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**ANALYSIS OF THE RESPONSIBILITY OF INSURANCE COMPANIES  
DECLARED BANKRUPT FOR CUSTOMER CLAIMS IN THE PERSPECTIVE OF  
INDONESIAN POSITIVE LAW**

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**KEYWORDS**

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**ABSTRACT**

Insurance for human life is very important, and it requires a sense of comfort and safety. So that many companies have established their business in the field of insurance, behind insurance companies that provide security protection. Not all companies run smoothly in other words the company is inseparable from the threat of bankruptcy. This research focuses on legal certainty for customers when an insurance company with claim obligations is declared bankrupt. The research problem addresses the challenges faced by customers in such situations and the legal protection available to them. The purpose of this research is to find out the responsibility of insurance companies that are declared bankrupt in fulfilling customer claims and to find out the legal certainty for customers in cases when insurance companies that have claims obligations are declared bankrupt. The methodology used is normative juridical, by analyzing the law based on literature study, articles in the Civil Code, Law Number 21 of 2011 concerning OJK, Law Number 37 of 2004 concerning Bankruptcy and postponement of debt payment obligations, and Insurance Law. The results discuss the importance of legal protection provided by the Financial Services Authority and the Deposit Insurance Corporation for insurance customers in bankruptcy cases. The findings underscore the need for compliance with certain legal provisions to ensure customer protection, especially in cases involving insolvent insurance companies. The implications of this study emphasize the importance of legal certainty and the role of regulatory bodies in protecting customer rights in the insurance sector.

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**INTRODUCTION**

Humans not only need clothing, food, and shelter but also need a sense of comfort and safety. This is an anticipation of humans in the future and unexpected events such as accidents or, the death of a person. Therefore, humans must have unexpected funds and savings for their future needs.

Business law today is very dynamic and businesses cannot afford to wait for a complete and specific legal order to be issued. They still have to keep up with the times. And the existence

of human needs that want a sense of comfort and safety, then many companies build their business in the field of insurance. The development of the current era of modern technology is a challenge for each party to improve its ability to compete in its business, as now there are many various problems that can affect the flow of development of each part, not least in the insurance company business.

The Indonesian state is referred to as a state of law that regulates all actions of its society based on positive law (*Ius Constitutum*) which gives OJK special authority to organize a system of regulation and supervision of all activities in the financial services sector including insurance activities regulated in Law 21 of 2011. OJK has the authority to oversee the sustainability of insurance companies if the company commits negligence and has an impact on losses to policyholders.

Insurance is an agreement between two parties the insurer and the insured. The insured party is obliged to pay contributions/premiums, or called customers, while the insurer or company has an obligation to provide a full guarantee to the insured.

Insurance agreements are special agreements regulated in the KUHD. The valid conditions of an agreement are regulated in the Civil Code. According to this provision, there are 4 (four) valid conditions, namely the agreement of the parties, the authority to act, a specific object, and a halal cause.

Behind the protection of security provided by insurance companies. Not all and forever will run smoothly, in other words, the company is inseparable from the threat of bankruptcy. Bankruptcy often befalls debtors because creditors are unable to pay their overdue bills. As regulated in Law Number 37 of 2004 concerning bankruptcy and postponement of debt payment obligations. The presence of Bankruptcy Law is to provide the best and fairest solution for both parties, namely debtors and creditors. The Bankruptcy Law regulates the legal requirements for a creditor to have a receivable, the amount of the receivable, and the fair distribution of money collected from the debtor's assets. The bankruptcy law complements the Civil Code which organizes the procedures and implementation of bankruptcy law, starting from the filing of bankruptcy statements to the distribution of proceeds from the sale of the debtor's assets or other actions. Which can be taken by the parties, such as peace efforts or postponement of debt payment obligations (PKPU).

One example of a bankruptcy case is an insurance company located in Jakarta that has experienced obstacles and problems in its operations. They offer insurance products to people who want to start insurance. However, there are some of these products experiencing investment portfolio liquidity affected by the economic crisis in 2020 due to the COVID-19 pandemic.

As a result of the liquidity problem, the Insurance company postponed the financing of policy redemption for one year, starting from February 11, 2020, to February 12, 2021. This delay has caused concern for the public, especially due to the COVID-19 pandemic situation that has hit 2020 to 2021. The existence of COVID has caused many customers to sue the insurance service company for failure to pay the policy redemption. The company was unable to pay it because it was affected by the covid 19 pandemic.

Based on the background, it can attract the author's attention to conduct research with the title "Analysis of the Responsibility of Insurance Companies Declared Bankrupt for Customer

Claims in the Perspective of Indonesian Positive Law".

## **METHOD RESEARCH**

The method of approach taken by the author is normative juridical, normative juridical research method is library legal research conducted by examining library materials or secondary data legal materials. Secondary data is obtained from legislation, legal theories, books on Insurance Company law, research reports articles, or data obtained from the internet related to the issues discussed, which are then analyzed to draw conclusions and problems to be used. This form of research by analyzing using systematic and logical exposure, then analyzing it, in order to examine materials from literature and legislation in force in Indonesia which are associated with legal theories concerning the problems at hand and must have a clear foundation.

## **RESULTS AND DISCUSSION**

### **Responsibility of Insurance Companies Declared Bankrupt in Fulfilling Customer Claims**

According to Hans Kelsen, responsibility is related to obligations, if the obligations that arise are not carried out or fulfilled, sanctions arise (Afifah & Januarita, 2022). In addition, according to the law, responsibility is a consequence of the consequences of a person's freedom of action related to ethics or morals in carrying out an action (Soekidjo, 2010).

The responsibility of the insurance company begins with an agreement in the insurance policy contract that has been agreed upon by the policyholder and the insurance company. So that a sense of responsibility arises that must be obeyed both by the insurance company and the policyholder in an agreement (Syahran & Marwanto, 2020). If there is an improper agreement from one of the parties, it can cause losses made by the insurance company.

The agreement that has been made gives rise to rights and obligations for the parties, where one party has obligations that must be carried out, and the other party is entitled to the results of the implementation of these obligations. These rights and obligations are known as achievements as in article 1234 of the Civil Code, namely giving something, doing something, or not doing something (Andri & Djuariah, 2021). Article 1234 of the Civil Code, which article applies to insurance companies that become debtors with the obligation to pay losses after proving their negligence but do not provide benefits that must be fulfilled by failure to carry out their obligations. Insurance companies that experience problems for losses that have been made will get supervision from the OJK which is regulated in Law Number 21 of 2011 concerning the Financial Services Authority.

OJK is a Financial Services Institution which carries out activities in the Banking sector, Capital Markets, Insurance, Pension Funds, Financing Institutions, and other Financial Services Institutions. OJK is an independent institution and free from interference from other parties, which has the functions, duties, and authority to regulate, supervise, examine, and investigate. From this law, it can be concluded that the one who can file an insurance company bankruptcy application is the OJK, which means that there should be no interference from other parties.

Bankruptcy itself is explained in the KBBI as a state of a person or legal entity that is no longer able to pay its obligations (in terms of its debts) to the debtor. And there are several requirements that must be met to be declared bankrupt as referred to in Pasal 2 Ayat (1) of the

UUK and PKPU, namely "Debtors who have two or more creditors and do not pay in full at least one debt that has fallen due and collectible, are declared bankrupt by a court decision, either at their own request or at the request of one or more of their creditors".

Bankruptcy is the right way for a debtor to get out of the debt problems he has faced for years so that the debt payment process is completed and the debtor's situation is quickly resolved. If the debtor is unable to pay some or all of his debts (bankruptcy), a bankruptcy petition will be filed against the insurance company, and deliberately does not pay debts to policyholders based on the foregoing, policyholders can take steps to file a bankruptcy petition with the Commercial Court. problems faced by insurance companies with policyholders must be based on the principle of responsibility for debt payments made (Syahran & Marwanto, 2020).

A company that has been declared bankrupt by a Commercial Court decision means that the company must stop all its activities and no longer enter into transactions with other parties, except for liquidation or administration, namely by collecting debts, calculating all company assets, then selling them to pay the company's debts. Insolvent insurance companies in fulfilling customer claims have legal responsibilities, they must continue to fulfill their obligations to customers who have policies.

Insurance is an option for the community to minimize the risk of possible losses to wealth or human life by transferring risks to insurance companies (Ridho, 2020). The insurance agreement is contained in an insurance policy, stating the terms, rights, and obligations of each party, the amount of money insured, and the insurance period. If one party does not carry out the rights of the other party and its obligations contained in the policy, the other party has the right to demand liability from the party that does not fulfill its obligations.

As the provisions of Article 1267 of the Civil Code stipulate that the party who does not fulfill his obligations is obliged to provide compensation and can demand the cancellation of the contract or the return of costs. Several factors cause the difficulty of managing the finances of insurance companies, namely;

1. High fluctuation in claims;
2. Changes in regulation;
3. Investment risk;
4. Changes in market conditions.

The high level of competition and changes in consumer patterns can also affect the financial balance resulting in losses for the company.

Insurance companies that experience bankruptcy and have been proven to have losses on the investment of company customer funds and violate one of the insurance company's products, where the Company invests customer funds in excess of the provisions and problems occur in its affiliated companies, making the company have to delay the payment of claims and investment benefits. These actions caused losses and financial instability of the Company resulting in default, and made customers lose money and customers of the company could not make claims for insurance and did not get benefits for their investments.

The responsibility of insurance companies that have been declared bankrupt, in fulfilling the responsibilities of these insurance companies there are several forms and rights that must be fulfilled by insurance companies to protect customers:

1. Compensation or return of premium

If the claim cannot be processed and not settled, the insurance company is required to compensate or return the premium paid by the customer, depending on the applicable regulations and the company's financial condition.

2. Cooperation with receivers or liquidators

The company must work with a curator or liquidator who has been appointed to manage the company's assets during the bankruptcy process. The curator's duties include selling the company's assets to pay debts, including obligations to customers.

In fulfilling this responsibility, insurance companies can help protect their customers from greater losses and ensure that their rights remain protected even if the company experiences financial difficulties.

Law Number 37 of 2004 concerning bankruptcy and postponement of debt payment obligations has no provisions governing the position of policyholders as creditors. According to Law Number 40 of 2014 concerning insurance in pasal 52 ayat (1) explains that the rights of a policyholder are higher than other rights. pasal 52 also explains that if a life insurance company is declared bankrupt by the court, its receivables must first be matched by the supervisory judge. Then the policyholder cannot directly execute the bankrupt debtor's assets such as separantis or get special rights. If the bankrupt company must be fully legally responsible for policyholder losses, as in pasal 28 ayat (7) of Law Number 40 of 2014 concerning Insurance, it is stated that insurance companies must be responsible for claims that arise, if they have received premiums.

**How is Legal Certainty for Customers in Cases When Insurance Companies with Claim Obligations are Declared Bankrupt?**

According to Gustav Radbruch, there are three objectives of law, namely expediency, justice, and legal certainty, what is needed in this problem is legal certainty. legal certainty aims to protect the interests of each individual in order to know what actions are allowed and what actions are prohibited so that they are protected from arbitrary government actions (Admin, 2021).

Legal certainty is one of the objectives of the law, Sudikno Mertokusumo revealed that legal certainty is a guarantee that the law can run properly, meaning that with legal certainty individuals who have rights are those who have received a decision from the legal decision itself. Legal certainty is closely related to justice. Law is general, binds everyone, is generalizing, while justice is individualistic and does not generalize. This theory is according to Sudikno Mertokusumo (Nur, 2023).

Legal certainty has an important role in social life, if people do not know what they should do, and ultimately can lead to uncertainty and balance of the existing legal system (Andri et al., 2023). Through law, the government is able to regulate and order society so that life in society becomes more orderly. Legal certainty also provides legal protection for the recognition of citizens' rights and becomes a limitation for the community in acting against individuals. The legal certainty contained in the laws governing customers guarantees that customers are entitled to protection and judge decisions can be implemented.



Insurance companies that have claims obligations that are declared bankrupt, the impact can be felt by insurance customers. In such a situation, insurance customers are at risk of losing the money or insurance rights they have paid and may not get the benefits promised by the insurance company.

However, there is legal protection for insurance customers in this case. In Indonesia, the Deposit Insurance Corporation (LPS) is an institution established by the government to provide protection to customers of banks, insurance companies, and other non-bank financial institutions in the case of bankruptcy. As a guarantor institution, LPS will repay insurance customers' claims that cannot be paid by the insolvent insurance company. It is important to note that this compensation claim can only be made if the insurance company has been declared bankrupt by the court:

1. LPS protection only applies if the insurance company is registered and supervised by the Financial Services Authority (OJK).
2. Insurance customers need to fulfill the requirements and procedures set by LPS to file a claim.

Insurance customers can apply for settlement of payment obligations through the PKPU route when the company becomes insolvent, however, this process involves OJK and requires an assessment and examination of the customer's application before deciding whether to approve or reject the application. Insurance customers can also file a claim with the curator appointed by the court to manage and divide the bankruptcy assets of the insurance company, the customer's claim will be considered along with claims from other creditors in the bankruptcy property management process.

Legal protection should be obtained by insurance company customers who experience default based on Law Number 21 of 2011 concerning OJK. Law Number 21 of 2011 concerning OJK is expected to provide protection for consumers as customers of the financial services sector of insurance companies that are under the regulation and supervision of the OJK.

Legal protection carried out by the OJK will make customers feel safe when participating in providing funds to the company. OJK has the authority to carry out preventive legal protection actions by preventing consumer and community losses. Experienced by customers as stipulated in the provisions of article 28 of Law Number 21 of 2011 concerning the Financial Services Authority which includes (Larisa et al., 2023):

1. Provide information and education to the public on the characteristics of the financial services sector, its services and products;
2. Requesting Financial Services Institutions to stop their activities if such activities have the potential to harm the public;
3. Other actions deemed necessary in accordance with the provisions of laws and regulations in the financial services sector.

Insurance companies that experience bankruptcy, for insurance customers will be protected by Law Number 37 of 2014 concerning Bankruptcy and Postponement of Debt Payment Obligations. Insurance companies are declared bankrupt by the Commercial Court, then customers are given legal protection by appointing curators and supervisory judges by court judges mentioned in pasal 15 ayat (1) of Law Number 37 of 2014 concerning Bankruptcy

and PKPU. By submitting insurance claims to the curator and since the bankruptcy verdict, all rights and obligations of the insurance company to manage assets are taken over by the curator.

In fulfilling the company's obligations to all policyholders, it must not harm or weaken the rights of customers. Compensation for customer obligations can be done by transferring the policyholder's portfolio to another company or returning the policyholder's rights. If the insurer refuses to transfer the insurance contract to another company, the policy ends and the company is forced to return the rights of the insured. The transfer of policyholders can only be carried out by shareholders and is carried out after obtaining OJK approval and is carried out to companies that have similar products.

If there is a conflict between the separatist creditor and the policyholder, the party that takes precedence is the policyholder as stipulated in pasal 52 of Law Number 40 of 2014 concerning Insurance, in this case, the Insurance Law takes precedence, thus the creditor must take precedence in the distribution of the debtor's assets is the insurance company customer based on Article 52 of Law Number 40 of 2014 concerning Insurance. (Larisa et al., 2023).

## **CONCLUSION**

Liability relates to obligations and sanctions for non-fulfillment. Insurance companies are responsible since the agreement in the policy contract is formed with rights and obligations for both parties. Losses incurred by the company will be supervised by the OJK. Companies declared bankrupt by the Commercial Court must stop their activities and conduct liquidation to pay debts. Insurance companies have been proven to have losses in the investment of customer funds, so insurance companies must be fully legally responsible for the losses of policyholders, as referred to in pasal 28 ayat (1) of Law Number 40 of 2014 concerning insurance.

Providing legal certainty for customers will get legal protection for insurance customers. In this case, such as the protection provided by LPS and the possibility of filing a claim through the PKPU route. Insurance customers can also submit claims to the curator appointed by the court. It is important for insurance customers to understand the legal rights and protections available and follow the established procedures for filing claims. The position of policyholders takes precedence and is regulated in Article 52 of Law No. 40 of 2024 on Insurance. And thus the creditor that must take precedence in the distribution of the debtor's assets is the insurance company customer.

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