

Bankruptcy Petition for Indonesia Insurance Company

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Abstract The new Indonesian bankruptcy law (Act Number 37 of 2004 on Bankruptcy and suspension of Payment) gives the opportunity to file the bankruptcy petition for an insurance company to the Indonesia Finance Minister. This article aims to discuss the bankruptcy petition mechanism within insurance company. This study employs doctrinal research method. The study shows that the authority to file the bankruptcy for an insurance company is under the authority of the finance service authority.

1 INTRODUCTION

At the end of 1997, Indonesia got monetary crisis which made the foreign investors doubtfully bought some shares in Indonesia. This turmoil made the enormous of difficulties to the national economy especially the ability of the businessmen to develop their business and even to maintain the continuity of their business activities, which consequently has had a major influence on the ability of the national business to fulfill their payment to the creditors.

In a such situation, The Indonesia Government sought out an international financial institution that could provide finance to Indonesia, which was finally signed a Letter of Intent (*LoI*) between the Indonesian Government and the International Monetary Fund (IMF) as one of the financial institutions that gave and encouraged Indonesia to make an agreement, so the legal facilities that regulate the matter of fulfilling obligations by debtors to creditors are corrected. For this purpose, the regulation regarding bankruptcy including the issue of suspension of payment is one of the important issues that must be resolved immediately with legal facilities that can be used as a basis for the efforts to settle the debt obligations.

Bankruptcy is the situation when the debtor being unable to make payments to the creditors. The situation of being unable to pay is usually due to the difficulties of financial conditions (financial distress) (**Sutan Remi Syahdeni:72**). A bankruptcy petition for an insurance company can only be filed by the OJK to be registered in the commercial court.

The bankruptcy petition is a repressive effort rather than a preventive effort, while building public

effort is a preventive effort, thus the provision (based on The New Indonesian Bankruptcy law number 37 of 2004, article 2 paragraph (5) concerning bankruptcy of insurance business entities) is irrational or illogical (Hajon, explained as the expert witness in the Material Test of Law number 37 of 2004 article 2 paragraph (5) concerning the bankruptcy of insurance companies).

The position of OJK as the subject of filing the bankruptcy of insurance companies brings various problems both from philosophical and judicial aspects which need to be answered and it is an important thing to be reviewed and studied. Therefore, the author examines the Bankrupt Petition to the Indonesian Insurance Companies as the subject of this study.

Based on the background above, the problem of this study is how is the legal position of The Finance Service Authority (OJK) to bankrupt the insurance company.

2 MATERIALS AND METHODS

This paper is a normative legal research (**Mahmud Peter Marzuki:2005**). In order to grasp a thorough understanding of the legal issues, this paper used statute and conceptual in analyzing and identifying about the authority of The Finance Service Authority (OJK) to bankrupt the insurance company. Whereas literature and news were used as the supplementary source to strengthen the argument.

3 RESULTS AND DISCUSSION

3.1 Accountability from the Financial Services Authority for Bankruptcy

Accountability can be interpreted as a place and form responsibility for an obligation to the duty that is its obligation. Accountability is defined as "mandatory or expected to provide an explanation for someone's actions".¹ Accountability is needed or expected to provide an explanation of what has been done. With thus accountability is the responsibility to provide accountability and explain the performance of the actions of someone / legal entity / lead someone organization for parties that have the rights and requirements to request information or accountability.

According to The Finance Service Authority, OJK is an institution that is independent and free from interference from other parties.² Its functions, duties, and authorities are to regulate, supervise, examine, and investigate. OJK has the function of organizing an integrated system of regulation and supervision of all activities in the financial services sector (Sentosa Sembiring:2006).

Before the emerge of OJK as the subject of bankruptcy petition, these tasks were carried out by the Indonesian Finance Ministry.³ By the enactment of the finance service authority law, the transition of this authority has been effectively prevailed since 2nd December 2012 from the Minister of Finance for the functions, duties, and authorities to regulate and supervise the financial service activities in the capital markets, insurances, pension funds, financing institutions, and other finance service institutions.⁴ This article is a bridge to carry out the functions, duties, and authorities of controlling and supervising the insurance service sector which has been shifted from the OJK to the authority of the Indonesian Minister of Finance.

Insurance to be the only choice for people to minimize the risk that potentially can result in losses on their wealth or their lives by ensuring the losses to the insurance company. In case there is no any incident which causes a loss, the company has the opportunity to collect the premiums paid by the debtors (Abdulkadir Muhammad:2006).

Insurance company is a non-bank institution that has similar role as bank which provides insurance service for the customer's future. Insurance company as a diversion and risk sharing institution has positive benefits for both the customers or for the insurance company and also for the development of the country (Muhammad Alfi, Etty Susilowati & Siti Mahmudah, 2017). Limited company (Ltd.) is the form of company that commonly used by the insurance company. In carrying out its business, the insurance company collects funds through the premium withdrawals by promising to give amount of money as compensation to the customers in case there is incident causes a loss through an insurance policy agreement. This relationship makes the insurance company in the position of a debtor (Yani Ahmad & Gunawan Widjadja:2006).

Life insurance business is a business that carries out risk management services for providing payments to policyholders, trustee or other parties who are entitled in this insurance in death or alive condition, or other payments to policyholders, trustee, or other parties at certain time regulated in the agreement, with the amount of money which has been determined, and/ or based on the result of the management of funds (Man Suparman & Endang, 1997). However, in the insurance agreement, there are three basic principles which consist of the principle of insurable interest, the principle of utmost good faith, and the principle of indemnity (Tuti Rastuti:2011).

In the event of default by the debtor, the creditor is given an attempt to file a lawsuit to the court against the insurance company (Sutedi Adrian :2009). Beside filing the lawsuit, an insurance company may also file a bankruptcy statement to the commercial court which covers the legal position of the insurance company. Creditors who wish to submit a bankruptcy statement application that: ⁵

1. Having 2 (two) or more creditors; and
2. Having at least 1 (one) debt that is due date and can be collected.

One of several cases in Indonesia happened to PT Asuransi Jiwa Bumi Asih Jaya (PT AJBAJ) which was bankrupt by the OJK. The OJK's position in this bankruptcy case is to represent creditors whose appointment is based on the special power of attorney from the board of commissioner of OJK, who can

¹ While according to The Oxford Advance Learner's Dictionary, quoted by The Institute of State Administration (2000).

² Seeing on Act Number 21 of 2011 about The Finance Service Authority (OJK) number 1 article 1.

³ A bankruptcy petition for an insurance company can only be filed by the OJK to be registered in the commercial court.

⁴ Seeing on Act of The Finance Service Authority (OJK) article 55 paragraph (1).

⁵ Statement application must fulfill the conditions based on the new Indonesian Law of Bankruptcy and Suspension of Payment number 37 of 2004 article 2 paragraph (1).

submit a bankruptcy statement request to the Commercial Court within the legal position of the debtor domiciled. Basically, the procedure that must be taken by the OJK through the board of commissioners of the OJK is the common procedures which based on the new Indonesian Bankruptcy and Suspension of Payment Law (UUK-PKPU). However, before undergoing the procedure at UUK-PKPU, there are other provisions governing the procedure for the bankruptcy petition for the insurance company as in the Law concerning of insurance No.40 of 2004 article 51:

- (1.) Creditors submitted a request to the Financial Services Authority (OJK) to file the bankruptcy petition to the commercial court.
- (2.) OJK approves or rejects the application submitted by the creditors, as referred to the paragraph (1) no later than 30 days after the application is completed.
- (3.) In the event that the OJK rejects the application submitted by the creditors as referred to the paragraph (2), the refusal must be made in the writing along with the reasons.
- (4.) Further provisions regarding the procedures and requirements for applications from creditors as referred to the paragraph (1), paragraph (2), paragraph (3) is regulated in the OJK's regulations.

Based on the procedure above, it can be seen that there are several mechanisms for submitting a bankruptcy petition application to an insurance company, such as:

1. The creditor of the insurance company submits an application to the OJK and then the OJK conducts a study or a review whether it is possible to submit the bankruptcy petition to the relevant insurance company or not;
2. OJK through its Board of Commissioners can directly apply for a bankruptcy petition against the insurance company in case there are considerations related to the stability and the financial condition of the insurance company.

In the case of PT AJBAJ which bankrupt by the OJK, as in the supreme court rulings with the case register number 408 K/Pdt.Sus-Pailit/2015, was unable to fulfill the level of solvency at least 120% of the losses which may arise as a result of the deviation in management of assets and liabilities, equity -Rp. 931,56 billion, and it also had two (or more) creditors who did not pay at least one debt that was due date, and it could be collected by fulfilling the obligations to the customers or policyholders. The result of the decision of the commercial court stated that PT AJBAJ (insurance company) was in bankruptcy by

with all of its legal consequences had been proven having more than two creditors and having more than one debt which were due date. After all of the bankruptcy elements had been proven, then based on the new Indonesia bankruptcy and suspension payment law (UUK-PKPU) article 8 paragraph (4) the request of petition should be granted by the judges of supreme court who adjudicated.

Then, based on the new Indonesia bankruptcy and suspension payment law (UUK-PKPU) article 16 paragraph (1) all of the debtor's assets were confiscated, and the task of regulating and / or settling the bankrupt assets is within the authority of the curator (Hartini Rahayu:2007). Since this shifting regulation determined, the debt payment from the creditors will automatically be carried out by the curator. In this case, the role of OJK through the board of commissioners in filling the bankruptcy petition for the insurance company is important, because the OJK has the responsibility to maintain the public trust especially customers who are the policyholders, and it also has responsibility to protect the private right of the customers of the policyholders.

After the decision from the court stated, based on the new Indonesia bankruptcy and suspension payment law (UUK-PKPU) article 16 paragraph (1), all of that the debtor's assets were confiscated, and the task of regulating and / or settling the bankrupt assets is within the authority of the curator. Since this shifting regulation determined, the debt payment from the creditors will automatically be carried out by the curator.

4 CONCLUSION

From the research, it is concluded that; The legal consideration of the OJK in submitting the bankruptcy petition for PT Asuransi Jiwa Bumi Asih Jaya (PT AJBAJ) was in accordance with the duties and authority of the OJK in protecting creditor's interest (policyholders). Based on the law concerning about insurance number 40 of 2014 article 19 that PT Asuransi Jiwa Bumi Asih Jaya (PT AJBAJ) did not have enough fund to fulfill the claims or other liability based on policy and it was bankrupt. The legal position of OJK as the bankruptcy petitioner has been given a legal protection in the form of regulations and law of insurance, and it is based on the legal position of its debtors. the Financial Services Authority has authority in filing for bankruptcy against PT AJBAJ because PT AJBAJ can't meet financial health and can't fulfill it's obligations to policyholders.

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