

RESPONSIBILITY OF INSURANCE COMPANIES DECLARED BANKRUPT FOR THE REPAYMENT OF POLICYHOLDERS' RECEIVABLES

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Abstract

Insurance companies, as legal entities engaging in business activities, may not always maintain good financial standing. A bankrupt company is typically in a state of insolvency where its assets fall short of its outstanding obligations. The insolvency of an Insurance Company leads to setbacks and limitations in its operations, with the Policyholder being the most affected party. This study aims to explore how dividends from bankrupt insurance companies are distributed and how such companies are accountable for settling Policyholders' receivables. The research employs a normative research method, utilizing a statutory approach and legal concept analysis. The findings indicate that the distribution of bankrupt insurance companies' assets is based on the priority order of creditors. The Policyholder, as the Preferred Creditor, receives payment of their receivables first and assumes the position of Separatist Creditor. In case of bankruptcy, the Insurance Company bears full responsibility for settling Policyholders' receivables. If there are any unpaid receivables, the Insurance Company is obligated to pay the remaining amount to the Policyholder.

Keywords: Bankrupt, Policyholder, Responsibility

1. INTRODUCTION

Humans live in a life full of uncertainty, and every event that occurs or will occur carries the potential for risk. These risks are closely related to the losses that individuals may experience. For instance, the death of a person can significantly impact the lives of their spouse and offspring, especially if they are dependent on the deceased's financial support (Retnaningsih, 2018). Other events such as childbirth also entail risks, including the health of the mother and child and the child's future education. Additionally, people often face unexpected events like house fires, property damage, or personal accidents.

Regarding these risks, individuals have several options: accept or face the risks, avoid them, prevent them, transfer them to others, or share them with other people or institutions (Patria, 2018). The concept of risk transfer and sharing forms the basis for insurance institutions. Insurance allows individuals (the Insured) to transfer the risks they face to the Insurer. If the risk materializes and causes a genuine loss to the Insured, the Insurer compensates them. For this coverage to take effect, a legal relationship must exist between both parties, documented in a written agreement known as a policy.

In Indonesian law, insurance agreements have been regulated since before independence, specifically in the *Burgerlijke Wetboek* (BW) or the Civil Code, and also in the Commercial Code (KUHD) (Shubhan, 2015). Insurance agreements are considered one of the agreements involving profit and loss, where the outcome depends on an uncertain event. Article 246 of the KUHD formally outlines the limitations of insurance agreements, defining them as agreements in which the Insurer obliges themselves to the

Insured, upon receiving a premium, to provide compensation for losses, damages, or lost expected profits due to an uncertain event.

Insurance companies, like other business entities, may not always have a stable financial condition (Nugroho, 2019). When an Insurance Company faces financial difficulties and is unable to fulfill its obligations to Policyholders, it may be subject to bankruptcy proceedings. The financial condition of a bankrupt business entity is typically insolvency, where its assets are insufficient to cover its liabilities (Sembiring, 2014). In Indonesian bankruptcy law, debts remain with the Debtor until they pass away or the Debtor dissolves (Syahran, 2020).

One prominent example of an insurance company bankruptcy case is PT Asuransi Bumi Asih Jaya. After the revocation of its operational license by OJK on October 18, 2013, Bumi Asih Jaya Life Insurance Company was found to have unpaid claims worth IDR 85.6 billion from 10,584 Policyholders. This insolvency issue affected 103,584 individual insurance policies and 544 group insurance policies. The value of Bumi Asih's active claims totaled Rp3.4 trillion as of the second quarter of 2013, four months before the license revocation, with individual insurance accounting for Rp1.3 trillion and group insurance for Rp2.1 trillion. This amount was expected to increase over time due to the growing number of overdue claims. Notably, the claim debt to Policyholders is not the only debt, as the company also had financial obligations to other parties, such as banks. Despite the potential sale of assets by the Curator team, it is evident that the value obtained would not suffice to cover the entire value of the active claims from Policyholders.

The insolvency of an Insurance Company has adverse implications for its business and significantly impacts the Policyholders. Based on this background, this study aims to address two fundamental and essential issues: 1) How is the distribution of assets (*boedel*) of an Insurance Company that has been declared bankrupt? and 2) What is the responsibility of the Insurance Company concerning the settlement of policyholder receivables?

2. RESEARCH METHOD

This research uses normative legal research methods, namely legal research based on or only examining secondary data, namely library data and laws and regulations as research materials (Diantha, 2016). The types of approaches used in this research are the statute approach and the analytical and conceptual approach. The legal material collection technique used is library research, by reviewing library sources such as books, scientific journals, research reports, and other documents both printed and online that are relevant to the topic being studied in this study (Amiruddin, 2016). The method of analyzing legal materials used in this research is the description analysis method, which describes clearly and what it is of a legal event or legal condition that occurs. The analysis is carried out qualitatively which is against data that cannot be calculated.

3. RESULT AND DISCUSSION

3.1. Distribution of Insurance Company *Boedel* that has been declared bankrupt

According to Clause 16 of Law No. 37/2004 on Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the Bankruptcy and PKPU Law), starting from the time the bankruptcy verdict is pronounced, the Curator is authorized to manage and/or administer the bankruptcy estate, even though the verdict has not been legally enforceable. Based on the explanation of Article 16, administration is the disposal of assets to pay or settle debts. The administration of bankruptcy assets can only be carried out after the debtor is in a state of insolvency. Based on Article 178 paragraph (1) of the Bankruptcy Law, insolvency occurs if:

- a. in the receivables matching meeting, no peace plan is offered;
- b. there is a peace offering by the bankrupt debtor or the curator, but the peace offering is not accepted by the creditors in the receivables matching meeting; or
- c. there is a peace offering and it is approved by the Creditors in the receivables matching meeting, but it is rejected or not authorized by the Judge.

The juridical consequence of the Debtor's insolvency is that the Curator will immediately carry out the administration and sell the bankruptcy assets in public (auction) or under hand and compile a distribution list with the permission of the Supervisory Judge, as well as the Supervisory Judge can hold a meeting of Creditors to determine the method of administration (Zuhra, 2016). One part of the bankruptcy estate administration process is the distribution of the bankruptcy estate auction proceeds. The distribution of the bankruptcy estate is based on an order of priority where creditors with a higher position receive a distribution ahead of other creditors with a lower position (Marwanto, 2020). The Bankruptcy and PKPU Law does not explicitly regulate the system or order of distribution of the bankruptcy estate of a bankrupt debtor, to ensure legal certainty, the bankruptcy estate distribution system follows the pre-existing rules in the Civil Code.

1. Article 1334 of the Civil Code stipulates that holders of liens and mortgages (material security) are positioned as Separate Creditors who are higher in position than special rights (Preferred Creditors), unless the law states otherwise.
2. Collateral or security objects of Separate Creditors are separated from the bankruptcy estate. If the proceeds from the sale of the collateral are insufficient to settle the debt, the remaining debt of the Separate Creditors will be claimed as Concurrent Creditors. Conversely, if there is an excess of proceeds from the sale of collateral, it must be returned to the bankruptcy estate.
3. If the Separate Creditors do not execute the collateral or exceed the time limit (90 days after insolvency), the execution of the collateral will be carried out by the Curator. The proceeds from the sale of secured assets by the Curator are first distributed to Preferred Creditors, but Preferred Creditors cannot take all of their rights from the rights of Separate Creditors.
4. In the insolvency of an Insurance Company, the Policyholder is a Preferred Creditor together with the State's tax debt and the salaries or wages of the workers/laborers. Among the Preferred Creditors, the one that must take precedence in the distribution of the bankruptcy estate is the State for the payment of tax debts. This is in accordance with the provisions of Article 21 paragraph (3) of Law Number 16 of 2009 concerning General Provisions and Tax Procedures. So that in the case of the

distribution of the bankruptcy estate of the Insurance Company, the State's right to tax is paid first and then the rights of Policyholders and other Preferred Creditors.

5. After the settlement of Preferred Creditors and Separate Creditors is made, the remaining bankruptcy estate is paid to Concurrent Creditors, including the remaining receivables of Separate Creditors, proportionally. Proportional calculation is to obtain payment on a pro rata basis based on the amount of each bill.

All creditors, whether they are Separate Creditors, Preferred Creditors or Concurrent Creditors, have their own position and rights. In practice, most of the receivables of Preferred Creditors and Separate Creditors are not paid in full because the Curator also needs to consider the rights of concurrent creditors or there are circumstances where the results of the bankruptcy estate auction are insufficient to settle the creditors' receivables.

3.2. Responsibility of Insurance Companies Declared Bankrupt for the Repayment of Policyholders' Receivables

Based on Article 6 of Law Number 40 of 2014 concerning Insurance (hereinafter referred to as the Insurance Law), the form of legal entity for organizing insurance business is a limited liability company; cooperative; or joint venture declared as a legal entity based on the insurance law. The Insurance Company with its status as a legal entity is considered a legal subject that can perform legal acts on its own behalf, has its own assets (separate from the assets of its members) and has its own responsibility, and can be sued and sued in court. As a legal entity, the Insurance Company can perform legal acts and legal relations through the company's organs, namely its management.

The agreement made by the Insurance Company with the Policy Holder contains a clause that the Insurance Company will compensate the Policy Holder for losses arising from events that are not certain to occur or as a result of events that have been determined in the agreement. The achievement arising from this agreement is that the Insurance Company has an obligation to compensate the Policyholder and what it is entitled to is to receive premium payments, while the Policyholder has an obligation to make premium payments and has the right to payment of insurance claims. The responsibility of the Insurance Company has arisen since the agreement between the two parties. If the responsibility is not carried out by one of the parties, the party has committed default or breach of promise. If the Insurance Company does not fulfill its obligations to the Policyholder, the Insurance Company can be declared in debt. The responsibility of the Insurance Company as a Debtor for its debts is guided by Article 1131 and Article 1132 of the Civil Code, both articles provide guarantees to Policyholders as Creditors that their rights will continue to be fulfilled or paid off with the guarantee of the Debtor's assets, both existing and future.

In principle, the assets of the Insurance Company are legally separated from the assets of the company's organs, therefore the legal responsibility is also separated from the assets of the Insurance Company's organs. If the Insurance Company makes an agreement with another party, the responsibility is on the Insurance Company and only limited to the assets owned by the company. In the event of bankruptcy of the Insurance Company, the one responsible for the company's debts is the Insurance Company itself,

and the company's assets become the source of settlement of the creditors' receivables. Personal assets belonging to the organs of the Insurance Company cannot be confiscated or charged for the responsibility of the Insurance Company, because the organs or management of legal entities have limited liability.

Indonesian bankruptcy law does not allow for a debt forgiveness scheme for the debtor's remaining unpaid debts after the bankruptcy estate has been disposed of, otherwise known as the debt forgiveness principle. Bankruptcy does not in any way intend to relieve a person declared bankrupt from the obligation to pay debts and the remaining debts. The bankruptcy of a legal entity cannot be said to be completed if all rights and obligations of the legal entity have not been fully implemented. Based on Article 204 of the Bankruptcy and PKPU Law, Creditors regain the right of execution against the Debtor's assets regarding their unpaid receivables. Creditors' execution rights over unpaid receivables are also strengthened by the provisions of Article 205 of the Bankruptcy and PKPU Law which states that a receivable recorded in the Minutes of Meeting has permanent legal force against the Debtor like a court decision that has obtained permanent legal force.

4. CONCLUSION

Based on the discussions presented above, the conclusions regarding the division of a bankrupt insurance company's assets (*boedel*) and the responsibility for repaying Policyholders' receivables are as follows:

Firstly, the distribution of the bankruptcy insurance company's *boedel* adheres to a priority order among creditors. Creditors holding higher positions in this order receive distributions ahead of those in lower positions. As a preferred creditor, the Policyholder holds a privileged position and is entitled to receive payment of their debt first, assuming the position of a Separate Creditor. However, it is worth noting that within the category of Preferred Creditors, the State's right to tax takes precedence over the rights of individual Policyholders.

Secondly, the Insurance Company, being a recognized legal entity, enjoys the status of a legal subject capable of conducting legal acts on its own behalf. As such, the company possesses its own assets, bears its own responsibilities, and can be sued and sued in court. In cases of bankruptcy, the full responsibility for repaying Policyholders' receivables rests solely with the Insurance Company. This responsibility extends until all Policyholders' receivables are entirely settled.

Lastly, if there are any remaining receivables yet to be paid off, the Insurance Company remains obligated to fulfill its commitment by paying the outstanding amounts owed to the Policyholders.

In summary, the division of assets and the responsibility for repaying Policyholders' receivables in the event of an Insurance Company's bankruptcy are determined by legal provisions and the priority rules set forth in the applicable laws. Policyholders, being preferred creditors, are given precedence in receiving payments, and the Insurance Company bears the full responsibility for ensuring their debts are met. These legal principles aim to safeguard the interests of Policyholders and maintain a fair and orderly process in times of insolvency.

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