

## **Legal Protection of Policyholders Due to Bankruptcy of Bumi Asih Jaya Insurance**

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### **ABSTRACT**

PT. Asuransi Bumi Asih Jaya Insurance or Asuransi Bumi Asih Jaya failed to pay due to many factors, one of which was due to the Covid-19 pandemic. This condition caused the investment portfolio of the two products to be problematic. After experiencing a default, the Supreme Court finally decided to go bankrupt. So that policyholders must get legal protection from the bankruptcy of Krishna Life. The formulation of the problem in this research is the legal position of the policyholder against the decision of the bankrupt Asuransi Bumi Asih Jaya and the legal protection of the Asuransi Bumi Asih Jaya policy holder being declared bankrupt. This study also uses a normative juridical research method. As well as using a statutory approach and a conceptual approach. Based on the results of research and discussion of the legal position between Asuransi Bumi Asih Jaya and policyholders under Preferred Creditors and above Concurrent Creditors. Then there is also no legal relationship between Krishna Life and the Policy Holder. This provision is regulated in Article 21 of the Bankruptcy Law/PKPU, so during the bankruptcy process, the assets obtained from Krishna Life are still managed by the Curator because there has been a bankruptcy statement from the Supreme Court Judge at the cassation level. So that there is no legal relationship again between the Insurer, namely Krishna Life and the Insured, namely the policyholder. Legal protection for Asuransi Bumi Asih Jaya Insurance even though it has been declared bankrupt based on Article 52 paragraph 1 of the Insurance Law. Asuransi Bumi Asih Jaya Insurance also has the same position and is entitled to obtain the proceeds from the sale of the debtor's assets, both the debtor's assets in the future. The bankruptcy estate settlement process from Life Insurance can be carried out by a Curator who starts the settlement of the bankruptcy estate after the bankruptcy estate is unable to pay and the debtor's business is terminated.

Keywords : Bankruptcy, Policy Holder, Legal Protection

### **ABSTRAK**

PT. Asuransi Bumi Asih Jaya terjadi gagal bayar yang disebabkan banyak faktor, salah satunya disebabkan akibat pandemi Covid-19. Kondisi tersebut menyebabkan portofolio investasi dua produknya bermasalah. Setelah mengalami gagal bayar akhirnya diputus pailit oleh Mahkamah Agung. Sehingga pemegang polis harus mendapatkan perlindungan hukum dari kepailitan Asuransi Bumi Asih Jaya. Rumusan masalah dalam penelitian ini adalah kedudukan hukum Pemegang Polis terhadap putusan pailit Asuransi Bumi Asih Jaya dan Perlindungan hukum terhadap Pemegang Polis Asuransi Bumi Asih Jaya dinyatakan pailit. Penelitian ini juga menggunakan metode penelitian secara yuridis normatif. Serta menggunakan pendekatan perundang-undangan dan pendekatan konseptual. Berdasarkan hasil penelitian dan pembahasan kedudukan hukum antara Asuransi Bumi Asih Jaya dengan pemegang polis dibawah Kreditor Preferen dan diatas Kreditor Konkuren. Kemudian juga tidak adanya hubungan hukum antara Asuransi Bumi Asih Jaya dengan Pemegang Polis. Ketentuan tersebut diatur pada Pasal 21 UU Kepailitan/PKPU, jadi selama proses kepailitan harta yang diperoleh dari Asuransi Bumi Asih Jaya tetap diurus oleh Kurator karena telah adanya pernyataan pailit dari Hakim Mahkamah Agung pada tingkat kasasi. Sehingga tidak ada hubungan hukum kembali antara Penanggung yaitu Asuransi Bumi Asih Jaya dan Tertanggung yaitu pemegang polis. Perlindungan hukum bagi Pemegang Polis Asuransi Bumi Asih Jaya meskipun sudah dinyatakan pailit berdasarkan Pasal 52 ayat 1 UU Perasuransian. Asuransi Bumi Asih Jaya juga memiliki kedudukan yang sama dan berhak memperoleh hasil penjualan harta kekayaan debitor, baik harta debitor yang ada di kemudian hari. Proses pemberesan harta pailit dari Asuransi Bumi

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Asih Jaya dapat dilakukan oleh seorang Kurator yang memulai pemberesan harta pailit setelah harta pailit dalam keadaan tidak mampu membayar dan usaha debitor dihentikan.

Kata Kunci : Kepailitan, Pemegang Polis, Perlindungan Hukum

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## **INTRODUCTION**

Every individual will face the uncertainty of life, this uncertainty has a great influence on the welfare of oneself and that person, namely economic uncertainty that affects one's survival in meeting the needs of daily life (Oferman Zai, 2017). Similarly, the uncertainty of an unexpected event, for example, theft, accidents, and various events that happened to him from the beginning were unthinkable. The life of a family becomes neglected due to the death of a parent. One way to reduce the risk mentioned above is by transferring or delegating the risk to another party or other business entity. The party or other business entity in question is an institution that guarantees if an unwanted event occurs. This institution is better known as the so-called insurance which is regulated in Law Number 40 of 2014 concerning Insurance, hereinafter referred to as the Insurance Law (Putra, 2017).

The case in PT. Bumi Asih Jaya Insurance occurred around February 2021 in which there was a default by the Insurer PT. Bumi Asih Jaya Insurance. Failed to pay an amount of Rp. 6.4 Trillion by PT. Bumi Asih Jaya Insurance to 8,900 customers and 11 policies turned out to be caused by many factors, according to one policyholder, the default was due to a violation of regulations, such as PT. Bumi Asih Jaya Insurance invests customer funds in affiliated companies far above the limit allowed by the FSA (Sorta Tobing, 2021).

In addition, PT. Bumi Asih Jaya Insurance has failed to pay two of its insurance products due to the Covid-19 pandemic. This condition caused the investment portfolio of two of its products to be problematic. The financial capability of PT. Bumi Asih Jaya Insurance to fulfil policy obligations is hindered. The company experienced liquidity problems in its investment portfolio (underlying investments) due to the economic crisis and the Indonesian capital market. Before bankruptcy, the policyholders had submitted an official letter of rejection of PKPU to the panel of judges and the management team. The letter outlines the legal basis which shows that the PKPU is legally flawed and should be revoked because the Financial Services Authority responded by saying that it never approved PT. Bumi Asih Jaya Insurance to any party. The Financial Services Authority has also never submitted a PKPU application for this company to the court. PT. Bumi Asih Jaya Insurance was also finally released from PKPU homologation status in February 2021. However, customers have not yet received payment for their policies. Alvin Lim, the customer's attorney at PT. Bumi Asih Jaya Insurance said:

PKPU status has never benefited the policyholders but rather the debtors. PKPU only serves to delay the payment of the policy which is the obligation of PT. Bumi Asih Jaya Insurance. The PKPU decision was previously held by PT. Bumi Asih Jaya Insurance has consequences. As a consequence, there are two options namely, peace or bankruptcy. After a long polemic PT. Bumi Asih Jaya Insurance eventually was declared bankrupt by the Supreme Court in the Supreme Court's decision No. 647 K/Pdt.Sus-Pailit/2021 which stated the applicant's application from PT. Bumi Asih Jaya Insurance for the bankruptcy status of PT. Life Insurance was granted on June 8, 2021. However, this verdict was not welcomed by policyholders. They hope that the bankruptcy decision can be overturned. They hope that the insurers can immediately pay their obligations to the customers because the bankruptcy verdict is also considered to harm on the fulfilment of the customer's rights.

As stated by Nurlaila, one of the policyholders who said that: "If PT. Bumi Asih Jaya Insurance becomes bankrupt, and then all of its assets and finances will be taken over by the curator. As a result,

payments to customers will be stopped until all assets and finances have been sold by the curator.” In addition, the policyholders of PT. Asuransi Bumi Asih Jaya also urges that the Financial Services Authority is willing to carry out its duties in protecting consumers. In addition, the Financial Services Authority must also ensure that all customer rights are immediately paid by PT. Bumi Asih Jaya Insurance. Based on Article 1 point 1 of Law Number 8 of 1999 concerning Consumer Protection, hereinafter referred to as the Consumer Protection Act, consumer protection can be defined as various efforts that guarantee legal certainty to protect consumers. The government immediately takes law enforcement action to protect consumers if violations of the applicable laws and regulations are found by prioritizing the restoration of consumer rights.

## **RESEARCH METHOD**

The type of research used in this paper is normative juridical. This method has the intent and purpose of solving legal problems by emphasizing an application of norms containing legal analysis and protection following legal principles in positive law rules or applicable laws and regulations in Indonesia relating to the legal protection of policyholders due to the bankruptcy of PT. Bumi Asih Jaya Insurance. The approach used in this study uses a statutory approach and a conceptual approach. The legal approach in this paper is related to the topic of discussion of legal issues related to the legal protection of policyholders due to the bankruptcy of PT. Bumi Asih Jaya Insurance. In addition, in the conceptual approach, there are theories used, namely legal standing, legal relations, legal protection, the concept of limited liability companies, the concept of insurance, and the concept of bankruptcy. The primary legal materials in this study include BW, KUHD, Insurance Law, Consumer Protection Law, Bankruptcy Law/PKPU, and Decision Number 647 K/Pdt.Sus-Pailit/2021 first because as a tool to explore or analyze as contained in the theoretical framework. The secondary materials include legal books, language dictionaries, legal dictionaries, legal encyclopedias, and journal articles related to life insurance and bankruptcy agreements.

## **RESULTS AND DISCUSSION**

### **Legal Relations PT. Bumi Asih Jaya Insurance with Policyholders**

The law in its application is referred to as a legal event carried out by legal subjects, namely humans and legal entities. The legal event will give rise to a legal relationship. According to Soeroso, legal relations have the meaning of a relationship between two or more legal subjects. In this legal relationship, the rights and obligations of one party are dealing with the rights and obligations of the other party. Law as a set of rules created by the legislature to regulate social relations gives a right to the subject of law to do something or demand something required by that right, and the implementation of such authority/rights and obligations guaranteed by law (Sovia Hasanah, 2021). In civil law which regulates private legal relationships in its application, it can be carried out such as an insurance agreement made by the parties, namely the policyholders or can be called the insured and the PT. Bumi Asih Jaya Insurance is referred to as the insurer. The insurance agreement in the process is formed due to an agreement from the insurance policy. An agreement that gives birth to an engagement following the provisions in Article 1233 BW: The engagement is formed by a treaty or due to a law. According to Djaja S. Meliala, who said that although Civil Law experts generally agree that the sources of engagement as regulated in Article 1233 BW are incomplete because outside of Article 1233 BW, there are still sources of engagement, namely doctrine, unwritten law, and judges' decisions (Meliala, 2012). The agreement that forms the engagement is

regulated in Article 1313 BW which reads: An agreement is an act by which one or more people bind themselves to one or more other people. Insurance agreement made by PT. Bumi Asih Jaya Insurance with insurance policyholders that forms an engagement due to an agreement, not an engagement due to law because in an insurance agreement the parties can start an engagement with evidence of an insurance policy.

### **The Parties to the Bumi Asih Jaya Insurance Agreement**

A life insurance agreement has parties such as insurance agreement in general, in this case, the parties or subjects of the Bumi Asih Jaya Insurance agreement are referred to as the Insurer and the Insured who have a legal relationship and position as a result of the birth of a non-statutory agreement. Based on the definition of Abdulkadir Muhammad reads: "Insurers and the insured are supporters in carrying out the performance of obligations and rights" (Abdulkadir Muhammad, 2015). In addition to the Insurers and the Insured who are classified as parties in a narrow sense, the parties in a broad sense, namely parties other than the insurer and the insured are required for an insurance agreement and can also obtain rights and obligations.

The insurer as the subject has a definition as the party who accepts the risk of the agreement that has been agreed upon by both parties and bears the payment of the sum insured for the payment of a certain amount as agreed, following the purpose of insurance, namely risk transfer (Posner & Rosenfield, 1977). In a special insurance agreement, namely life insurance, there is a special character, namely, the Insured party is willing to be examined on the condition of the body and there are times when there is a life insurance agreement without requiring a doctor's examination because it relates to the life as the object of life insurance. The theory of the parties above means that the parties from PT Asuransi Bumi Asih Jaya are the insurers, namely PT. Bumi Asih Jaya Insurance and the Insured consist of 8,900 persons who have established an insurance agreement with a legal relationship as evidenced by the Bumi Asih Jaya Insurance policy before 2021.

An insurance policy is regulated in Article 225 of the KUHD, an insurance agreement must be made in writing in the form of a deed called a policy which contains an agreement, an object which means the soul and human body as a whole unity created by God Almighty, special conditions and special promises that become the basis for fulfilling the rights and obligations of the parties (the Insurer and the Insured) in achieving insurance objectives. Thus, the policy is written evidence of the occurrence of an insurance agreement between the Insured and the Insurer. Considering its function as written evidence, the parties (especially the Insured) must pay attention to the clarity of the contents of the policy (Deny Guntara, 2016). Thus the insurance policy can be used as written evidence in the insurance agreement that the parties, namely the insurer and the insured, agree to the birth of an insurance agreement. With the birth of an insurance agreement that has been stated in the form of a written deed called an insurance policy in which there are important clauses such as statements of the parties, agreement, the object of insurance, rights and obligations of the parties and so on.

The insurance policy contains a statement that the insurance agreement must be done by making a deed called an insurance policy. The policy is not the only condition for existence (*bestaanvoorwaarde*). Insurance agreement, the policy also has a function as evidence that explains the occurrence of an insurance agreement, so that an insurance policy can be written evidence at trial. The policy or form of insurance agreement under any name, must not contain words or sentences that can lead to different interpretations of the risks covered by the insurance, the obligations of the insurer and the obligations of the insured or make it difficult for the insured to manage his rights. Insurance policies are also in practice

in the field printed so that can be read easily and understood either directly or indirectly by the policyholders and or the insured. As for every insurance policy issued and marketed in the jurisdiction of Indonesia, it must be made in the Indonesian language. If necessary, the insurance policy can be made in a foreign language alongside Indonesian (bilingual language) (Salviana, 2016). Insurance policies are made based on an agreement because of the relationship between the parties and in the implementation of the insurance agreement, the legal relationship has two aspects, namely: In terms of power/authority (*bevoegdheid*) or rights with opponents, *plicht* or obligations. The authority granted by law to legal subjects (people or legal entities) is called rights. Fulfilment of the clauses of the rights and obligations of the narrow insurance parties, namely the Insurer and the Insured, as outlined in the insurance policy is a form of part of the legal objectives, namely justice, certainty and expediency as well as good faith between the Insured and the Insurer, namely PT. Bumi Asih Jaya Insurance is following the principle of good faith used in the insurance agreement.

### **Analysis of the Legal Relations of the Parties Due to the Declaration of Bankruptcy**

Bankruptcy cases that occurred in Limited Liability Companies have been rampant, one of which is the case of PT. Bumi Asih Jaya Insurance has recently happened. The Declaration of Bankruptcy was decided by the Supreme Court Number 647 K/Pdt.Sus-Pailit/2021 against PT. Asuransi Bumi Asih Jaya as the Respondent for Cassation / Respondent for PKPU with the policyholder or customer as the Petitioner for Cassation with the verdict: "rejecting the application for Suspension of Debt Payment Obligations from the Applicant for Suspension of Debt Payment Obligation in its entirety and Sentencing the Cassation Respondent/PKPU Applicant to pay court fees in all cases. court level, which in the cassation level is set at Rp. 5,000,000.00 (five million rupiahs)". The bankruptcy decision is following Article 24 paragraph 1 of the Bankruptcy Law/PKPU which reads: "the debtor by law loses his right to control and manage his assets which are included in the bankruptcy estate, from the date the bankruptcy declaration decision is pronounced". Thus, based on the Decision of the Supreme Court and Article 24 paragraph 1 of the Bankruptcy Law/PKPU, it will cause legal consequences for legal actions by the Debtor. The legal action also has an influence on the legal relationship of the parties, namely between the Insurer and the Insured.

The statement of bankruptcy of the Supreme Court resulted in all assets of the bankrupt debtor being in general confiscation which was managed by the Curator following Article 24 paragraph 1 of the Bankruptcy Law/PKPU which confirms although Article 22 of the Bankruptcy Law/PKPU contains exceptions for general confiscation of:

1. "objects, including animals that are needed by the Debtor in connection with his work, equipment, medical equipment used for health, bedding and equipment used by the Debtor and his family, and food for 30 (thirty) days for the Debtor and his family, which were in that place;
2. everything that the Debtor obtains from his work as remuneration from a position or service, as wages, pensions, waiting for fees or allowances, to the extent determined by the Supervisory Judge; or
3. money given to the Debtor to fulfill an obligation to provide a living according to the law."

All assets of the bankrupt debtor are managed by the Curator then the bankrupt debtor in this case is PT. Bumi Asih Jaya Insurance and its policyholders, there is no longer any legal relationship between the two parties because of all the assets of PT. Bumi Asih Jaya Insurance which has been declared bankrupt has been transferred and managed by the Curator without exception based on Article 21 of the Bankruptcy Law/PKPU which reads: "Bankruptcy includes all the assets of the Debtor at the time the bankruptcy declaration decision is pronounced as well as everything obtained during the bankruptcy." During the

bankruptcy process the assets obtained from PT. Bumi Asih Jaya Insurance is still being managed by the Curator due to the bankruptcy declaration. So that there is no legal relationship between the Insurers, namely PT. Bumi Asih Jaya Insurance and the Insured are the policyholders.

### **Conflict of Legal Position of Policy Holder PT. Bumi Asih Jaya Life Insurance Due to Bankruptcy**

Application for bankruptcy of PT. Bumi Asih Jaya Insurance which was granted by the Supreme Court Judge Number 647 K/Pdt.Sus-Pailit/2021 on 08 June 2021 between the Policy Holder as the Cassation Petitioner and PT. Asuransi Bumi Asih Jaya as the Respondent for Cassation/PKPU Petitioner who previously had a decision on the Ratification of the Debt Reconciliation Agreement (PKPU) Number 389/Pdt.Sus-PKPU/2020/PN. Niaga.Jkt.Pst. and became an inseparable part which was decided by the Judge of the Central Jakarta Commercial Court on February 11, 2021 in the Supreme Court's legal considerations there was a conflict of norms in PKPU, namely based on Article 223 Juncto Article 2 paragraph (5) of the Bankruptcy Law/PKPU Juncto Law Number 21 of 2011 concerning the Financial Services Authority, hereinafter referred to as the FSA Juncto Law, Article 50 paragraph 1 of the Insurance Law.

The policyholder or the Insured has filed a PKPU and Bankruptcy process to the insurance company, namely PT. Bumi Asih Jaya Insurance does not have any legal position as regulated in the FSA Law. But only to one institution, namely the Minister of Finance who then turned to the Financial Services Authority, hereinafter referred to as FSA.

### **Conflicts of Norms of Policy Holders Who Can File a Bankruptcy Application**

The Bankruptcy Law/PKPU was first implemented only domestically, while each party or the location of assets were only in one country. Therefore, the problems and problems are not too many. With the increasing number of transnational business transactions, the potential for failure and losses that can result in bankruptcy is a state of a person declared bankrupt subject to the Bankruptcy Law/PKPU. The condition of a person who has committed bankruptcy, and therefore can be sued by his creditor. The circumstances of a person whose condition is such that at his voluntary request he has the right to take advantage of the Bankruptcy Law/PKPU. (Sefriani, 2019)

Arrangements related to parties who can file for bankruptcy are regulated in Article 2 paragraph 1 of the Bankruptcy Law/PKPU, so those who can file for bankruptcy are:

1. The Debtor
2. One or more Creditors
3. Prosecutors or public prosecutors
4. Bank Indonesia if the debtor is a Bank;
5. Capital Market Supervisory Agency if the debtor is a Securities company, Stock Exchange, Clearing Guarantee Institution, Depository and Settlement Institution;
6. The Minister of Finance if the debtor is an Insurance, Reinsurance, Pension Fund and State-Owned Enterprise. (Man Sastrawidjaya, 2016)

Based on Article 2 paragraph 1 of the Bankruptcy Law/PKPU, individuals or policyholders are not included in the party who can file for bankruptcy. This means that in the case of PT. Asuransi Bumi Asih Jaya in terms of the legal position of policyholders, there is a conflict of norms and at the same time violates Article 2 paragraph 1 of the Bankruptcy Law/PKPU because it contradicts that the Policy Holder should

not be a party to file bankruptcy. However, the Policy Holders who became parties in filing for bankruptcy still succeeded in granting their petition so that PT. Bumi Asih Jaya Insurance is bankrupt.

The philosophy of filing a bankruptcy petition is based on Article 2 of the Bankruptcy Law/PKPU relating to insurance companies in the case of PT. Bumi Asih Jaya Insurance should be FSA's aim is to protect consumers regarding the rights that must be given to consumers for the obligations carried out by consumers. The basis of the authority of the FSA in submitting applications for bankruptcy statements for insurance companies is because of the ease of requirements in bankruptcy as stated in Article 2 paragraph 1 of the Bankruptcy Law/PKPU that debtors who have two or more creditors and do not pay off at least one debt that has matured and can be billed, declared bankrupt by a court decision either at its application or at the request of one or more creditors. (Istikhomah Dika Romadhona, n.d.) The authority given to FSA to insurance companies does not mean to have any meaning, in fact by being centralized to FSA, it has the aim of ensuring the interests of all parties and also creating a stable and good economic system in Indonesia through the financial services sector, namely the FSA. Considering that the monetary crisis that occurred in Indonesia in 1998 had a so-called unfavorable impact on the national economic system, resulting in major difficulties for Indonesia for the business world in settling debts and receivables in terms of running a business activity. By being given authority to the FSA, the FSA has the responsibility to provide legal protection to customers, so that the creation of a legal goal, namely benefit for all parties.

The next philosophical basis in the formation of FSA is that FSA is an important part of the system for administering state affairs that is well integrated with other state institutions and governments in achieving the goals of the ideals of independence for the State of Indonesia as stated in the Constitution of the Republic of Indonesia in 1945. The FSA, which has an important role in supervising the banking, capital market, and non-bank financial industry needs to be done separately because of differences in the characteristics of each of these financial services industries. Thus it is hoped that with the existence of FSA which has a role in supervision, specialization in supervision can be achieved, development of appropriate supervisory methods, as well as being able to organize decision making and implementation of decisions to be more efficient and effective. Based on this theory, the formation of the FSA was given the task of supervising various fields, especially in the field of insurance companies.

The sociological basis of the existence of FSA in insurance companies in terms of regulation and supervision by the FSA must be directed at creating efficiency, fair competition, consumer protection, and maintaining a healthy market mechanism. The existence of the principles of fairness and transparency on the principle of equality of regulation and supervision must be established in such a way as to create an orderly and productive economic activity and transaction and no less important is the protection of customers and the public.

In the PKPU process, the Policy Holder as the Petitioner in this case is an individual creditor while the Insured is an Insurance Company, namely PT. Bumi Asih Jaya Insurance. However, in the bankruptcy process, the Petitioner comes from the Policy Holder who should not have a position in filing the bankruptcy process.

After the enactment of the FSA Law specifically for the insurance sector, there was a shift in the regulatory and supervisory functions of insurance companies from the Minister of Finance to the FSA. This also has an impact on the filing of a petition for a declaration of bankruptcy against the Insurance Company which also turned to the FSA. Therefore, the FSA has the right position to file PKPU and bankruptcy applications in dealing with insurance companies. Not an individual, namely a policyholder who has a position. Based on this theory, the position of the policyholder as a result of the bankruptcy statement has violated Article 21 of the FSA Law and the judge needs to be careful and thorough with who has the right

to file the PKPU and Bankruptcy process. The position of FSA in bankruptcy cases is to represent creditors whose appointments are based on a special power of attorney from the FSA Board of Commissioners who can then apply for a declaration of bankruptcy to the Commercial Court or in this case also submitted to the Supreme Court.

The judge's consideration in Decision Number 647 K/Pdt.Sus-Pailit/2021 which decided PT. Bumi Asih Jaya Insurance which was declared bankrupt, the judge had the opinion that there was a *Judex Facti* in the PKPU case which had previously been decided by a judge at the Central Jakarta Commercial Court Number 389/Pdt.Sus-PKPU/2020/PN-Niaga.Jkt.Pst related to the existence of Conflict of norms according to the theory, what is meant by conflict of norms is about several articles that will be compared between the two different laws and regulations. So when referring to the bankruptcy decision, the judge has the authority to have an interpretation of a provision of the law, but that interpretation can only be justified if there are unclear norms that need to be interpreted.

Based on Article 11 paragraph 3 of the Bankruptcy Law/PKPU although in the case of PT. Asuransi Bumi Asih Jaya at the Supreme Court's cassation level filed by the creditors of PT. Asuransi Bumi Asih Jaya, but not from the FSA, that what is meant by other creditors, Judges of the Supreme Court, has a grammatical interpretation that creditors who are not parties to the trial in the first instance process are dissatisfied with the bankruptcy statement. This means that the article can be considered by the judges of the Supreme Court to grant the bankruptcy petition.

The occurrence of the case of PT. Manulife Life Insurance is almost the same as the case of PT. Bumi Asih Jaya Insurance. In the case experienced by PT. Manulife Life Insurance the decision of the Commercial Court was cancelled by the Supreme Court for technical reasons caused by the judges of the Commercial Court incorrectly applying the law. The petition for bankruptcy declaration in the Manulife case was submitted by a curator (Annisa Chaula Rahayu, 2013). This has resulted in a technical error in the decision of the Commercial Court which is comparable to the case of PT. Bumi Asih Jaya Insurance was proposed by the policyholder. The rules that have been set by the legislature are still obeyed by the judges during the trial process in the Court. The issuance of Article 2 paragraph 5 of the Bankruptcy Law/PKPU is an addition that states that if the debtor is an Insurance Company, Reinsurance Company, Pension Fund, or State-Owned Enterprise engaged in the public interest, the application for a declaration of bankruptcy can only be submitted by the Minister of Finance. Article 223 of the Bankruptcy Law/PKPU states that if the debtor is a Bank, Securities Company, Stock Exchange, Clearing Guarantee Institution, Settlement and Settlement Institution, Insurance Company, Reinsurance Company, Pension Fund, and State-Owned Enterprise operating in the field of public interest, then those who can apply for the postponement of debt payment obligations are the institutions as referred to in Article 2 paragraph 3, paragraph 4, and paragraph 5 (Annisa Chaula Rahayu, 2013).

### **Application for Declaration of Bankruptcy Against Insurance Company**

The case that occurred at PT. Bumi Asih Jaya Insurance which ended in bankruptcy determined by the Supreme Court that there was an error related to the proposed mechanism. In theory, there are several mechanisms for applying a declaration of bankruptcy against an insurance company, namely:

1. The creditor of the insurance company submits an application to the FSA for which FSA will then review whether it is possible to apply for a declaration of bankruptcy against the insurance company concerned.



2. FSA through the FSA Board of Commissioners may directly apply for a declaration of bankruptcy against the insurance company concerned if there are considerations regarding the stability and financial condition of the insurance company.

Based on the theory of the mechanism, creditors from PT. Bumi Asih Jaya Insurance in the case of submitting an individual application for PKPU and Bankruptcy should first apply to the FSA according to the procedure for submitting a PKPU and Bankruptcy application which is regulated by a special rule, namely the Bankruptcy Law/PKPU, because within the scope of insurance companies there are special rules, namely the FSA Law so that in the case of PT. Bumi Asih Jaya Insurance, following the principle of *lex specialist derogat legi generalis*, bankruptcy petitions and PKPU submitted by the parties must be examined and decided following the corridors of Article 8 of the Bankruptcy Law/PKPU. In this case, the FSA also did not know if there were creditors from PT. Asuransi Bumi Asih Jaya applied for PKPU and Bankruptcy. In its arrangement, the procedures that must be followed by FSA through the FSA Board of Commissioners are the same as those carried out by other parties within the scope of Articles 6 and 7 of the Bankruptcy Law/PKPU.

### **The Position of Creditor Insurance Policy Holder PT. Bumi Asih Jaya Insurance Declared Bankrupt**

In the bankruptcy process, as regulated in the Bankruptcy Law/PKPU Article 2 paragraph 1, one of the conditions that must be met is to have two or more creditors (Hartini & Gorda, 2020). Based on these conditions, the Bankruptcy Law/PKPU only provides for the possibility of a debtor being declared bankrupt if the debtor has at least two creditors. The condition for the existence of two creditors is called a *concursum creditorum*, even though the debtor must have two or more creditors (Sutan Remy Sjahdeini, 2010) which are not required or not stated in Article 1 paragraph 1 *Faillissementsverordening*. The existence of the Bankruptcy Law/PKPU is very necessary because there must be legal provisions governing how to divide the assets of a debtor among creditors if the creditor has more than one creditor.

Aspects of bankruptcy law recognize general confiscation that can be carried out by the curator based on his authority and duties over all debtor's assets following Article 1 number 5 of the Bankruptcy Law/PKPU. Through the concept of bankruptcy law, that there is a part of collateral law, there is an inseparable part of civil law book 2 BW on property. By knowing the phrase from Article 1131 BW which has the same meaning as the substance of bankruptcy in the Bankruptcy Law/PKPU. In the decision of the Supreme Court Number 647 K/Pdt.Sus-Pailit/2021 was proposed by the Policy Holder as a creditor to PT. Bumi Asih Jaya Insurance as a creditor which is regulated in Article 2 paragraph 1 of the Bankruptcy Law/PKPU that the meaning of the article mentions creditors, thus giving the meaning that the creditor as the applicant for bankruptcy in the case of PT. Bumi Asih Jaya Insurance is part of the Preferred Creditors, Concurrent Creditors, or Separatist Creditors. Thus, the Bankruptcy Law/PKPU regulates various types of creditors..

### **Process of Settlement and Distribution of Bankrupt Assets by the Curator of Insurance Debtors PT. Bumi Asih Jaya Insurance**

Bankruptcy assets can include all assets owned by the debtor. However, several assets are not included in the bankruptcy as regulated in Article 22 of the Bankruptcy Law/PKPU, namely:

1. "Objects, including animals that are needed by the Debtor in connection with his work, equipment, medical equipment used for health, bedding and equipment used by the Debtor and his family, and food for 30 (thirty) days for the Debtor and his family, which were in that place;

2. Everything that the Debtor obtains from his work as remuneration from a position or service, as wages, pensions, waiting for fees or allowances, to the extent determined by the Supervisory Judge; or

3. Money given to the Debtor to fulfill an obligation to provide a living according to the law.”

If in the process of the reconciliation meeting the reconciliation stage is not offered or if the peace offering has been rejected or the ratification of the reconciliation is definitely rejected, then by law the bankrupt property is said to be in a state of inability to pay. If based on the provisions of Article 178 of the Bankruptcy Law/PKPU, the curator or creditor present at the meeting can propose that the debtor company's bankruptcy be continued. Based on Article 104 of the Bankruptcy Law/PKPU and Article 106 of the Bankruptcy Law/PKPU, it is not valid again, if there is a certainty that the bankrupt debtor company will not be continued according to the articles or if the continuation of the business is terminated.

The curator in carrying out the duties of the bankruptcy process is divided into two stages, namely the management stage and the settlement stage of the debtor's bankruptcy estate.

### **Bankrupt Asset Management by the Curator**

Management of the bankruptcy estate of the debtor of PT. Bumi Asih Jaya Insurance, which is within the period since the debtor is declared bankrupt by a judge of the Supreme Court on June 8, 2021, following his theory until the debtor submits a reconciliation plan, where the reconciliation plan is accepted by the creditor and homologated by the panel of judges resulting in the appointment of bankruptcy, then the curator must take the following actions, among others:

1. Collecting data, and verifying the obligations of the bankrupt debtor, which requires accuracy from the curator. Both bankrupt debtors and creditors must be heard to be able to determine the status, amount and validity of the debts owed between the bankrupt debtors and their creditors.
2. Conducting data collection, researching assets of the bankrupt debtor including the types of all claims owned by the bankrupt debtor, so that it can be determined what steps must be taken by the curator to cash the said bills.

At this stage, the curator is obliged to protect the existence of the assets of the bankrupt debtor and try to maintain the value of the assets (Novita & Husna, 2019). Because every action taken by the curator outside his authority at this stage must obtain prior approval from the supervisory judge. For example, selling the assets of a bankrupt debtor or pledging the assets of a bankrupt debtor.

### **Distribution of Bankrupt Assets by the Curator**

After the end of the bankruptcy process, the curator is obliged to provide a calculation with all responsibilities of all management that has been carried out to the supervisory judge. The accountability report may contain:

1. Results of records of the use of bankrupt assets, which contain:
  - a) Bank accounts and checking accounts;
  - b) Securities on and on behalf of precious metals or stones;
  - c) Moving objects; and
  - d) Immovable property belonging to the bankrupt debtor;
  - e) Other assets of the debtor.
1. List of bankruptcy estate debts, which have been received or temporarily received along with a brief analysis of the acceptance or rejection of the claim.
2. Continuity analysis related to the debtor's business

3. List of divisions, which contains a list of descriptions;
  - a) All receipts and
  - b) All expenses, fees for curator services, names of creditors, the adjusted amount of each receivable and the distribution to be received for each receivable.
5. List of descriptions and objections or opposition to the distribution list;  
List of closing distributions, namely a list of distributions that have been signed and all proof of payments that have been made by the curator based on the list of closing distributions. (Firmansyah, 2021)

## CONCLUSION

Based on the analysis of the discussion in the previous chapters, it can be concluded by the author that the legal position between PT. Bumi Asih Jaya Insurance with the policyholder because it is a creditor whose rights are prioritized over other creditors according to Article 52 Paragraph 1 of the Insurance Law. Then there is also no legal relationship between PT. Bumi Asih Jaya Insurance with Policy Holders. This provision is regulated in Article 21 of the Bankruptcy Law/PKPU, so during the bankruptcy process the assets are obtained from PT. Bumi Asih Jaya Insurance is still managed by the Curator because of the bankruptcy statement from the Supreme Court Judge at the cassation level. So that there is no legal relationship between the Insurers, namely PT. Bumi Asih Jaya Insurance and the Insured are the policyholders. Legal protection for PT. Asuransi Bumi Asih Jaya, even though it has been declared bankrupt, is based on Article 52 paragraph 1 of the Insurance Law, PT. Bumi Asih Jaya Insurance also has the same position and is entitled to the proceeds from the sale of the debtor's assets, both debtor assets in the future. The bankruptcy estate settlement process from PT. Bumi Asih Jaya insurance can be carried out by a curator who starts the settlement of the bankruptcy estate after the bankrupt assets are unable to pay and the debtor's business is stopped.

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