

## Legal Standing of Insurance Policy Holders Regarding Applications for Delay of Debt Payment Obligations Due to Bankruptcy (Study of Commercial Court Decision Case Number 389/Pdt.Sus-pkpu/2020/Pn-Niaga.Jkt.Pst)

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### Abstract

The proposed study will examine the legal protections afforded to insurance policyholders if their insurance provider declares bankruptcy. 2) In accordance with Case Decision No. 389/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.Pst., this research will analyze and determine the legal standing of policyholders regarding requests to postpone debt payment obligations resulting from bankruptcy. With a focus on both statutes and concepts, this study follows a normative juridical research methodology. According to the research, Article 53 of Law Number 40 of 2014 on Insurance provides legal protections for policyholders of insolvent insurance companies. In the same decision, the Panel of Judges confirmed that PT. Kresna Life Insurance (in PKPU) and all its creditors are bound by a settlement agreement, which includes mechanisms that protect policyholders from insolvency, such as actio pauliana, alignment of receivables, and settlement (peace). Law No. 37 of 2004 on Bankruptcy and Postponement of Debt Payment Obligations (PKPU) states that the signing of the peace agreement will officially end the PKPU. Additionally, in the same decision, insurance policyholders are considered preferred creditors in requests for the deferral of debt payment obligations due to bankruptcy. Due to the specifics of their receivables, certain creditors are required by law to be paid first before others. These creditors are known as preferred creditors, who have special rights under the law, giving them priority over other creditors based on the nature of their receivables.

**Keywords: Insurance, Legal Standing, Policy Holder, PKPU.**



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### INTRODUCTION

Insurance in legal terminology is an agreement, therefore the agreement itself needs to be studied as a reference towards the meaning of an insurance agreement (Klee, 2018). The insurance agreement is entered into with the aim of obtaining certainty regarding the return of the (economic) situation to its original state before the event occurred. In fact, the purpose of all insurance is to cover a loss suffered as a result of an event in question and which cannot be determined beforehand whether it will occur or not (Balcilar et al., 2020). Unfortunately, the element of compensation as an important element in insurance has not been implemented in accordance with the objectives of insurance policy holders entering into an insurance agreement. Insurance policy holders experience difficulties when submitting compensation claims (Lou et al., 2022). Insurance companies as insurers always put forward various reasons

as a basis for not paying compensation claims submitted by policy holders. This is one of the reasons why there are still many people who do not have the awareness to take insurance (Al-Thaqeb & Algharabali, 2019).

One Indonesian company that deals with life insurance is PT Asuransi Jiwa Kresna. One of the requirements of Law Number 40 of 2014, which deals with insurance, states that "Every entity engaged in Insurance Business must first secure a business license from the Financial Services Authority."

Bankruptcy institutions have been known about for a long time around the world. Since the country's currency collapsed in 1998, this institution has become very popular in Indonesia (Mahmudah et al., 2018). Bankruptcy in Indonesia is defined in Article 1, paragraph (1) of the Bankruptcy Law (Law Number 37 of 2004) as the total seizure of all assets of the bankrupt debtor and their management and resolution by a curator overseen by a supervising judge. The inability of the debtor to pay off their debts is a hallmark of bankruptcy. If you are unable to pay your creditors, filing for bankruptcy may be a good option for you (Reza, 2022).

The sole individual entitled to file a petition for bankruptcy is the Minister of Finance, as stated in Article 2, paragraph 5, of Law Number 37 of 2004, which pertains to Bankruptcy and Postponement of Debt Payment Obligations. Bankruptcy proceedings against insurance companies may only be initiated by the Financial Services Authority, per article 50, paragraph (1) of Insurance Law Number 40 of 2014. Public fund management institutions are crucial to development of the economy, and public faith in insurance companies as risk managers is critical, which is why this provision is essential (Utang, 2020).

The legal consequences of bankruptcy are what insurance companies fear most because bankruptcy status legally provides confiscation status for all of the insurance company's assets. The management of an insurance company that has gone bankrupt does not have authority over the company's assets that are in general confiscation because when the bankruptcy status is imposed by the Commercial Court, a curator will be appointed to manage and settle all the assets of the bankrupt insurance company (Macey & Salovaara, 2019).

The case relates to an application such as the Commercial Court Decision Case Number 389/PDT.SUS-PKPU/2020/PN-NIAGA.JKT.PST in which the main case is that PT Asuransi Jiwa Kresna submitted an application for permission to submit a PKPU to the OJK (Financial Services Authority) by because the function of coaching and supervising insurance companies lies with the OJK. PT Asuransi Jiwa Kresna was submitted for bankruptcy by the PKPU Petitioner, because it had debt claims from policy holders that had not been paid and for reasons of the insurance company's health which were difficult to recover. So, bankruptcy is the only last resort to save policy holders from losses suffered due to the insurance company not fulfilling its obligations as a debtor. However, in the Decision handed down by the Panel of Judges, Postponement of Debt Payment Obligations (PKPU) Number 389/Pdt.

As stated in Article 2 of Law No. 37 of 2004, policyholders have the right to be called creditors. All creditors, whether concurrent, separatist, or favored, are considered creditors. Filing for bankruptcy protection does not revoke the priority or collateral rights of preferred or separatist creditors to the debtor's assets. This clause indicates the classification of the

policyholder and their legal protection as a certain type of creditor in relation to the legal issue under examination.

In order to ensure the security of policy holders, especially if there is a claim, the government should make clearer legal regulations regarding insurance, especially in the life insurance sector so that there is uniformity from each life insurance company, so that participants can be assured that they will be safe and have their rights guaranteed. If something happens to him. Legal protection provided by the State is really needed to provide guarantees to policyholders to support and take their rights if undesirable risks occur. So, there is a need for strong legal rules and legal protection in resolving life insurance company cases.

## **RESEARCH METHODS**

This research method combines a conceptual framework and a legislative framework to analyze the legal standing of insurance policyholders in the context of requests for the postponement of debt payment obligations due to bankruptcy. In this case, a normative juridical approach will be used to review existing laws and regulations, such as laws on bankruptcy, insurance, and related commercial court procedures.

This study will examine positive law (for example, laws regulating bankruptcy and the rights of insurance policyholders) and analyze the application of the law based on relevant court decisions (such as the Commercial Court Decision No. 389/Pdt.Sus-pkpu/2020). Through the collection and analysis of scholarly articles, books, and other legal sources, this research aims to provide normative conclusions that explain the legal standing of insurance policyholders in such situations.

Thus, this normative juridical research method will focus on a normative analysis of legislation and its application in the context of bankruptcy cases and the rights of insurance policyholders, covering two essential aspects of legal practice: lawmaking (legislation) and the application of the law through court decisions.

## **RESULTS AND DISCUSSION**

### **Legal Actions for Policyholder Protection**

Risk is a major aspect of human life and is an important factor in insurance. Efforts that can be made to reduce risk are by transferring the risk to the insurance company. This is intended to provide security protection to customers, namely by entering into a risk transfer agreement with another party (Jinaratana et al., 2023).

Rechts bescherming is the Dutch word for "legal protection," whereas "legal protection" is the English word. The term "legal protection" has two syllables in its etymological form: protection and law. The Big Indonesian Dictionary defines protection as (1) a safe haven, (2) objects (deeds, etc.), and (3) protective procedures, techniques, and activities (Jimmytheja Ng et al., 2023). If one wants to make sure that everyone may enjoy the rights that the law guarantees, including the right to recuperate from human rights violations (HAM), then they should seek legal protection, says Satjipto Raharjo. Legal certainty is essential to the fulfillment of law's nature and purpose, which is to guide and safeguard society, in his view. Legal protection is both a deterrent and a constraint (Fauziah et al., 2023).

Law 40 of 2014, which deals with insurance, ensures that the rights of policyholders, insureds, or participants take precedence over the rights of other parties in the event of the revocation of insurance company business licenses and liquidation. This is done to protect their interests. As stated in Article 52, this is the case. Participation in the policy guarantee mechanism is mandatory for insurance and Sharia insurance providers, according to Article 53, Paragraph 1. The program will be put into action by a law that, according to Article 53 Paragraph (4), must be enacted no later than three years following the promulgation of Law Number 40 of 2014 concerning Insurance (Rego & Carvalho, 2020).

Article 53 Paragraph (1) of Law Number 40 of 2014 concerning Insurance states that "Insurance Companies and Sharia Insurance Companies must be policy guarantee program participants," which is in line with Pawitri's earlier research that found that this provision regulates the protection of policyholders in the event of bankrupt insurance companies. According to Sapriadi, the protection given to life insurance policy holders in cases of bankruptcy is that the position of the policy holder is guaranteed in the event of bankruptcy of the insurance company which has been expressly regulated in Article 52 paragraphs (1) and (2) of the Insurance Law, namely, the policy holder is domiciled. as a preferred creditor in terms of obtaining premium returns from the assets of bankrupt insurance companies and moreover for policy holders who are entitled to insurance benefits guaranteed by an insurance policy to obtain payment of their claims (Santri et al., 2022).

In insolvency proceedings, the classification of creditors is crucial for determining the order of payment from a debtor's assets. Preferred creditors, or preferential creditors, are afforded legal priority and are typically the first to be compensated. This category generally encompasses employees owed wages, tax authorities, and, in certain jurisdictions, claims related to environmental remediation or tort victims (Yuldashev & Kozyreva, 2019). Conversely, concurrent creditors, also known as unsecured creditors, lack such priority and are compensated only after the claims of secured and preferred creditors have been fulfilled. Consequently, concurrent creditors often receive a diminished proportion of their claims, particularly in scenarios where the debtor's assets are insufficient to meet all obligations. This hierarchical structure underscores the importance of creditor classification in insolvency law, influencing the recovery rates for different classes of creditors.

The Bankruptcy Law has regulated many things related to legal actions that can be taken by a creditor here so there is no specific legal protection that can only be used by the Policy Holder. There are many ways to protect policyholders from insurance bankruptcy, here are the ways (Marpi & Dewi, 2023):

a. Actio Pauliana Act

Everyone, not only policyholders, stands to benefit from this action because Actio Pauliana safeguards creditors' rights against actions taken by insolvent debtors that are harmful to creditors. As the bankruptcy relationship becomes more apparent, the curator is obligated to cancel the debtor's legal actions before the bankruptcy decision is made if the curator believes that the debtor's legal actions could harm the interests of creditors. The curator is also given the recourse institution known as action paulina.

b. Receivables Matching

This stage of the process will indeed be carried out by the curator for the creditors; therefore it is hoped that creditors will never be absent from calculating the matching of receivables, namely at the Verification Meeting. A temporary list of receivables will be created from claims placed into the debtor's bankruptcy assets that specify the number of receivables that can be paid to creditors. The policyholder's situation can be easily ascertained if the Insured's receivables fall under the recognized category.

If the position of the policy holder is placed with a privileged creditor, there will be no difficulties in terms of distributing assets because their rights are also guaranteed in the new Insurance Law, but if the curator decides to become a concurrent creditor then here it is difficult for the policy holder to ask for his rights because The decision itself rests solely with the curator, therefore creditors must keep receipts of proof of premium payments they have made to the guarantor who has been declared bankrupt.

c. Accord (*Peace*)

Legal requirements pertaining to bankruptcy settlements and debt deferrals are addressed in Law 37 of 2004, which governs this settlement. According to Article 144, the debtor in bankruptcy has the right to offer the creditor a settlement.

Peace in bankruptcy is assured when a prior bankruptcy ruling exists, typically initiated by the debtor, either voluntarily or at the behest of creditors. Bankruptcy debtors may seek debt restructuring from creditors to terminate bankruptcy proceedings (Bachri et al., 2021). Peace alone does not facilitate an agreement; only then will the debtor's possessions be auctioned. Debtors are allowed to keep running their businesses even after bankruptcy is declared if the Financial Services Authority has not revoked their licenses. This settlement usually provides benefits to creditors because the liquidation settlement usually takes a long time and is not necessarily in accordance with what was expected because there is no guarantee that all creditors' bills will be met from the auction results.

Regarding measures to safeguard policyholders from insurance insolvency within the peace category, following the Commercial Court's ruling in Case Number 389/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.Pst., the Panel of Judges mandated that PT. Kresna Life Insurance (in PKPU) and all creditors must adhere to and execute the provisions of the Peace Agreement dated February 10, 2021. As to Article 288 of Law No. 37 of 2004 about Bankruptcy and Postponement of Debt Payment Obligations, the Postponement of Debt Payment Obligations (PKPU) shall formally come to an end with ratification of the peace deal.

Law Number 40 of 2014 concerning Insurance ("Insurance Law") and Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations ("Bankruptcy Law") in Indonesia highlights the unique regulatory framework governing the insolvency of insurance companies. The Insurance Law imposes strict oversight on these entities, recognizing their critical role in managing public funds and mitigating financial risks, which necessitates a distinct approach to bankruptcy proceedings compared to other sectors (Pradana, 2021). Specifically, Article 50 of the Insurance Law stipulates that only the Financial Services Authority (OJK) can initiate bankruptcy proceedings for insurance companies, ensuring that such actions are taken with due consideration of systemic implications (Kruczalak-Jankowska

et al., 2020). Furthermore, the Insurance Law prioritizes policyholder claims during liquidation, reinforcing the commitment to protect public trust and interest. This dual regulatory approach effectively harmonizes the general provisions of the Bankruptcy Law with the specific safeguards of the Insurance Law, aiming to maintain financial stability within the insurance sector while safeguarding policyholders' rights.

### **Legal Standing of Insurance Policy Holders in Bankruptcy Proceedings**

The position of insurance policy holders, especially regarding legal protection, especially relating to their claims, can be considered through the insurance agreement. Insurance in legal terminology is an agreement therefore the agreement itself needs to be studied as a reference towards the meaning of an insurance agreement. The insurance agreement is entered into with the aim of obtaining certainty regarding the return of the (economic) situation to its original state before the event occurred (Nurani Chofifah et al., 2023).

The total seizure of all assets owned by creditors is an essential part of the bankruptcy procedure as outlined in Law no. 37 of 2004 about Bankruptcy and Postponement of Debt Payment Obligations. This idea makes it very evident that Guarantee Law includes Bankruptcy Law as a subset. To do this, one must study Civil Code Article 1131, which is in line with the definition of bankruptcy in Law 37 of 2004 on Bankruptcy and the Postponement of Debt Payment Obligations.

The legal position of the Policy Holder in the Civil Code, it is known that the Policy Holder here is definitely not in the Separatist Creditor category because what is known is that the Separatist here has previous collateral in their receivables, whether in the form of mortgage or fiduciary rights or something else, with all due respect, Just a policy exists in the insurance agreement between the insurance company (the insurer) and the policyholder (the insured).

Article 1134 of the Civil Code explains about Special Creditors where the categories included in it have been regulated in Article 1139 where policy holders are not included in Article 1139 as well as in Article 1149, so of course according to the Civil Code this means that Policy Holders are categorized in the section of concurrent creditors. Apart from that, based on the bankruptcy law, although it does not clearly explain the legal position of the insured (policy holder), it can be understood in Article 137 that the insured or policy holder can be categorized as a type of receivable whose collection is unclear. An insured whose insurance policy has not yet expired or the event has not yet occurred, then his receivables when the Insurance Company is declared bankrupt can be grouped as receivables whose payments are made periodically. The view in the new Insurance Law towards policyholders is very different from the Civil Code and Bankruptcy Law, Here, if we first look at the old Insurance Law, namely Law Number 2 of 1992, it is found in Article 20 paragraph (2) which clearly states that the position of the insurance customer, namely here the policy holder in an Insurance Company declared bankrupt is the priority creditor, however because there is a new Law on Insurance, namely Law Number 40 of 2014, it is clear that the old Law will no longer be able to be used (Jinaratana et al., 2023).

The transition from Law No. 2 of 1992 to Law No. 40 of 2014 in Indonesia significantly enhanced the protection of policyholders by explicitly prioritizing their claims in the event of an insurance company's bankruptcy. Under the new framework, policyholders are recognized

as having preferential rights, which marks a substantial improvement in their legal standing compared to previous regulations. However, this preferential status is not absolute; policyholders' claims are subordinate to those of secured creditors-creditors holding collateral-who are granted higher precedence under the bankruptcy law (Bednarz & Manwaring, 2022). This balance ensures that while policyholders enjoy stronger protections, their claims are only fulfilled after the obligations to secured creditors are satisfied, reflecting a nuanced approach to insolvency that seeks to protect both policyholders and the interests of secured creditors. Thus, the new law aims to create a fairer and more equitable framework for all stakeholders involved in bankruptcy proceedings.

The main objective of the new Insurance Law is clearly seen in the preamble to the law which states that a healthy, reliable, trustworthy and competitive insurance industry will increase protection for policyholders, insureds or participants, and play a role in encouraging national development (Bos, 2018).

Furthermore, according to the insurance law, namely Law Number 40 of 2014, it strictly regulates the substance of which is the same as Article 20 of the old insurance law, namely in the new law there is Article 52 paragraph (1) which also strictly regulates the position rights of policy holders where says that the position of the policy holder here is higher (main) compared to other rights.

"When it comes to the distribution of assets in the case of bankruptcy or liquidation of an insurance, reinsurance, or Sharia reinsurance company, no party's rights are more important than those of the policyholder, insured, or participant."

The explanation regarding the position or rights of policy holders in the Civil Code or the Bankruptcy Law and the Insurance Law here seems inconsistent, even though it is not explicitly explained in the Civil Code regarding the position of policy holders, as well as in the Bankruptcy Law but both If understood further, it places the policy holder's rights within the concurrent creditor.

As an example of a case in this area, the author examines Decision 389/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.Pst and concludes that policyholders in insolvent insurance companies, like PT. Kresna Life Insurance, are in the position of preferred creditors. Legally, certain creditors are entitled to priority in repayment due to the specifics of their receivables; these creditors are known as preferred creditors. One type of creditor is known as a preferred creditor; this is a creditor who, due to the specifics of their receivables, enjoys legal protections that other creditors do not.

Based on this, it is known that the position of the policy holder is as a preferred creditor, that is, he has a higher position than other parties. However, according to the provisions of Article 1134 Paragraph (2) of the Civil Code, the position of creditors holding material security rights (pledges, mortgages, fiduciaries and security rights) is higher than privileged creditors. This means that the position of the insured who is the policy holder or who has the right to enjoy (beneficiary) of the policy is as the number two creditor. Even though his name remains as a privileged preferred creditor, his rights are only paid after the rights of the separatist creditors have been settled first, so that Law Number 40 of 2014 concerning Insurance gives policy holders a position when the insurance company goes bankrupt.

The decision in Case Number 389/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.Pst highlights the application of key legal principles governing the hierarchy of creditors in bankruptcy proceedings (Amalia & Judge, 2023). The court classified the policyholders of PT. Kresna Life Insurance as preferred creditors, recognizing their unique status under Law No. 40 of 2014 concerning Insurance. This classification aligns with the intent of the Insurance Law to prioritize the interests of policyholders and beneficiaries, ensuring they are not left without recourse in cases of insolvency. However, the court also adhered to the provisions of Article 1134 Paragraph (2) of the Civil Code, which establishes that creditors holding material security rights (e.g., mortgages, pledges, fiduciary security) as separatist creditors have the highest priority in repayment. This principle, rooted in Bankruptcy Law and the Civil Code, balances the protections granted to secured creditors who rely on collateral and the public interest embedded in the Insurance Law to safeguard policyholders, often vulnerable parties. The court's decision carefully applied this legal framework, acknowledging policyholders' rights while deferring to the established hierarchy that prioritizes separatist creditors (Manurung et al., 2022). By doing so, the ruling underscores the interplay between these laws and ensures a balanced approach to creditor protection, setting a precedent for future insolvency cases involving insurance companies (Maf'ula & Mi'raj, 2022).

## CONCLUSION

Article 53 of Law Number 40 of 2014 regarding Insurance governs legal protection for insurance policyholders in the event of insurance business insolvency, according to the study results. A peace agreement has been confirmed by the Panel of Judges in Commercial Court Decision No. 389/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.Pst., which establishes that PT. Kresna Life Insurance (under PKPU) and all of its creditors are obligated to protect policyholders from insolvency. The decision also covers *actio pauliana*, the alignment of receivables, and accord. The Postponement of Debt Payment Obligations (PKPU) will officially end with the ratification of the peace agreement, as per Article 288 of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Regarding the request for the postponement of debt payment obligations resulting from bankruptcy, the policyholder is named as a Preferred Creditor. According to the terms of their receivables, certain creditors are entitled to be paid first before others, a practice known as preferred creditors. Preferred creditors are distinguished from other creditors due to the special legal protections granted to them in relation to their claims, as outlined in Article 37 of the Bankruptcy and Debt Payment Suspension Law of 2004. Because of the specifics of their receivables, certain creditors are required by law to be paid off before others. These creditors are known as preferred creditors. Preferred creditors are distinguished from other creditors by virtue of the special legal protections afforded to them in relation to their claims, as provided in Article 37 of the Bankruptcy and Debt Payment Suspension Law of 2004. Regarding the request for the postponement of debt payment obligations resulting from bankruptcy, the policyholder is identified as a Preferred Creditor according to the aforementioned decision. The term "preferred creditors" refers to debtors whose receivables are defined by law as having priority in repayment. Preferred creditors are distinguished from other creditors by the special legal protections afforded to them in relation



to their claims. Based on the specifics of their claims, certain creditors are granted special legal protections that place them in a higher position than ordinary creditors.

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