad) to the Administrative Court based on Article 2 of the Republic of Indonesia Supreme *Court* Regulations Number 2 of 2019 concerning Guidelines for the Settlement of Disputes on Government Actions and the Authority to Try Unlawful Acts by Government Agencies and/or Officials (*onrechtmatige overheidsdaad*). Claims against government actions contain claims against government actions submitted to the Court. Government actions in question are actions to do and/or not to do concrete actions in the administration of government. In the event that the claim is granted, the Court may oblige the government administration official to take government action. If within 90 days the government official does not carry out this obligation, then a request can be submitted to the Chief Justice for the Court to order the Defendant to carry out the decision. The lawsuit against the authority of TUN officials aims to provide a basis for TUN officials to carry out what is required by Law no. 30 of 2014 so as to provide certainty for creditors.

Returning to the AJK PKPU case, other creditors who rejected the Commercial Court Decision Number 389/Pdt.Sus-PKPU/2020/PN-Niaga.Jkt.Pst, made an appeal. The Supreme Court has decided on the cassation case in accordance with Decision Number 647 K/Pdt.Sus-Bankrupt/2021, annulled the commercial court decision on the grounds that the legal standing *for* filing a PKPU application against an insurance company is not given to creditors or debtors but is granted only to one institution, namely the Minister of Finance which then turned to the Financial Services Authority (OJK). The procedure for filing PKPU and bankruptcy applications is regulated through special laws, namely Law no. 37 of 2004 so that in accordance with *the principle of lex specialis derogat legi generalis,* bankruptcy and PKPU applications must be examined and decided based on the corridors of Law Number 37 of 2004.

The Supreme Court stated that examining and deciding on Bankruptcy and PKPU cases based on Law no. 30 of 2014, is a very fundamental mistake because it examines cases outside the provisions that are specific, namely Law no. 37 of 2004. This decision resulted in the cancellation of the peace plan (homologation) and PKPU AJK and returned the situation to how it was before the occurrence of PKPU. This Supreme Court decision demonstrates legal certainty and strengthens the role of the OJK as the only institution that has the authority to submit PKPU applications. This decision also confirms that those

[10]Interview with Andreas Nahot Silitonga (Deputy Secretary General of the Association of Indonesian Curators and Administrators), Tuesday, April 18 2023, 10.00 WIB.

who do not have *legal standing* to submit a PKPU application against an insurance company are not limited to insurance customers, but all creditors who wish to apply for a PKPU against an insurance company.

Against the Supreme Court's Decision, the previous PKPU Petitioner and other creditors then conducted a Review (PK), (PK Petitioners), with Decision Number 3 PK/Pdt.Sus-Bankrupt/2022, even though the Judge rejected the PK application with considerations between others as follows :

“Whereas based on the provisions of Article 285 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt, it is determined that against a decision to ratify the settlement, cassation can only be filed and there is no regulation regarding judicial review, therefore the request for review returns submitted by the Applicants for Review must be rejected”

The Supreme Court Decision and the PK Decision which canceled the Commercial Court Decision gave rise to several notes in the PKPU process, as stipulated in Article 285 of Law no. 37 of 2004 regarding homologation, it turns out that the Supreme Court Decision annulled all existing decisions (the entire PKPU process from the start) not only homologation decisions, but the fact is that the decision disputed the legal standing of the PKPU applicant so that there was a mistake from the Supreme Court, the decision should only *focus* on on the homologation process is appropriate or not. As for the PKPU decision as stipulated in Article 235 paragraph (1) of Law no. 37 of 2004 stipulates that against the PKPU decision no legal remedy can be filed. However, from the point of view of the usefulness of the Supreme Court's decision, it is appropriate to rectify existing laws, this is in accordance with one of the duties of the Supreme Court, namely uniformity, so that justice seekers can reflect on existing decisions. [11]In addition, there are differences of opinion regarding the judge's considerations in deciding the PKPU AJK case, that the judges (the judiciary) have not consistently applied legal rules in resolving PKPU legal disputes.

justifiable protection against arbitrary actions which means that someone will be able to get something that is expected under certain circumstances. The law is tasked with creating legal certainty because it aims to create order in society. Legal certainty is a characteristic that cannot be separated from law, especially for written legal norms. Law without the value of legal certainty will lose meaning because it can no longer be used as a guideline for behavior for everyone. The problem of legal certainty already exists, that is, if a customer wants to submit a PKPU, they must submit an application to the OJK, the problem is how to convince the OJK to continue submitting a PKPU to the insurance company.

Legal Protection for Creditors Due to Default by Insurance Companies

Legal protection is needed by the community to maintain and protect their rights. But what needs to be considered is that society itself is always developing so that the interests of society are also developing, therefore the law always follows the development of human interests. [12]According to Philipus M. Hadjon legal protection can be determined by 2 means, namely preventive and repressive.

Preventive Legal Protection

Preventive legal protection is very significant for government actions based on freedom of action because with the existence of preventive legal protection, the government is

[11] *Ibid.*

[12]Badriyah, SM, *Legal Findings in the Context of Searching for Justice* , Diponegoro University Publishing Agency, Semarang, 2010.

encouraged to be careful in making decisions based on discretion. Regarding the problem of policyholder claims, the government has issued regulations as in Article 31 paragraph (4) and (5) of Law no. 40 of 2014 and has been amended in Law no. 4 of 2023, that:
paragraph (4);
Insurance companies, sharia insurance companies, reinsurance companies and sharia reinsurance companies are prohibited from taking actions that could delay settlement or payment of claims and taking actions that should not be taken resulting in delays in settlement or payment of claims.
paragraph (5);
Further provisions regarding the application of all expertise, attention and accuracy as referred to in paragraph (1) and handling of claims and complaints through a fast, simple, easily accessible and fair process as referred to in paragraph (3) are regulated in the Financial Services Authority Regulation.
Based on the Regulation of the Financial Services Authority Number 69/Pojk.05/2016 Concerning the Conduct of Business of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies (hereinafter referred to as POJK No. 69 of 2016), insurance companies are prohibited from taking actions that could delay settlement or payment of claims, or failure to take action that should be taken resulting in delays in settlement or payment of claims. The settlement process or insurance claim payment period as stipulated in Article 40 POJK No. 69 of 2016, is according to what is stipulated in the insurance policy or no later than 30 (thirty) days from the existence of an agreement between the policyholder, the insured, or the participant with the Insurance Company, Sharia Insurance Company, or Sharia Unit at the Insurance Company, or certainty regarding the amount claims to be paid, whichever is shorter.
OJK continues to supervise and oversee the insurance company's financial restructuring process, one of which is in the AJK case, settlement of AJK policyholder claims to continue to provide protection to policyholders. OJK is imposing administrative sanctions on AJK, namely the sanction of Restricting Business Activities for all business activities through letter number S-499/NB.21/2020 dated 7 December 2020 regarding Restrictions on Business Activities. The sanction is imposed with a period of 3 months.
In addition to legal protection efforts as described above, creditors can also take the PKPU route as stipulated in Article 51 of Law no. 4 of 2023. First, the creditor submits a request to the Financial Services Authority to apply for a postponement of debt payment obligations to the commercial court. Procedures and requirements for applications from creditors are regulated in the Financial Services Authority Regulation as described in the previous discussion.
The case with the Kresna Life Insurance Company began in 2019 when it stated that it was delaying the payment of a policy that was due for 6 (six) months, due to circumstances that forced the COVID-19 pandemic which disrupted the company's financial capabilities. The Kresna Life Insurance Company also offers a payment scheme that will be made, but the customer is disappointed and rejects the payment scheme offered unilaterally by the Kresna Life Insurance Company. As a result, a customer submitted a PKPU application to OJK through their attorney on August 11, 2020. However, after the 30 (thirty) day period as stipulated in Article 54 paragraph (1) POJK No. 28 of 2015, OJK does not provide conditions for accepting or rejecting (fictional positive), so that customers directly apply for PKPU.
The positive fictitious mechanism regulated in Law no. 30 of 2014, namely through the state administrative court, but after being amended by the enactment of Law no. 6 of

2023, the positive fictitious mechanism is no longer under the authority of the State Administrative Court but is regulated in a Presidential Regulation, meaning that the government has provided protection at the preventive stage. However, the problem is that until now there has been no Presidential Regulation regarding positive fiction.

The change in these rules is in line with the Decision of the Constitutional Court Number 071/PUU-II/2004, 001.002/PUU-II/2005 dated 17 May 2005 on Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, Regarding this decision, there was one judge who had a dissenting opinion , namely: Prof. Dr. HM Laica Marzuki, SH, with the following considerations:

Whereas if the intervention of the Minister of Finance in the matter of filing a bankruptcy declaration application and a request for postponement of debt payment obligations is meant '... to build the level of public trust in Insurance Companies or Reinsurance Companies as risk management institutions and at the same time as public fund management institutions that have a strategic position in development and economic life' (Explanation of Article 2 paragraph (5)) then efforts to protect state administrative bodies or officials should be carried out at the stage of preventive efforts by making administrative regulations (*besluit van algemene strekking*) and various State Administration Regulations, not involve themselves in repressive settlement stages that enter the domain of proceedings in court.

Repressive Legal Protection

Repressive legal protection aims to resolve disputes. As for those included in the category of handling legal protection, among others, through the General Courts and Administrative Courts in Indonesia. The dispute resolution process is carried out through the courts or what is often referred to as litigation. Litigation is a dispute settlement carried out by means of proceedings in court where the authority to regulate and decide is exercised by a judge. All parties to the dispute face each other to defend their rights before the court. The end result of a dispute resolution through litigation is a decision stating *a win-lose solution* .

The insurance policy itself is a contract or agreement between the insurance company and the insured. For the insured, who can be an individual or a company, the policy is proof that they have transferred the risk to the insurance company. For the insured, who can be an individual or a company, the policy is proof that they have transferred the risk to the insurance company. An insurance policy contains all rights and obligations owned by both the insurance provider and the insured, and you need to remember that an insurance policy has legal force because it is an agreement. So that if one of the parties violates the agreement can be subject to legal sanctions. If later the insurance company still does not pay the approved insurance claim, then the insurance claim settlement process as stipulated in Article 40 paragraph (3) POJK No. 69 of 2016, can be delegated to court.

The process of resolving insurance claims through the courts, customers or creditors file civil lawsuits on the basis of default (see Article 1243 of the Civil Code). In accordance with Article 118 paragraph (1) HIR (Article 142 RBG), a lawsuit must be filed and filed with the District Court in the area where the Defendant lives. The basis of insurance or coverage is an agreement (see Article 1 point 1 of the Insurance Law). The implementation of an agreement must be based on the norms of decency in society or it is called good faith. Implementation of the agreement as Article 1338 paragraph (3) of the Civil Code, where the judge is given a power to oversee the implementation of the agreement so that its implementation does not violate the norms of decency and justice. If the debtor does not fulfill an agreement that has been required, then according to the provisions of Article

1236 jo. Article 1243 of the Civil Code, such a legal situation has been categorized as a form of default.

In addition to legal remedies through default lawsuits, customers or creditors can also take PKPU legal remedies. The purpose of the enactment of Law no. 37 of 2004 is to realize the settlement of debt problems quickly , fairly, openly and effectively. [13]Based on the provisions in Article 51 paragraph (1) of Law no. 4 of 2023, that "the creditor submits a request to the Financial Services Authority to apply for a declaration of bankruptcy or postponement of debt payment obligations to the commercial court."

After the OJK has received an application to submit a PKPU application, then based on Article 55 paragraph (4) POJK No. 28 of 2015, OJK immediately submits a request for a Company PKPU statement to the commercial court in accordance with statutory provisions. PKPU applications that are submitted to the Commercial Court by the OJK must meet formal requirements and substantial requirements.

The Commercial Court is required to subpoena the debtor via a bailiff by express letter which is recorded no later than 7 days before the trial takes place. During the hearing, the debtor is required to submit a list containing the nature, amount of receivables, and the amount owed by the debtor with sufficient evidence and also if there is a reconciliation plan. The court, within 20 days at the latest, from the date the application was registered, is required to grant the Provisional PKPU request and appoint a supervisory judge from the Court Judge and appoint one or more administrators together with the debtor to manage the debtor's assets.

The temporary suspension of obligation for payment of debt is effective from the date the decision on the suspension of obligation for payment of debt is pronounced. During PKPU, debtors without the approval of PKPU management cannot take management actions or ownership of all or part of their assets. The management is required to immediately issue an announcement of the temporary PKPU decision in the State Gazette of the Republic of Indonesia and at least publish it in 2 daily newspapers (1 national newspaper and one local newspaper) and the announcement must contain an invitation to attend the hearing which is the following deliberative meeting of judges the date, place and time of the trial, the name of the supervising judge and the name and address of the management.

The judge of the court no later than 45 days through the clerk must summon the creditors, debtors and their administrators to be able to hold a hearing. At the time of the trial held, a vote was taken (among concurrent creditors) so that it could be decided whether the PKPU could be granted or otherwise rejected. Based on the voting results, the court can give a definitive (fixed) decision on the PKPU application. In this case, concurrent creditors and/or creditors who have material guarantees do not agree to this Fixed PKPU or its extension or have exceeded the maximum period of 270 days or the number of days that have been determined, they cannot also reach agreement on the reconciliation plan, then upon notification from the management, the court Niaga must declare that the debtor is bankrupt.

Based on the explanation above, PKPU is divided into two stages, namely the Temporary PKPU stage and the Permanent PKPU stage. Based on Article 225 paragraph (2) Law no. 37 of 2004, the Commercial Court must grant the temporary PKPU request. A temporary PKPU is given for a period of 45 days, before a meeting of creditors is held to provide an

[13] Widjanarko, *Impact of Bankruptcy Law Implementation on the Banking Sector* , Business Law Journal, Volume 8, Business Law Development Foundation, Jakarta, 1999, p . 73 .

opportunity for the debtor to present the proposed peace plan. Whereas PKPU is still given for a maximum period of 270 days, if on the 45th day or the meeting of creditors has not been able to cast their vote on the peace plan (Article 228 paragraph (6) of Law No. 37 of 2004). After the court grants the PKPU, the court clerk is obliged to hold a public register and during the PKPU period every 3 months the management is obliged to report on the condition of the debtor's assets and also this report must also be made available to the Registrar's Office of the Commercial Court so that it can be seen by the public free of charge.

Based on the two descriptions of the legal protection theory above, it is known that PKPU is not the only way to obtain justice for defaults that have occurred, there are still other legal instruments that can be implemented. Nonetheless, litigation dispute resolution through PKPU is the best option used by creditors considering that the PKPU application has its own advantages, namely that the PKPU process period is much faster and clearer, and no more than 270 days after the PKPU application is granted. The PKPU process is faster than the civil lawsuit process in general.

According to Zainal Asikin PKPU profits that are obtained for the debtor, in sufficient time will improve and overcome his economic difficulties, and eventually he will be able to pay all his debts in their entirety. For creditors, by granting a delay in payment, it is very likely for the debtor to pay off the debt in its entirety, so that the creditor is not harmed.[14]

PKPU requests for insurance companies that can only be submitted by the OJK actually provide protection for both insurance companies and customers. Considering that OJK carries out the task of regulating and supervising financial services activities in the insurance sector, so that it can find out whether an insurance company meets the requirements to be able to submit a PKPU application or not. On the other hand, there are many customers in insurance companies, so OJK must be able to protect the interests of consumers or the public.

Protection of insurance customers is very important for increasing the trust in the public where the financial services sector is used for long-term stability and growth. The role of OJK in protecting customers is a form of handling for consumers by carrying out complaints which include the preparation of adequate devices and facilitating the settlement of consumer complaints. Talking about the PKPU of insurance companies, OJK plays a significant role because OJK has a fairly high responsibility which is used to maintain trust in the public, especially insurance company customers and guarantee and actively participate in protecting customer rights in relation to their civil rights. OJK is expected to be able to improve the performance of the financial services sector, especially in the insurance sector. OJK's authority has the mission of being a guarantor of the interests of all parties involved in maintaining an insurance business which must be in a healthy order and carry out its duties in protecting its customers.

CONCLUSION

The authority of an insurance company's PKPU application can only be submitted by the OJK as emphasized in Article 50 of Law no. 4 of 2023 concerning the Development and Strengthening of the Financial Sector . The process of submitting a PKPU to the insurance company first the customer submits an application to the OJK, within a maximum period

[14] Zainal Asikin, *Bankruptcy Law and Suspension of Payments in Indonesia* , Raja Grafindo Persada, Jakarta, 2001, p. 107.

of 30 days OJK approves or rejects the application to submit a PKPU application, if within the time limit referred to the OJK does not stipulate and/or make a decision, then the application is considered legally granted (positive fictitious). The form of stipulation of a positive fictitious decision and/or action was previously submitted to the State Administrative Court, after changing the rules, the form of a positive fictitious determination is regulated in a Presidential Regulation. However, until now the Presidential Regulation has not existed, so there is legal uncertainty.

Legal protection for creditors due to default by insurance companies can be seen through 2 means of legal protection, namely preventive and repressive. Preventively the government has regulated that insurance companies are prohibited from taking actions that could delay the settlement or payment of insurance claims. Handling insurance claims must be done through a process that is fast, simple, easy to access, and fair. The settlement process or the insurance claim payment period is in accordance with the provisions of the insurance policy or a maximum of 30 days according to the agreement of the insurance parties, payments can also be made based on the decision of an alternative dispute resolution institution if the company is required to go through this method. Meanwhile, in a repressive manner, customers or creditors can file a lawsuit for default to the District Court or can apply for PKPU to the Commercial Court by first submitting an application to the OJK .

SUGGESTION

To immediately issue a Presidential Regulation related to fictitious positives, so that there is no confusion in the PKPU application process submitted by creditors or customers of insurance companies to OJK and can lead to legal certainty.

So that OJK is more active or able to make decisions on applications submitted by creditors according to the time period based on statutory provisions.

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