



## **Analysis of The Commercial Court’s Decision on The Postponement of Debt Payment Obligations to Life Insurance Companies Without The Approval of The Financial Service Authority (Case Study Case Number 389/Pdt.Sus-PKPU/2020/PN Niaga Jkt. Pst)**

**Siti Amalia<sup>1</sup>, Zulfikar Judge<sup>2</sup>**

<sup>1</sup>Esa Unggul University, Jakarta, Indonesia, email mia.mahendra25@gmail.com

<sup>2</sup>Esa Unggul University, Jakarta, Indonesia, email zulfikar10710@yahoo.com

**Abstract.** The Financial Services Authority (hereinafter referred to as "OJK") is an institution that has the authority to attribution has been established and appointed by the government to carry out regulatory and supervisory functions for Financial Service Institutions, one of which is in the case of requests for Suspension of Debt Payment Obligations (hereinafter referred to as "PKPU") at life insurance companies. This research was motivated by the issuance of a PKPU ruling against PT. Kresna Life Insurance (hereinafter referred to as "PT. AJK) by the Commercial Court based on the application of Lukman Wibowo as one of PT AJK's customers and creditors. The problem that arises is that OJK as an institution that has the authority does not respond to the application submitted by the customer in question within the period prescribed by law. This study examines and analyzes the Commercial Court Decision against PKPU at PT. AJK (Case Study Number 389/Pdt.Sus PKPU/2020/PN Niaga Jkt.Pst). The research method used in this study is normative or doctrinal legal research. The results of the study found that the PKPU was not in accordance with applicable laws in Indonesia, because legally the authority to apply for PKPU is absolutely in the hands of the OJK.

**Keywords:** Role, Responsibility, Finansial, Suspension, Insurance

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### **INTRODUCTION**

Insurance as a company engaged in financial services has one very noble goal, which is to provide guarantees to customers to be protected from unavoidable and unpredictable risks. This is in line with the opinion that explains that insurance aims to provide protection or protection for someone's financial loss caused by an unexpected event. (Ancient). In principle, the main function of insurance is as a risk transfer mechanism, which is transferring risk from one party, namely the insured to another party, namely the insurer. This risk transfer does not mean eliminating the possibility of misfortune, but the insurer provides financial security facilities and peace of mind for the insured, in return, the insured is obliged

to pay a premium in a relatively small amount when compared to the potential losses that may be experienced.(Suisno)

In addition to the risk transfer function, insurance is an industry that plays an important role in the Indonesian economy. Where insurance is an institution that collects funds from the public in large quantities. The collection of funds is obtained from premium payments of insurance customers and from the premiums obtained will be empowered and developed through investment schemes in various financial instruments such as deposits, bonds, stocks, and other assets. This means that insurance indirectly contributes to the improvement of the capital market and economy.

Referring to the various roles of insurance, financial health and also a good and correct operational system of an insurance company is certainly a must, in order to avoid systemic impacts that can affect the stability of the financial system as a whole. This is because the life insurance industry has a complex relationship with other financial sectors. This underlies the need for an institution that functions in regulation and supervision, so that insurance companies as financial institutions can carry out all their activities properly, as expected. The Financial Services Authority (hereinafter referred to as "OJK") is an institution that has attribution authority, formed and appointed by the government, functions to organize an integrated regulatory and supervisory system for all activities in the financial services sector.(Fahmi). In the concept of Constitutional Law, authority or authority is described as "rechtsmacht" (legal power). In public law, authority relates to power. In addition, authority consists of at least three components, namely: influence, legal basis and legal conformity. (Hadjon).(Indroharto)

Therefore, it is very clear that through this authority, OJK is expected to carry out its functions based on the principles of good governance, which include accountability, transparency, independence, accountability, and fairness Thus, (Heriyadi)all activities in the financial services sector can be carried out in an orderly, fair, transparent, and accountable manner. In addition, OJK is expected to be able to realize a financial system that grows sustainably and stably, and most importantly is able to protect the interests of its consumers in particular and the public in general. as explained in Law Number 21 of 2011 concerning the Financial Services Authority, especially in Chapter III Article 4.(Law No. 21 of 2011 concerning the Financial Services Authority)

But in reality, an insurance company cannot escape the threat of financial difficulties that can be caused by various causes. One possible cause is due to errors in the company's

financial management, including errors in investment placement policies. This is what happened to PT. Kresna Life Insurance (hereinafter referred to as "PT. AJK"), where PT. AJK places most of its investment in capital market instruments of affiliated companies, namely by placing 88.77 percent of the total investment funds in affiliated companies. This of course violates the provisions set by the government, where investment placement in affiliated companies must not exceed 25 percent.

The existence of Law Number 37 of 2004 concerning Bankruptcy and PKPU (hereinafter referred to as "UUK and PKPU") as the legal basis for bankruptcy proceedings and PKPU has basically regulated this. OJK as an institution that has authority over financial service institutions including life insurance companies has been given authority in filing bankruptcy and PKPU from life insurance companies. The issuance of this provision is certainly not something unfounded, and it has certainly been decided after various thoughts and considerations.

But in fact, this is still far from expectations. This is evident in the case of PT. AJK where the Commercial Court issued a Central Jakarta District Court Decision number 389 / Pdt.Sus-PKPU / 2020 / PN Niaga Jkt.Pst dated December 10, 2020 which determined that PT. AJK has the status of temporary Suspension of Debt Payment Obligations (PKPU), followed by a permanent PKPU decision through Decision Number 389 / Pdt.Sus-PKPU / PN-Niaga Court.Jkt.Pst dated January 22, 2021, which was then continued with a peace agreement (homologation) through Decision Number 389 / Pdt.Sus-PKPU / 2020 / PN Niaga Jkt.Pst on February 18, 2021. In this case, the PKPU decision was issued by the Commercial Court based on the request of Lukman Wibowo as the Policyholder of Kresna Link Investa Life Insurance (K-LITA). This request is based on conditions where PT. AJK has made several adjustments to the payment mechanism, but it has not run as promised or in other words PT. AJK is no longer able to pay its obligations to the Applicant. One of the Applicant's arguments based on the provisions of Article 53 of Law Number 30 of 2014, hereinafter referred to as the "Government Administration Law", where OJK as a government agency or official does not provide a response within the specified period of 10 (ten) working days. This is the basis for being validly granted (positive *tif fictiti*).

This is certainly contrary to the UUK and PKPU, especially in Article 2 and Article 223. In Article 2 paragraph 5 it has been explained that; "In the event that the Debtor is an Insurance Company, Reinsurance Company, Pension Fund, or State-Owned Enterprise engaged in the field of public interest, the bankruptcy declaration can only be filed by the

Minister of Finance." (Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations) . And pthere is Article 223 also explained that; "In the event that Debtors are Banks, Securities Companies, Stock Exchanges, Clearing and Guarantee Institutions, Depository and Settlement Institutions, Insurance Companies, Reinsurance Companies, Pension Funds, and State-Owned Enterprises engaged in the field of public interest, those who can apply for postponement of debt payment obligations are institutions as referred to in Article 2 paragraph (3), paragraph (4), and paragraph (5).(Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations) . However, with the establishment of the OJK institution through Law No. 21 of 2011 concerning the Financial Services Authority, the duties and authorities in terms of regulating and supervising non-bank service activities that previously existed with the Minister of Finance automatically shifted to the OJK. (Law No. 21 of 2011 concerning the Financial Services Authority)

## **LITERATURE**

This research is a normative or doctrinal legal research with a *statutory approach method (statute approach)* and a case approach that uses primary legal materials in the form of laws and court decisions, secondary legal materials obtained from libraries in the form of normative legal theories, and opinions of experts in the field of law related to research topics and tertiary legal materials namely legal materials or documents that provide explanations of primary legal materials, in the form of articles, papers and other materials originating from the internet related to this research.

The qualitative methods used in the study will allow to conduct an in-depth analysis of the data that has been collected. It allows to understand different perspectives and relevant panandgan related to the research topic . The legislative approach is carried out with the aim of being able to examine all laws and regulations related to the legal issue being handled, in addition (Marzuki)to case approaches that can help describe the real situation that occurs in legal practice.

In order to analyze data with qualitative methods, various analytical techniques such as content analysis can be used to identify patterns, themes, and relationships in the collected data. In addition, it can also compare expert opinions with court rulings and existing laws and regulations to form a more complete understanding of the problem carefully.

Normative legal research often makes an important contribution in understanding the theoretical and legal aspects underlying an issue. Qualitative methods also make it possible to explore the complexity of the topic in more detail. With the hope that this research can provide valuable insights related to rigorous issues.

## **METODE**

This research is a normative legal research or known as doctrinal law, with a case approach method. Furthermore, Normative Legal research is one type of legal research methodology that bases its analysis on applicable laws and regulations and is relevant to the legal issues that are the focus of research. In this study, the author used secondary data obtained from the library, including laws and regulations, court decisions, normative legal theories, and opinions of experts in the field of law, related to the subject matter of this study. Research data will be analyzed using qualitative methods, where the data that has been obtained will be analyzed in depth.

## **DISCUSSION**

The financial services industry is one of the industries that plays an important role in economic development in Indonesia, one of which is from the insurance industry sector. In this case, insurance acts as an institution that collects funds from the community with a large enough amount. Based on data from the Indonesian Life Insurance Association (AAJI) in 2022 data shows that life insurance premium income reached Rp192.08 trillion. The income came from the type of life insurance business, and the highest premium income came from unit link insurance products, which amounted to 57.7 percent of the total life insurance premium income or Rp110.77 trillion.(Alatas)

Unit link insurance is one of the life insurance products that combines programs, protection, savings and investment in one product. In this insurance product, insurance customers will have the freedom to determine their own allocation of funds to be invested in investment. (Bukhari)In unit link products, there is a choice of types of managed funds provided by the issuing life insurance company. The completeness of this type of fund is important, so that customers can adjust to their investment goals and risk profiles. (Herayani)

Currently, insurance companies have made various innovations to their insurance products in order to attract prospective insured. There are still many antipathetic people's mindsets to buy insurance products because they feel it is a loss to pay insurance premiums. The presence

of unit link insurance is a breath of fresh air, because through unit link insurance can attract (Hazhin and Diaz) the interest of the wider community to buy insurance program, because unit link insurance can provide investment returns in addition to protection as a basic benefit. Of course, this will change people's views, by buying unit link insurance products, of course, it will not be in vain because even though there is no risk, program buyers will still benefit from the growth of their investment.

Likewise what happened to PT. AJK, where the insurance company offers unit link insurance products by promising high investment returns to the public. The products offered are Kresna Link Investa (K-LITA) and Protecto Investa Kresna (PIK), where prospective policyholders are offered a return on investment of 9%. (Hazhin and Diaz) PT. AJK is a company in the form of a Limited Liability Company Legal Entity, established under the laws of the Republic of Indonesia. Existing problems regarding PT. AJK and customers related to delays in insurance policy payments and liquidity problems in investment portfolios are serious matters and require attention. Based on the chronology provided, there are several events that indicate problems in the implementation of policy payment obligations by PT. AJK.

First, sending a letter to the customer to postpone the payment of overdue policies on the grounds of protecting and saving customer funds indicates a comfortable condition in the company's financial condition. Then, the existence of a second letter stating force majeure and the extension of policy payments until a certain date also reflects a difficult situation within the company. The actions of PT. AJK to pay the first stage insurance policy only to a few policyholders with a certain value also indicates a priority in payments, which can create competition and dissatisfaction among other customers.

Customer steps to report PT. AJK to OJK is a reasonable action in such a situation. OJK as an institution has authority based on attribution authority, namely authority granted under law, has duties and responsibilities for the supervision and regulation of financial institutions, has an important role to ensure that insurance companies fulfill payment obligations to customers in accordance with agreed contracts. OJK also has the responsibility to maintain the stability of the insurance industry and customer protection. (Hazmi et al.) With the report submitted by the customer, OJK can conduct further investigations against PT. AJK to ensure the company's compliance with applicable rules and regulations, and encourage PT. AJK to carry out its obligations in paying overdue policy claims.

The shaky condition of PT. AJK provides a clear picture of the problems within the company. Excessive investment placement in affiliated companies is an action that can pose a substantial risk to the financial health of the insurance company. Government regulations governing the maximum limit of investment placement in affiliated companies aim to protect the interests of customer companies and maintain financial stability. Over-placing investments in affiliated companies can lead to liquidity problems and unbalanced investment risks. If the value of the shares of affiliated companies has decreased significantly, then the investment value of PT. AJK will also be affected. This can cause difficulties in fulfilling claim payment obligations to customers and create doubts among customers.

Meanwhile, the maximum investment placement limit in affiliated companies also aims to prevent conflicts of interest that can harm customers and maintain company integrity. By facilitating the placement of investments in affiliates, it is expected that insurance companies will focus more on the financial health and interests of their customers' companies. Conditions that occur related to violations of investment placement limits set by the government indicate problems in risk management and investment management at PT. AJK. Therefore, government action and regulatory agencies are urgently needed to address this problem. Actions that can be taken include tighter supervision of insurance companies, further investigations related to investment policies, and restructuring measures to address liquidity issues and investment risks.

Such conditions also express the importance of transparency, integrity, and good corporate governance in the financial services industry. Customer protection must always be a top priority, and governments and regulatory agencies must act to ensure that companies in the industry operate in compliance with applicable regulations and have customer interests in mind.

The process of submitting a Request for Suspension of Debt Payment Obligation (PKPU) by the customer to the OJK and the commercial court shows that the client feels aggrieved by the condition of PT. AJK who is unable to fulfill the obligation to pay the overdue insurance policy. Customers use these legal channels to try to obtain protection of their rights. This process also shows how complex the problems faced by customers and insurance companies are, as well as the role of supervisory agencies in dealing with these kinds of problems.

Law Number 40 of 2014 concerning Insurance has given authority to OJK in regulating and supervising the insurance industry. The PKPU application, which was originally the authority of the Minister of Finance, has been transferred to the OJK. Therefore, OJK should have a strong role in handling problems involving insurance companies and their customers. (Law No. 40 of 2014 concerning Insurance) OJK's action in issuing a business activity sanction letter (PKU) against PT. AJK is a step to ensure that the company complies with its provisions and obligations towards customers. However, along with the difficulty of the problem, it is important for OJK to run it quickly and transparently in responding to client complaints and requests.

This case also shows that customer protection and the financial health of companies in the insurance industry are very important. The difficulty of supervisory agencies and the role of commercial courts in resolving disputes like this is part of an effort to create a safer and more trusted environment for clients and industry players. Central Jakarta Commercial Court Decision Number 389/Pdt.Sus-PKPU/2020/PN Niaga.Jkt.Pst. The granting of PKPU's request against PT Asuransi Jiwa Kresna by policyholder customers did create a polemic. There are legal considerations underlying this ruling, where the trial judge considers several factors and arguments presented in the case.

One of the judge's juridical considerations in granting the PKPU application is that the creditor (policyholder customer) has good faith to seek justice by submitting a PKPU application to the OJK. In this context, OJK acts as a supervisory institution in the financial services sector including the insurance industry. By applying for PKPU, customers strive to obtain protection and restoration of their rights related to the payment of overdue insurance policies.

The change in role and authority in the regulation and supervision of financial services activities, including industrial insurance, from the Minister of Finance and the Capital Market and Financial Institutions Supervisory Agency (Bapepam-LK) to OJK since December 31, 2012, has implications for such cases. OJK is responsible for ensuring that financial institutions, including insurance companies, operate in accordance with established regulations and standards to protect the interests and customers of the public.

This court decision may be based on the consideration that OJK already has the authority and discipline in supervising the insurance industry. However, this ruling may also raise questions regarding the dynamics between the role of the OJK, commercial courts, and authority in addressing issues involving insurance companies and customers. It should be

noted that the interpretation and application of the law in each case may vary based on the facts and arguments at hand. Therefore, the court's decision and its consideration must be viewed in the specific context of the case and in accordance with applicable law.

In the decision, the Panel of Judges gave very important considerations related to the applicant's reasons for applying for Suspension of Debt Payment Obligations (PKPU) against PT. AJK to the Commercial Court. These considerations demonstrate the judge's understanding of the legal process and OJK's role in regulating and supervising the insurance industry.

The panel of judges considered that the applicant had good faith in seeking justice, because the applicant had previously submitted a PKPU application to the OJK which did not get an answer within several months. In this case, the applicant seeks legal protection over circumstances involving the insurance company. In addition, the panel of judges also referred to incompleteness in regulations related to PKPU submissions against insurance companies. This incompleteness reflects the fact that Law Number 40 of 2014 concerning Insurance does not regulate the existence of PKPU. In the context of this incompleteness of norms, the panel of judges used the legal principle of *lex specialis derogat legi generali*, which means that special laws override common law. In this case, if there is a law that specifically regulates a thing, then that law should take precedence over the more general and non-specific law.

However, because Law Number 40 of 2014 concerning Insurance is not regulated regarding PKPU, the Panel of Judges takes an approach to follow general law principles governing government administration. Because OJK is a state institution bound by the Government Administration Law, the Panel of Judges argued that OJK has the responsibility to provide answers or responses to the PKPU application.

This ruling reflects the complexity of the interaction between financial services sector regulation, industrial insurance regulation, and government administrative law. However, it is important to remember that the interpretation and application of the law may vary in other cases depending on the facts, arguments, and legal principles applied in the court decision.

Article 53 of the Government Administration Law states:

- 1 Time limit for the obligation to determine and/or carry out Decisions and/or Actions in accordance with the provisions of laws and regulations.

- 2 If the provisions of laws and regulations do not specify the time limit for obligations as referred to in paragraph (1), the Agency and/or Government Officials must determine and/or carry out Decisions and/or Actions within a maximum of 10 (ten) working days after the application is received in full by the Agency and/or Government Officials.
- 3 If within the time limit as referred to in paragraph (2), the Agency and/or Government Official does not determine and/or carry out a Decision and/or Action, then the request is considered legally granted.
- 4 4.The applicant submits an application to the Court to obtain a decision on the acceptance of the application as referred to in paragraph (3).
- 5 The court must decide the application as referred to in paragraph (4) no later than 21 (twenty-one) working days from the time the application is submitted.
- 6 6.Government Agencies and/or Officials must determine the Decision to implement the Court's decision as referred to in paragraph (5) no later than 5 (five) working days from the Court's decision.(Law No. 30 of 2014 concerning Government Administration)

The decision of the panel of judges seems to refer to Article 53 of the Government Administration Law, especially paragraph (3) which states that if within 10 days of receipt of the notification of the PKPU application, there is no written answer from the debtor or if the answer given is insufficient, then the court can immediately grant the PKPU application. UU of Government Administration, has adopted the legal principle of 'silence means agree' or commonly known as "positive fictitious" In simple terms, it can be said that the conception of positive fictitious in the Government Administration Law is a legal fiction that requires administrative authorities to respond or issue decisions / actions submitted to it within the time limit as determined and if prerequisites This is not fulfilled, the administrative authority is deemed to grant the application for issuance of the decision/action requested to him.

Therefore, the "silence" shown by OJK is considered a form of granting permission from creditors to apply for PKPU against individual insurance companies(Simanjuntak) (*naturlijk person*). This is different from the principle or legal fiction adopted by Law No. 5 of 1986 concerning the State Administrative Court where "silence means rejecting" or commonly referred to as negative fiction(Hazmi et al.).(Law No. 5 of 1986 concerning State Administrative Court)

In addition, the ruling also provided information that several PKPU applications against PT. The AJK filed by the policyholder's previous policyholder was revoked by the applicant on the day of trial. This shows that there are efforts made by policyholder customers to apply

for PKPU as a means of seeking legal protection against situations of delayed policy payments that have matured.

Related to OJK's actions, OJK letter Number S-342/NB.2/2020 issued on August 14, 2020 sanctioned the completion of business activities (PKU) to PT. AJK. This PKU sanction indicates that OJK has an important role in supervising and controlling insurance companies to ensure that payment obligations to customers are still fulfilled.

In the legal context, such a situation demonstrates the limitations and importance of the role of regulation, corporate law, contract law, and customer protection in the financial services industry. Ultimately, the court's ruling in this case could provide guidance and precedent for similar cases in the future and underscore the importance of the role of the FSA and oversight of the financial industry as a whole.

The opinion reflects an in-depth analysis of the issues related to submitting a PKPU application against PT AJK and OJK's role in this matter. have resolved several things that became points of difficulty and challenge in this case. In this case, the author tries to summarize several key points that convey:

- 1) Good Faith and Interests of the Applicant: The action of the applicant to file a PKPU application against PT AJK to the Commercial Court may seem hasty and prioritize unilateral interests without considering the decision of the OJK regulator.
- 2) Ratification of Application: The judgment put forward by the panel of judges is partial because it does not comply with Article 53 paragraph (4) and paragraph (5) of the Government Administration Law where it has been affirmed that the phrase "deemed legally granted" in a positive fictitious decision must be tested and appealed through the Court in order to obtain an endorsement decision whether the positive fictitious decision is feasible or not
- 3) OJK Authority and Response Time: It is noted that the Insurance Law and OJK Regulation No. 28/POJK.05/2015 have clearly stipulated a 30-day time limit for OJK to respond to PKPU applications submitted by creditors (policyholder customers). However, there is a misalignment between Article 53 of the Government Administration Law which regulates the time limit of 10 days and Article 51 of the Insurance Law and OJK Regulation No. 28/POJK.05/2015 Article 54 which regulates the time limit of 30 days.

- 4) OJK Independence and Legal Provisions: responsibility that OJK as an independent institution should carry out its management in accordance with applicable legal provisions and not conflict with special regulations regulated in the Insurance Law.

All the points raised are important elements in one law regarding this case. This issue is also complicated in combining the rules of various applicable laws, especially when there are inconsistencies or inconsistencies between these provisions. The final assessment of the parties concerned with the case will serve as an important guide to its reach and future legal practice. We can review the technical and juridical aspects related to the process of submitting a PKPU application and the interpretation of related articles. Here are some points that can be taken from the explanation:

Linkage of Article 53 of the Government Administration Law: details the relationship between Article 53 of the Government Administration Law and other articles in the context of PKPU applications and decision making by the government. emphasizing that in Article 53 of the Government Administration Law, there is a requirement to apply to the court in order to obtain a preparation settlement after the government agency has not provided an answer within the stipulated time limit.

- 1) Applicant and Creditor: lists the applicant's status as a creditor, which allows them to apply for PKPU against PT AJK. states that the applicant filed the application based on the belief that PT AJK could not continue to repay its debts.
- 2) Differences in Debtor Categories: shows the different categories of debtors who can apply for PKPU based on Article 223 of the UUK and PKPU. In this case, insurance companies belong to the regulated category.

All the points raised are an integral part of the legal discussion regarding this case. has provided a detailed analysis of legal rules relating to the submission of PKPU applications, debtors, creditors, and the role of government agencies in this matter. Legal debates such as these underscore the complexity of legal acts and how the interpretation of laws affects the outcome of certain cases. A detailed explanation of the legal provisions governing the submission of PKPU applications to insurance companies, especially those relating to the authority of parties who can submit applications. Here are some main points that can be interpreted from the explanation:

- 1) Authority to Apply for PKPU: specifies that based on Article 2 paragraph (3), paragraph (4), and paragraph (5) of the UUK and PKPU, the authority to apply for PKPU against

insurance companies is transferred from the Minister of Finance to the OJK. This includes debtors engaged in insurance companies.

- 2) Debtor and Creditor Status: confirms that PT AJK, as an insurance company, is the debtor in this case. Insurance policy owners who apply for PKPU are considered creditors, and under Article 223 of UUK and PKPU, concurrent creditors of debtors who cannot continue to pay their debts can apply for PKPU.
- 3) Transfer of Authority: specifies that the authority that originally existed with the Minister of Finance to submit a PKPU application for insurance was transferred to OJK based on Article 55 of the OJK Law. As a regulatory and supervisory institution in the financial sector, including insurance companies, OJK is required to apply for PKPU.
- 4) Relevance of Procedures for Filing Bankruptcy Applications: it is emphasized that in the case of filing PKPU applications against insurance companies, the relevant procedures are procedures for filing bankruptcy applications that apply *mutatis mutandis*. This means that the procedures used to file a bankruptcy application also apply with adjustments in filing PKPU against insurance companies.

By providing these points, it has provided a comprehensive picture of how the authority and procedures for submitting PKPU applications for insurance are regulated in applicable law. Based on several judges' considerations in deciding PKPU and Bankruptcy cases above, it can be seen that Creditors or customers of insurance policyholders do not have legal standing in submitting PKPU applications against Insurance Companies to the Commercial Court but Creditors can submit PKPU applications against Insurance Companies to OJK as a supervisory and supervisory institution in the financial sector. So that Article 223 of the UUK and PKPU which are imperative in nature become the main basis for submitting PKPU applications to Insurance Companies.

In Decision Number 389/Pdt.Sus-PKPU/2020/PN Niaga Jkt. Pst, the Panel of Commercial Court Judges at the District Court, decided that:

- 1 Declaring valid and legally binding, the Peace Agreement dated February 10, 2021 between PT. Kresna Life Insurance (IN PKPU) with its Creditors;
- 2 Punish Debtor/ PT. Kresna Life Insurance (IN PKPU) and all its creditors to comply and comply with and implement the contents of the Peace Agreement dated February 10, 2021;
- 3 Declaring the Suspension of Debt Payment Obligations (PKPU) Number 389/Pdt.Sus-PKPU/2020/PN. Niaga.Jkt.Pst., for the sake of the law ended;

- 4 Declare the management team's service fees and management fees will be determined in a separate determination;
- 5 Sentencing the Applicant to pay the costs of the case which until today has been set at Rp 3,923,000.00 (Three million nine hundred twenty three thousand rupiah).

According to the author, the decision is not appropriate (*contra*) because legally the authority to apply for PKPU is in the hands of the OJK, this is as stipulated in:

- a UUK and PKPU Article 2 and Article 223 and refer to Law Number 21 of 2011, especially Article 55 paragraph (1) above, of course, can be used as a basis that this authority has shifted from the Minister of Finance to OJK.
- b Law No.40 of 2014 concerning Insurance, in article 50 paragraph (1).
- c OJK regulation No. 28/POJK.05/2015 Articles 52 to Article 54.

The problem is that within four (4) months OJK has not provided an answer. OJK actually took an action where, on August 3, 2020 OJK issued OJK letter number S- 342 / NB.2 / 2020 which contained sanctions for limiting business activities (PKU) with the prohibition of closing new coverage activities for all business lines. This is certainly not appropriate, where the presence of OJK is expected as an institution that can regulate and supervisor financial institutions including life insurance companies that have been authorized through the Law are expected to carry out their duties as proclaimed by the Law. This includes playing an active role in solving problems that occur, one of which is PKPU at life insurance companies.

The existence of OJK as the only institution given authority in the PKPU application in this case was strengthened by the Supreme Court decision through Decision Number 647 K / Pdt.Sus-Pailit / 2021, where the Supreme Court judge stated that the *judex facti* in the PKPU case had misapplied the law. The consideration of the Supreme Court is based on the provisions of Article 223 jo Article 2 paragraph (5) of Law Number 37 of 2004 concerning Bankruptcy and PKPU jo Law Number 21 of 2011 concerning the Financial Services Authority jo Article 50 paragraph (1) of Law Number 40 of 2014 concerning Insurance, where the party who has the authority (legal standing) to submit a PKPU application against an insurance company is only given to one institution, namely the Minister of Finance who is currently switching to OJK, other than that it is considered to have no legal standing. In the case of PT. AJK, the applicant for PKPU is a customer as well as an individual creditor while the respondent PKPU is an insurance company, namely PT. AJK, so that the existing

PKPU decision is contrary to the provisions of Article 223 jo. Article 2 paragraph (5) of Law Number 37 of 2004 concerning Bankruptcy and PKPU. Thus, the PKPU's application in the case should not be accepted.

Later in its cassation, the Supreme Court also stated that the *judex facti* had erred in examining and deciding the PKPU application based on the Government Administration Law. Even though the procedure for filing PKPU and bankruptcy applications has been regulated through a special law, namely Law Number 37 of 2004 concerning Bankruptcy and PKPU so that in this case in accordance with the principle of *lex specialis derogate legi generalis*, bankruptcy and PKPU applications should be examined and decided within the corridors of Law Number 37 of 2004.

The Supreme Court judge in his decision also argued that, because the decision of the PKPU application on which the homologated peace agreement was based was a wrong decision, the consequence was that the entire decision was flawed and must be declared void. That it is true at the practical level that if homologation is canceled, the debtor will automatically be declared bankrupt. However, this does not apply to the case of PT. AJK, because the Supreme Court judge declared that all *judex facti* rulings in this case were void, PT. AJK returned to its original condition before the PKPU and Homologation rulings. Thus, PT. AJK after the cassation decision is not in bankruptcy. (Hazhin and Diaz)

In this case, the author also believes it is necessary to see the need to place OJK as the only institution that has authority in applying for PKPU seen from various aspects including:

1. Philosophical aspect:

- a) OJK as a regulator has the duty and responsibility to protect the public interest and ensure the stability of the insurance sector. This includes ensuring that life insurance companies practice ethical and responsible financial management. Given the function of insurance in people's lives is very large as stated in the previous chapter Insurance has the following functions: The main functions are risk *transfer*, fund collection (*common pool*), balanced premiums (*equitable premium*), besides that insurance also has secondary functions including stimulating business growth, security so that the insured can concentrate on his business, Prevention (*loss prevention*) by identifying potential risks, social benefits namely by accelerating economic recovery and preventing poverty, savings (investment) for example for life insurance, and additional functions including as a source of public funds where

insurance companies invest premiums collected through financial instruments and *invisible earning* namely income for insurance and reinsurance companies.

- b) Consumer Protection: OJK must ensure that life insurance policyholders are protected and provided with clear and accurate information about the status of their companies and insurance policies. This aims to foster trust and confidence among policyholders who are also creditors
- c) Transparency and Openness: OJK in carrying out its duties and responsibilities adheres to the values of transparency and openness in dealing with PKPU situations. Their decisions and actions can be accounted for and explained clearly to the public because the values of transparency and openness allow OJK to account for decisions and actions taken in supervision and regulation. This helps build public trust in supervisory authorities and ensures that decisions taken are based on sound judgment. In addition, by prioritizing transparency, OJK can prevent situations where there is the potential for irresponsible parties to commit fraud or manipulation. Open information minimizes opportunities for harmful practices and helps the general public understand the reasons behind such actions and reduce uncertainty. What needs to be underlined, openness will allow third parties, such as financial analysts, academics, and media, to understand and evaluate the steps taken by OJK. This will provide independent png angles that can help supervise the activities of supervisory authorities.
- d) Sustainability and Balance: OJK is tasked with ensuring that the decisions taken focus on the sustainability of the insurance industry and the stability of the financial services sector as a whole. This is considering life insurance as a tool to protect and provide financial protection for the community. OJK must ensure that life insurance continues to function effectively as a social instrument that provides benefits for many people.

## 2. Juridical aspect:

- a. Legal Basis: OJK as a supervisory institution in the financial services sector in Indonesia has the authority to regulate and supervise life insurance companies. The juridical aspect of PKPU is based on a valid legal basis, including laws and regulations governing the PKPU process in the insurance industry.
- b. PKPU Procedures and Provisions: OJK follows the procedures and provisions stipulated in the applicable laws and regulations related to PKPU. This includes

the steps to be taken, the deadline set, the obligation to notify policyholders, as well as criteria and reasons that can be used as a basis for conducting PKPU.

- c. Rule of Law: OJK ensures that the entire PKPU process is carried out in accordance with the principle of rule of law. Therefore, OJK's decisions and actions are based on applicable law and within the limits of authority that have been determined.
- d. Public Interest: The juridical aspect of PKPU also includes consideration of the public interest in maintaining the stability of the life insurance sector, ensuring that PKPU decisions are taken to maintain industry stability and consumer protection.
- e. Supervision and Control: OJK has the duty and responsibility to carry out effective supervision and control during the PKPU process to ensure that life insurance companies that experience PKPU operate in accordance with the stipulated provisions.

This juridical aspect is important to ensure that the life insurance company's PKPU process is carried out in accordance with applicable laws and regulations, protects the interests of policyholders, and maintains the stability of the life insurance sector as a whole. Adherence to this juridical aspect will ensure the PKPU process runs smoothly and fairly for all parties involved.

### 3. Sociological Aspect:

- a. Impact on Policyholders: PKPU can have a significant impact on life insurance policyholders. They may feel anxious and worried about the viability of their insurance policy, especially if the company is going through financial difficulties. This feeling of uncertainty can affect policyholders' confidence in the life insurance industry and may influence their decision to retain or cancel their policy.
- b. Economic Uncertainty: PKPU of life insurance companies by OJK can create economic uncertainty in the insurance industry as a whole. Industry players, such as insurance agents and brokers, may experience instability in their income due to this situation. In addition, policyholders and the general public can also feel concerned about the stability of the life insurance market as a whole.
- c. Impact on Employees and Workforce: PKPU can have an impact on employees and workers of life insurance companies who are experiencing financial difficulties.

Restructuring or termination processes are possible, which may lead to economic and social instability for affected employees.

- d. **Public Trust and Reputation:** PKPU in life insurance companies can affect the reputation and public trust in the insurance sector as a whole. If the public is concerned about the stability of insurance companies and their ability to pay claims, then public trust in the industry may decline.
- e. **Social Reaction:** Life insurance company PKPU can cause social reactions from various parties, including policyholders, employees, insurance agents, and the general public. This reaction can be protests, complaints, or concerns expressed through social media, forums, or advocacy groups.
- f. **Social Responsibility:** PKPU raises questions about the social responsibility of life insurance companies and OJK. In dealing with this situation, it is important for OJK and insurance companies to communicate clearly to the public about the steps taken and how they are responsible in protecting the interests of policyholders and the public.

## **CONCLUSION**

The authority of OJK, in applying for Life Insurance Company PKPU in accordance with applicable laws and regulations in Indonesia according to Article 223 of Law Number 37 of 2004, bankruptcy filing and insurance company PKPU is absolutely given to OJK to build and foster public trust. However, OJK's response to the case of PT Asuransi Jiwa Kresna is considered not in accordance with the provisions of Article 51 paragraph (2) of Law Number 40 of 2014 and Article 55 paragraph (4) of POJK 28/2015 which regulates procedures for filing bankruptcy applications. So when OJK continues to be slow to respond to this, it will certainly reduce the existence of OJK's role as a supervisory institution that can protect legal certainty over the rights of customers and insurance companies.

Legal remedies for the issuance of PKPU decisions against Life Insurance Companies by the Commercial Court, without OJK approval (Case Study Number 389/Pdt.Sus-PKPU/2020/PN Niaga Jkt. Pst, namely OJK submitted a letter of application to PT Asuransi Jiwa Kresna to make legal efforts against the Commercial Court Decision at the Central Jakarta District Court Number 389/Pdt.Sus-PKPU/2020/PN Niaga Jkt.Pst including extraordinary legal remedies, in accordance with statutory provisions. OJK itself will take the necessary steps in accordance with laws and regulations. In order to restructure PT AJK's

finances, OJK has also asked shareholders to detail the capital deposit plan in order to settle PT Asuransi Jiwa Kresna's obligations. OJK continues to supervise and supervise PT AJK's financial restructuring process and PT AJK's policyholder claim settlement to continue to provide protection to policyholders. OJK also imposes administrative sanctions on PT AJK, namely Business Activity Restriction sanctions for all business activities through letter number S-499 / NB.21 / 2020 dated December 7, 2020 regarding Business Activity Restrictions. The sanction is given with a period of 3 months.

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