

Judicial Considerations on Legal Protection for Insurance Policyholders in Bankruptcy Cases of Insurance Companies: An Analysis of The Supreme Court Decision No. 408 K/Pdt.Sus-Pailit/2015

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ABSTRACT

The bankruptcy of an insurance company represents a complex legal phenomenon that generates significant implications, particularly concerning the protection of policyholders' rights. This situation demonstrates that, to date, the existing national regulatory framework has not yet been fully effective in anticipating the diverse legal consequences arising from the insolvency of insurance institutions. In practice, such circumstances often result in substantial financial losses for policyholders, primarily because the insurance premiums that have been paid during the validity of the insurance agreement become difficult to recover. This difficulty arises from the fact that the insolvent insurance company is legally incapable of fulfilling its contractual obligations. Consequently, the policyholders' entitlement to the benefits of risk transfer an essential purpose of insurance cannot be realized as intended. Within the legal relationship between the policyholder and the insurance company, the policyholder occupies the position of a consumer who receives financial service benefits. As consumers, policyholders are entitled to legal protection against any actions, policies, or conditions that could potentially cause harm or loss. In this regard, policyholders, as consumers of financial services, possess a constitutional right to adequate legal protection, including in situations where the insurance company has been declared bankrupt. Such protection is essential to ensure that consumers' rights are not disregarded and to maintain a fair balance between the interests of business actors and service users. Therefore, the government plays a crucial role in ensuring the establishment of an effective legal protection mechanism either through legislative instruments or regulatory oversight policies to safeguard policyholders from the adverse impacts of insurance company bankruptcy.

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1. INTRODUCTION

Insurance can be understood as a form of legal agreement between two or more parties, where the insurer, in this case the insurance company, promises to provide financial compensation to the insured party for damage, loss of economic value, or legal liability to a third party that may arise as a result of an unascertainable event. In return for the protection, the insured party is obliged to pay a certain amount of premium to the insurer in accordance with the provisions that have been agreed in the insurance agreement.

Conceptually, insurance can be seen as a risk management instrument that allows individuals and business entities to transfer potential financial losses arising from unexpected events to other parties. Thus, insurance serves as an economic protection mechanism that provides certainty and stability for the parties involved in facing future uncertainty.

According to H. Mulyadi Nitiusastro's view, insurance is a form of *profit-making agreement*, where the outcome of the agreement—either in the form of profits or losses—for one or all of the parties involved, depends on the occurrence of an uncertain event. Meanwhile, based on the provisions of Law Number 40 of 2014 concerning Insurance, business activities in the insurance sector can only be organized by business entities in the form of Limited Liability Companies (PT), Cooperatives, or Joint Enterprises that have been established before the law was enacted.

Customers who act as insurance policyholders occupy the position of consumers who receive services from insurance companies, which are parties that provide protection against various potential risks that may be experienced by customers. From a legal perspective, policyholders are categorized as consumers who use insurance services who have the right to obtain legal protection from any actions, policies, or conditions that can cause losses to them. This principle is in line with the provisions that affirm that consumer protection is any form of effort to ensure legal certainty in order to provide protection to consumers.

In line with the increasing diversity and complexity of risks faced by modern society individuals and businesses, the need for insurance products and services has also experienced significant development. The function of insurance as a risk transfer instrument has encouraged the emergence of the insurance industry as one of the business sectors that has a strategic role in supporting the stability and growth of the national economy. The existence of this industry plays a strategic role in providing risk management and management services, thus enabling individuals and business actors to carry out more effective planning in the face of uncertainty.

However, in carrying out its business activities, insurance companies are inseparable from various risks, including the possibility of facing unstable financial conditions that lead to bankruptcy. Although insurance companies function to provide a sense of security for customers through risk protection, in reality insurance companies themselves also have the potential to experience business failures like other business entities.

Insurance companies have the potential to go bankrupt at any time if management management is not carried out effectively and responsibly. Therefore, a management system is needed that is able to manage and manage the assets and wealth of insurance companies optimally to maintain their financial stability. Bankruptcy conditions in insurance companies generally occur when the insurer is no longer able to fulfill its obligations in paying claims that have become due to the insured. In such circumstances, the most aggrieved party is the policyholder or customer, because their right to obtain claim payment cannot be realized.

In this regard, applications for bankruptcy declarations against insurance companies, including sharia insurance companies and reinsurance, can only be submitted by the Financial Services Authority (OJK). This provision shows that the OJK has exclusive authority in determining whether or not an insurance company can be submitted to the court for bankruptcy—an authority that was previously under the authority of the Minister of Finance. Thus, the OJK plays a central role in maintaining the stability of the insurance industry and protecting the interests of customers from the negative impact of insurance company bankruptcy.

As a result of the declaration of bankruptcy of an insurance company that can only be filed by the Financial Services Authority (OJK), in practice the most disadvantaged party is the customer or policyholder. They lose the legal ability to demand payment of claims or refund of premiums from the insurance company concerned. This condition is indirectly contrary to the principle of *utmost good faith* which is the main basis in the contractual relationship between the insurer and the insured in the insurance agreement.

2. METHODS

This type of research uses a normative juridical approach, which is a legal research method that focuses on the assessment of applicable legal norms to assess their suitability, consistency, and application in practice. This approach focuses on the analysis of laws and regulations, legal principles, and legal doctrines that are relevant to the problem of legal protection that is the object of study. This research is carried out through library research by studying various legal materials, both primary, secondary, and tertiary. Primary legal materials consist of laws and regulations and other legal provisions that have binding power and are directly related to research issues. Secondary legal materials include various sources that provide explanations, comments, or interpretations of primary legal materials, such as legal literature, scientific articles, research results, and other academic works. Meanwhile, tertiary legal materials are used as complementary materials that provide additional explanations or instructions to primary and secondary legal materials, including legal dictionaries, encyclopedias, and other relevant reference sources that support the analysis of this research.

3. FINDINGS AND DISCUSSION

Implementation of Legal Protection for Insurance Policy Holders at the Judge's Consideration in the Supreme Court Decision Number: 408K/Pdt.Sus-Parilit/2015

Protection is an act or effort that aims to provide a sense of security, both physical and legal, to an individual or group from threats that can cause harm. Law is a set of norms or rules made by the authority and applies in a binding manner in society to regulate human behavior in order to create order and justice. Thus, legal protection can be interpreted as a form of protection provided based on the provisions of the law that apply in society with the aim of protecting the rights and interests of legal subjects.

Legal protection is a form of government action or policy based on positive legal provisions to provide legal certainty guarantees to every legal subject in accordance with their rights and obligations. Legal protection is born as a consequence of the legal relationship between parties who have interests and rights regulated by legal norms. In a narrow sense, legal protection is defined as a legal tool given to legal subjects in the form of preventive (prevention) and *repressive* (settlement) rules, both in writing in laws and regulations and in unwritten forms such as legal practices and general principles. Legal protection reflects the basic function of the law, which is to create order, justice, and balance in people's lives.

Meanwhile, in a broad sense, legal protection is not only aimed at humans as subjects of the law, but also at all living beings and God's creation that are part of social and environmental life. In the context of insurance, legal protection is provided to policyholders, insureds, or insurance participants to guarantee their rights when the insurance company experiences a revocation of a business license or liquidation. This is in line with Article 52 of Law Number 40 of 2014 concerning Insurance, which emphasizes that the rights of policyholders, insureds, or participants have a higher position compared to the rights of other parties in the process of settling insurance company obligations. Overall, legal protection can be understood as an action that has a legal basis and is given to the subject of the law to protect his or her legitimate rights. In the insurance legal system, customer protection is the embodiment of the balance of rights and obligations between the insured and the insurer as stipulated in the insurance agreement that binds both parties.

Customers are parties who use the services of financial institutions, such as banks or insurance companies. While insurance is an insurance agreement is an agreement between the insurer, namely the insurance company, and the insured party as a customer, where the insurer is obliged to provide compensation or a sum of payments to the insured for losses, damages, or loss of economic benefits arising from an unpredictable event, in exchange for premium payments by the insured. Legal protection for life insurance customers when an insurance company is declared bankrupt is a form of protection provided based on legal provisions to risk transfer service users, especially in maintaining customer rights to life insurance benefits when the insurance service provider company goes bankrupt.

Law Number 8 of 1999 defines consumers as users of goods and/or services available in the community for personal or social purposes, not for trade. This provision illustrates that consumer protection is part of the national legal ideals based on Pancasila and the 1945 Constitution, with the aim of realizing justice and legal certainty for all Indonesian people.

Consumer Protection has a preventive and universal nature, with the aim of creating a balance between consumers and business actors. Although ideally the law describes comprehensive protection for consumers, in practice consumers also have the right to defend the law, including through judicial mechanisms. In addition, with the existence of a national consumer protection institution that functions as a regulator and supervisor in the implementation of consumer protection in Indonesia. Furthermore, the Financial Services Authority (OJK) explained that consumers are parties who place their funds or utilize services available at financial service institutions, including banking customers, investors in the capital market, insurance policy holders, and pension fund participants, in accordance with laws and regulations in the financial services sector.

Based on these provisions, it can be understood that the term "consumer" has a general meaning as stipulated in laws and regulations, while the term "customer" is used more specifically to describe consumers who use services in the financial services sector, including banking and insurance. Thus, an insurance customer can be defined as an individual who establishes a contractual relationship with an insurance company to obtain protection against certain risks through an insurance agreement. Consumers' choice to use financial services products, such as insurance, reflects a decision-making process based on personal needs, economic preferences, and a desire to gain a sense of security and certainty in the face of potential risks in the future.

The revocation of a company's business license has legal implications for the survival of the parties involved, including in this case the application of *the principle of structured creditors* as stipulated in bankruptcy law. This principle stipulates that in the process of distributing bankruptcy assets, there is a classification of creditors who have different priorities based on their legal position on the debtor's assets.

In the context of an insurance company, if the company is revoked from its business license, liquidated, or declared bankrupt, then all of the company's assets need to be maintained so that they can be used to fulfill the rights of policyholders in a fair and proportionate manner. Based on the provisions of laws and regulations, customers who hold insurance policies have legal status that must be prioritized. Thus, the rights of policyholders are placed as preferred creditors, namely parties who get repayment first than other creditors. In addition, in the event of the bankruptcy of an insurance company, the Financial Services Authority (OJK) has the authority to carry out supervision and preventive measures to prevent the occurrence of wider losses in the community. OJK is also authorized to ensure that the operational activities of insurance companies whose business licenses have been revoked can no longer operate.

Legally, insurance companies that have had their business licenses revoked are the same as companies that have been declared bankrupt. Therefore, the insurance policyholder has the right to file a claim through the liquidation team, no longer to the company's management. However, in practice, insurance companies are still found that continue to serve claims from customers even though it should have been the authority of the liquidator team. This condition causes confusion and uncertainty for

policyholders regarding the legal claim collection mechanism. In the liquidation process, the settlement of debts and receivables can be carried out through several legal mechanisms, including:

1. Peace outside the courts;
2. Lawsuits through the courts;
3. Peace in the courts;
4. Individual billing;
5. Delay in payment;
6. Peace in payment delays;
7. Bankruptcy; and
8. Peace in bankruptcy proceedings.

The provision shows that national law provides various dispute resolution instruments to maintain a balance of legal positions between creditors and debtors. Consumer Protection Law No. 8 of 1999 And Financial Services Authority Law No. 21 of 2011 Placing the government as an authority that functions to set regulations and carry out supervision, not as a direct mediator in resolving disputes between business actors and consumers. As a rule of the nature *lex specialis*, the OJK Law provides a more specific legal basis in terms of consumer protection in the financial services sector, including the insurance industry.

In the event of a dispute between consumers and financial services business actors, the resolution can be pursued through litigation (court) or non-litigation (outside court) in accordance with applicable laws and regulations. However, in practice, the implementation of the supervisory function by the OJK for insurance companies whose business licenses have been revoked is still not optimal. As a result, policyholder customers are in a weak position and experience legal uncertainty regarding the fulfillment of their rights.

Legal Consequences for Insurance Companies After Bankruptcy in Supreme Court Decision No. 408K/Pdt.Sus-Pailit/2015

A bankruptcy judgment handed down by a commercial court judge has legal consequences for all legal acts committed by the debtor. Since the bankruptcy judgment was pronounced, all of the debtor's assets, including assets obtained during the bankruptcy process, have been included in *the general seizure*. This is as stipulated in Article 22 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUK and PKPU), which provides exceptions for several types of assets, namely:

1. Objects, including animals, that are absolutely necessary to carry out the debtor's work, as well as equipment, medical equipment, beds and equipment, and foodstuffs for the needs of the debtor and his family for thirty days;
2. The income earned by the debtor from his employment, including salary, wages, waiting money, and allowances, to the extent determined by the supervising judge; and
3. Money given to the debtor to fulfill alimony obligations for the family that is his dependent.

In the case of Insurance Company If declared bankrupt, the company loses the authority to manage and control its own assets. Insurance companies declared bankrupt by Supreme Court (MA) because they are unable to meet the minimum solvency level limit as stipulated in Insurance and Reinsurance Company Financial Health Regulation, are obliged to fulfill their obligations to creditors in accordance with the type of creditor as stipulated in the applicable laws and regulations. Further Article 44 of Law Number 40 of 2014 concerning Insurance emphasized that in order to protect the interests of policyholders, insureds, or participants, liquidation of companies whose business licenses have been revoked must be carried out immediately. Moreover Article 53 paragraph (1) of Law Number 40 of 2014 regulates the obligation that "*Insurance Companies and Sharia Insurance Companies are required to be participants in the policy guarantee program.*" This provision relates to Article 20 The same law, which requires every insurance company, sharia insurance, reinsurance, and sharia reinsurance to form a Guarantee Fund according to the Financial Services Authority (FSA). The guarantee fund serves to

provide protection for the rights of policyholders, insureds, or participants if the company is in the liquidation process.

In the case under review, Judex Facti is considered to have based its decision on considerations that are not in accordance with the substance of the case, even deviating from the legal issue that is the basis of the problem. In addition, Judex Facti also associates the application for a declaration of bankruptcy with a State Administration (TUN) dispute, even though the object of the dispute between the bankruptcy and the TUN case is legally different and does not have a causal relationship. This can be seen from the substance of the TUN dispute, where the object of the dispute is the Decree of the Board of Commissioners of the Financial Services Authority (OJK) Number KEP-12/D.05/2013 dated October 18, 2013, regarding the revocation of the insurance company's business license as an insurer. Meanwhile, the main problem in bankruptcy cases is the fact that the insurance company has two or more creditors and is unable to pay off at least one debt that has matured, as required in Article 2 paragraph (1) of the Law and PKPU.

This condition shows the existence of solvency incapacity, namely the company's inability to bear the risk of loss due to deviations in wealth management, as referred to in Government Regulation Number 81 of 2008. Therefore, the Supreme Court is of the opinion that there are sufficient legal grounds to grant the appeal filed by the OJK Board of Commissioners, as well as to cancel the Court Decision. With the granting of the cassation, the insurance company as the debtor was declared bankrupt. Based on Article 15 paragraph (1) of the Law and PKPU, the court is obliged to appoint a curator and supervisory judge to manage the bankruptcy assets. In accordance with these provisions, the Supervisory Judge is appointed from the Commercial Court at the Central Jakarta District Court, as ordered by the Supreme Court to the Chief Commercial Court.

Furthermore, Article 15 paragraph (3) of the Law and PKPU requires that the appointed curator must be independent, have no conflict of interest with debtors or creditors, and not handle more than three bankruptcy cases or PKPU at the same time. In the context of insurance companies, Article 43 paragraph (1) of Law Number 40 of 2014 stipulates that insurance companies whose business licenses are revoked are obliged to stop all operational activities. After the business license was revoked, the company was in a state of "death", because it no longer had the authority to carry out its business activities.

Furthermore, the law stipulates that within a maximum of 30 (thirty) days from the date of revocation of the business license, insurance companies are obliged to hold a General Meeting of Shareholders (GMS) to decide on the dissolution of the legal entity and form a liquidation team. If the GMS cannot be held or fails to make a decision, the OJK is authorized to determine the dissolution of the company's legal entity and form a liquidation team. Law Number 40 of 2014 concerning Insurance also introduces several new provisions, including:

1. Provisions regarding controllers, namely the obligation of each insurance company to designate at least one controller who is also responsible for the company's losses due to its actions;
2. The provisions regarding controlling shareholders, which limit each party to only being a controlling shareholder in one similar insurance company, and are obliged to adjust within three years;
3. Provisions regarding mandatory insurance programs, which require the program to be organized competitively by parties that meet the requirements of the OJK;
4. Provisions regarding policy guarantees, which require insurance companies to be participants in policy guarantee programs that are further regulated by law;
5. Provisions regarding the statutory manager, which gives the OJK the authority to appoint a statute manager with the task of saving the assets of the participants, drafting rescue measures, proposing the revocation of the business license if the company cannot be saved, and reporting its activities to the OJK;
6. Provisions regarding sharia insurance, which requires the implementation of sharia insurance and reinsurance businesses through a separate entity (*full fledged entity*); and

7. The provisions regarding the prohibition of the placement of insurance on affiliated companies, which prohibit brokerage firms from placing insurance cover on their own affiliated companies.

The fundamental difference between a company that has been revoked from its business license and a company that has been insolvent lies in the validity of its legal entity status. Companies that have had their business licenses revoked remain as legal entities, while companies that have been declared bankrupt lose their legal prowess because all legal actions are taken over by the curator. However, for insurance companies, the principle of *lex specialis derogat legi generali* applies, where the provisions in Law Number 40 of 2014 concerning Insurance and OJK Regulations are the main guidelines. Therefore, after the business license is revoked, all company affairs are transferred to the liquidator team as the final settlement implementer.

Position Case

The main factor behind the revocation of insurance company business licenses by the Financial Services Authority (OJK) is the deterioration of financial health conditions and weak risk management implemented by the company. Weaknesses in risk management are an integral part of the indicators of financial instability. Based on OJK data as of August 2013, it was recorded that the total equity of insurance companies was in a negative position of Rp570 billion, while total liabilities reached more than Rp1 trillion. Of the total liabilities, the company has a claim payment obligation of IDR 85.6 billion to 10,584 policyholders.

The revocation of the insurance company's business license was carried out through the Decree of the OJK Board of Commissioners Number KEP-112/D.05/2013 dated October 18, 2013, which stipulated the revocation of licenses in the field of life insurance. This action was taken because the insurer no longer meets the requirements regarding the level including Risk Based Capital (RBC) and the ratio of investment adequacy to technical reserves and liabilities. Before the revocation of the license, the OJK had given the company the opportunity to improve its financial condition, but the effort was unsuccessful.

Previously, in 2009, the Minister of Finance had imposed sanctions in the form of restrictions on business activities against insurance companies through Letter Number S-694/MK.10/2009 dated April 30, 2009. The policy is intended to prevent widespread losses that can be experienced by the public due to the company's financial problems. Despite being given a 12-month deadline to improve its financial condition, the company was unable to meet the obligation until four years later. In accordance with the provisions of the law, the failure results in the revocation of the business license and the obligation for the company to lower all business attributes, complete obligations, and dissolve the legal entity.

After the business license was revoked, the OJK filed a bankruptcy application against the insurance company to the Commercial Court. However, the application was rejected on the grounds that simple evidentiary requirements related to the existence of maturing debts were not met. The OJK then filed an appeal to the Supreme Court (MA), and through Decision No. 408 K/Pdt.Sus-Bankruptcy/2015, the Supreme Court granted the OJK's cassation and declared the insurance company bankrupt. The ruling affirms that policyholders must obtain legal protection for their rights as an aggrieved party.

The company's inability to fulfill its claim payment obligations shows a violation of Article 1 number (6) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, which defines debt as an obligation that can be declared in money and must be fulfilled by the debtor. Failure to comply with the solvency provisions is also contrary to the Decree of the Minister of Finance No. 424/KMK.06/2003 as amended by the Regulation of the Minister of Finance No. 158/PMK.010/2008, which requires a solvency level of at least 120% of the risk of losses that may arise due to deviations in the management of wealth and liabilities.

The Ministry of Finance had previously issued a series of administrative sanctions in the form of three warning letters in 2007–2008 and restrictions on business activities in 2009. In addition, additional sanctions are also given related to the lack of guarantee funds and non-compliance with the minimum

solvency limit. Based on the OJK Audit Report dated December 9, 2013, the company's solvency level was recorded negative at 1,159.70% as of December 31, 2012 and remained negative at 1,045.62% as of June 30, 2013, with a deficit of more than Rp1 trillion. This condition proves that the company has violated the provisions of Article 2 paragraph (1) and Article 43 paragraph (2) letter c of KMK Number 424 of 2003.

In addition, the financial statements as of May 31, 2013 showed negative company equity of Rp953.54 billion, so that the company was declared no longer able to fulfill its obligations. This also violates Article 6B paragraph (1) b of Government Regulation Number 81 of 2008, which requires a minimum of Rp70 billion in own capital by the end of 2012. Based on this fact, the OJK finally revoked the insurance company's business license on the grounds of repeated violations of the solvency and minimum equity provisions.

The main purpose of revoking business licenses as stated in the Decree of the OJK Board of Commissioners Number KEP-112/D.05/2013 is to protect the interests of policyholders and prevent losses in the community due to violations of insurance provisions. Thus, the revocation of the license is a regulatory step that is in line with the principle of prudence and the supervisory function of the OJK in maintaining the stability of the financial services sector.

Furthermore, based on the OJK report, as of June 30, 2013, there was a claim debt of Rp110.7 billion to 13,209 policyholders with a total of 925,018 participants. This fact strengthens the conclusion that the insurance company has failed to carry out its legal obligations to customers. The failure proves that the company has debts that have matured and can be collected as referred to in Article 2 paragraph (1) of the Bankruptcy Law, so it deserves to be declared bankrupt for the sake of legal protection for all policyholders.

Case Analysis

It is understood as all forms of guarantees given to legal subjects through legal instruments, both preventive (prevention) and repressive (enforcement), as well as in the form of written and unwritten legal norms. This protection reflects the main function of the law, which is to provide peace, certainty, and justice for all human interests in social life, so as to create social balance and harmony.

As for the broad sense, the protection of the law is not only aimed at humans as subjects of the law, but also includes all living beings and God's creation that are used together for the sake of achieving a just and peaceful life. In the context of insurance law, legal protection for policyholders, insureds, and insurance participants has a normative basis in Article 52 of Law Number 40 of 2014 concerning Insurance. The provision emphasizes that the rights of policyholders, insureds, and participants occupy a higher position than other parties in the event of the revocation of business licenses or liquidation of insurance companies.

Legal protection for insurance customers is a form of implementation of the principles of justice and responsibility in the legal relationship between the insured (customer) and the insurer (insurance company). This legal relationship gives rise to reciprocal rights and obligations that must be fulfilled by each party. When insurance companies face bankruptcy conditions, the protection of customers is also in line with the mandate of Article 4 letter e of Law Number 8 of 1999 concerning Consumer Protection, which gives consumers the right to obtain advocacy, protection, and dispute resolution if the services received are not in accordance with the initial agreement.

In the event of a dispute or loss, the customer has the right to pursue legal remedies through various settlement mechanisms, either through bankruptcy, mediation, or litigation. The amount of compensation must be adjusted to the legal provisions and agreement of the parties. If the insurance company does not provide an appropriate response to the customer's demands, then the customer has the right to file a lawsuit and obtain juridical advocacy as a form of protection for his rights.

Furthermore, Article 52 of Law Number 40 of 2014 provides strong legal guarantees for policyholders. The provision states that in the event that an insurance company, reinsurance, or sharia unit is bankrupted or liquidated, the rights of policyholders, insureds, or participants to the distribution

of wealth have a higher position than other parties. In addition, insurance funds must be used first to fulfill obligations to policyholders or other parties who are entitled to insurance benefits.

Based on these provisions, policyholders are categorized as preferred creditors, namely creditors who obtain the right to repayment first compared to other creditors because the nature of their receivables is specifically regulated by law. This is in line with the provisions of Article 1134 Paragraph (1) of the Civil Code (KUHPpercivil) as well as the provisions in Articles 1139 to 1149 of the Civil Code which explain the types of receivables that obtain priority repayment. Meanwhile, Article 1134 Paragraph (2) of the Civil Code states that property security rights such as mortgages and mortgages occupy a higher position than privileges, unless the law stipulates otherwise.

Although the Civil Code does not explicitly mention the position of the policyholder as a preferred creditor, the Insurance Law functions as a *lex specialis* to the Civil Code which is *lex generalis*. This means that the provisions in the Insurance Law have the power to override general provisions in the Civil Code. The same applies to Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU) which does not specifically regulate the legal position of policyholders. Based on the principle of *lex posterior derogat legi priori*, the Insurance Law as a newer regulation has a position that overrides the previous law.

Thus, in accordance with Article 52 Paragraph (1) of the Insurance Law, the order of creditors who are entitled to repayment in the bankruptcy process of the insurance company is as follows:

1. Preferred creditors, namely customers or insurance policy holders;
2. Creditors with tangible collateral, such as mortgage holders or fiduciaries;
3. Concurrent creditors, i.e. other parties without privileges.

Policyholders as preferred creditors are entitled to receive repayment from the results of the liquidation of the insurance company's bankruptcy assets in accordance with the amount of premiums that have been paid. This legal position emphasizes the importance of protection for consumers of insurance services who are juridically the most vulnerable parties in insurance legal relations. In addition, Article 44 of the Insurance Law stipulates that to protect the interests of policyholders, companies that have had their business licenses revoked must be liquidated immediately. The liquidation is carried out by the liquidation team, which replaces the responsibility and function of the company's management, to ensure that the rights of policyholders are fulfilled.

If it is associated with the provisions of Articles 1131 and 1132 of the Civil Code, it can be seen that each debtor is responsible for all his assets to fulfill his obligations to creditors. This principle is intended as a form of protection for every party who enters into a legal relationship based on the principle of good faith. In a mutual insurance agreement, each party has obligations and benefits that must be met. If one of the parties does not carry out its achievements, then the action is included in default, as stipulated in Article 1338 of the Civil Code, which gives the other party the right to demand the fulfillment of obligations or compensation.

4. CONCLUSION

The judge's consideration in providing legal protection to customers who hold insurance policies in insurance companies that are experiencing bankruptcy shows that the customer (the insured) obtains legal guarantees through the mechanism of appointing curators and supervisory judges by the commercial court. The appointment in accordance with Article 15 Paragraph (1) of Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (UUK and PKPU) stipulates that in every bankruptcy declaration decision, the court is obliged to appoint a supervisory judge and curator. The Supreme Court's decision has basically fulfilled the elements for customers of insurance policy holders who are declared bankrupt. This is because the bankruptcy mechanism provides a legal instrument that ensures that the management of the insurance company's assets is carried out professionally and transparently by the appointed curator. Thus, the customer's rights as a policyholder are still protected and can be fulfilled proportionately. This provision means that the debtor no longer has the authority to manage or transfer assets included in the bankruptcy property, so that all asset

management actions are carried out for the benefit of creditors, including insurance policyholder customers. Thus, it can be concluded that legal considerations have provided real legal protection for policyholder customers. Through the supervision of judges and the management of bankruptcy assets by the curator, the process of settling the insurance company's obligations to customers can be carried out fairly and transparently.

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