

Customers' Accounts Receivable Late Submission to Curator of Insurance Companies Facing Bankruptcy (Bumi Asih Jaya Insurance Bankruptcy Case)

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ABSTRACT

This is a normative juridical legal research, i.e a research that examines applicable laws and regulations. Decision of the Supreme Court Number 408 K/Pdt.Sus-Pailit/2015 granted a request for bankruptcy by the Financial Services Authority (OJK) because the application fulfilled the bankruptcy requirements as Article 2 paragraph (1) of the Bankruptcy Law which states that the Debtor has two or more Creditors and does not pay at least one debt that has matured and can be billed, is declared bankrupt with a court decision, both on its own request and on the request of one or more creditors. In 2016, Curator also invited creditors and policy holders of PT Asuransi Jiwa Bumi Asih Jaya to attend the first creditor meeting. Policyholders submitted bills to the curator with the deadline for submitting bills on August 30, 2016. Until today, not all of the policyholders of PT Asuransi Bumi Asih Jaya have been paid by the policy and most of them have not received information about bankruptcy assets carried out by the curator. The author examines two points, first the customer position as the insurance policy holder if the insurance company is bankrupt and their legal efforts as the holders the policy if the insurance company is bankrupt and are late in registering the receivables to the Curator. The customers' position is viewed from the perspective of Civil Law and Insurance rules, through the principle of *lex specialis derogat legi generali*, its position as policyholder is included in the preferred creditor. Legal remedies can be taken by the insurance policy holder to the curator because after a company is bankrupt, the bankruptcy is the responsibility of the curator.

Keywords: Late submission of accounts receivable, bankrupt insurance company, curator

1. INTRODUCTION

Insurance companies as service companies sell services to customers while acting as investors from community savings to productive investments. Life Insurance Company is a company that provides services in risk mitigation that provides payments to policyholders, insured, or other parties who have the right if the insured dies or remains alive, or other payments to policyholders, insured, or other entitled parties at certain times regulated in the agreement, the amount of which has been determined and/or based on the results of the management of funds (Roesli, Heri, & Rahayu, 2017).

PT Bumi Asih Jaya is a local life insurance company founded on June 10, 1967 and has had thousands of policy holders throughout Indonesia. In 2009, the company was assessed as having failed in managing financial health that Capital Market and Financial Institution Supervisory Agency issued a warning to it. Since the issuance of the warning until 2013 by the Financial Services Authority, PT Bumi Asih Jaya was still considered unable to save its financial

health that in 2013 the Financial Services Authority revoked its license based on the Decision of the OJK Board of Commissioners Number: KEP-112/D 05/2013 dated October 18, 2013.

Based on the decision to revoke the business permit, Bumi Asih Jaya should carry out settlement of obligations to all its Policy Holders. However, the company has not implemented the decision that OJK (Financial Service Authority) filed a bankruptcy lawsuit through the Central Jakarta Commercial Court. PT Asuransi Bumi Asih Jaya has been petitioned by the Financial Services Authority based on the Decision of the Supreme Court Number 408 K/ Pdt.Sus-Pailit/2015.

The decision of the Supreme Court Number 408 K/Pdt.Sus-Pailit/2015 granted the request for bankruptcy by the Financial Services Authority because the application fulfilled the bankruptcy requirements as Article 2 paragraph (1) of the Bankruptcy Law. This law states that a debtor who has two or more creditors and does not pay at least one debt that has fallen due and can be billed, is declared bankrupt with a court decision, both on his own request and on the request of one or more creditors.

The Bankruptcy Law expressly states that if the debtor has two or more creditors and does not pay off at least one debt that has matured and can be billed, is declared bankrupt with a court decision, both on his own request and on the request of one or more creditors covering all the debtor's assets at the time of the bankruptcy statement, along with all what was obtained during bankruptcy, and stated that bankruptcy is the general confiscation of all debtor's assets. This provision is the normalization of the principle of debt collection and debt pooling¹.

Management and bankruptcy settlement is carried out by the curator under the supervision of the supervisory judge with the main purpose of using the proceeds of the sale of the assets proportionally and in accordance with the creditor structure². As soon as the debtor is declared bankrupt by the court, the bankruptcy for the law is not authorized to administer and/or transfer the assets which have become bankrupt assets.

Revocation of PT Bumi Asih Jaya's business license has an impact on policyholders' customers for the premiums paid and trust in PT Bumi Asih Jaya. But until now, there has been no protection that has been conveyed explicitly to all customers of policyholders, resulting in unclear information about the policies held.

The position of policyholders after the insurance company is declared bankrupt is not explained in the bankruptcy law. As a creditor, it is not clear whether the policy holder is a concurrent (ordinary) creditor or a separatist (special) creditor. The ordinary creditor obtains the

¹ Hadi Shubhan, *Op.cit.*, p.1

² Dewi Rachmat Kusuma, *Asuransi Bumi Asih Jaya Pailit, Pemegang Polis Bisa Ajukan Tagihan ke Sini*, 15 Juli 2016, accessed from <https://finance.detik.com/bursa-dan-valas/d-3254407/asuransi-bumi-asih-jaya-pailit-pemegang-polis-bisa-ajukan-tagihan-ke-sini>

remaining bankrupt assets after deducted with expenses which must be prioritized after the debtor is bankrupt in a prorated manner.

In 2016, the curator invited creditors and policy holders of PT Asuransi Jiwa Bumi Asih Jaya at the first creditor meeting on Tuesday, July 19, 2016 at 10:00 WIB at the Commercial Court at the Central Jakarta District Court. In addition, policy holders submitted bills to the curator with the deadline for submitting bills on 30 August 2016 at 16.00 WIB³.

Until now, not all policyholders of PT Asuransi Bumi Asih Jaya have received their policy payments and most have not received information about bankruptcy payments made by curators. Based on the background description above, the problems in this paper are:

1. Position of the insurance policy holder when the insurance company is bankrupt.
2. Legal remedies for bankrupt insurance company policyholders who are late in registering receivables with the curator.

2. METHOD

This research is a normative juridical research, so the method used is the legal research method⁴. Legal research is an activity of know-how in law, not just know about, so the purpose of this legal research is to solve the legal issues at hand⁵. Legal research methods are ways or processes to find legal rules, legal principles, or legal doctrines to answer the legal issues at hand. This is in accordance with the character of prescriptive and applied legal science. Given these scientific characteristics, legal science is always related to what should be⁶.

2.1. Source of Legal Material

2.1.1. Source of Primary Law Material

Primary legal materials are authoritative legal materials. Primary legal material consists of legislation and judges' decisions:

- a. Law Number 37 Year 2004 on Bankruptcy and Postponement of Obligation to Pay Debt (PKPU)
- b. Law Number 21 of 2011 on Financial Services Authority
- c. Law Number 40 of 2014 on Insurance
- d. OJK Regulation Number 2/POJK.05/2014 on Good Corporate Governance for Insurance Companies

³ Dewi Rachmat Kusuma, *Asuransi Bumi Asih Jaya Pailit, Pemegang Polis Bisa Ajukan Tagihan ke Sini*, 15 July 2016, accessed from <https://finance.detik.com/bursa-dan-valas/d-3254407/asuransi-bumi-asih-jaya-pailit-pemegang-polis-bisa-ajukan-tagihan-ke-sini>

⁴ Peter Mahmud Marzuki, *Penelitian Hukum*, Yuridika, Vol. 16, No. 2, Maret 2001, p. 103.

⁵ Peter Mahmud Marzuki, *Penelitian Hukum (Edisi Revisi)*, Kencana, Jakarta, 2005, p. 60.

⁶ *Ibid.*, p. 213.

e. Decision of the Supreme Court Number 408 K/ Pdt.Sus-Pailit/2015

1.1.1. Source of Secondary Legal Material

Secondary legal materials are all publications about the law which are not official documents. This legal publication includes textbooks, legal dictionaries, legal journals, and comments on court decisions.

3. RESULTS AND DISCUSSION

3.1. Position of Insurance Company Policy Holder Customer

3.1.1. Legal Relations of Insurance Companies and Insurance Company Customers

Insurance as an agreement is stated clearly in Article 1 number 1 of Insurance Law as follows:

Insurance is an agreement between two parties, namely an insurance company and policy holder as the basis for receiving premiums by insurance companies in return for:

- a. Providing replacement to the insured or policy holder due to losses, damages, costs incurred, loss of profits, or legal liability to third parties that may be suffered by the insured or policy holder due to the occurrence of an uncertain event; or
- b. Providing payment based on the death of the insured or payment based on the life of the insured with the large benefits determined and/or based on the results of the management of funds".

The insurance agreement is binding and creates obligations for each party after the parties to the insurance agreement reach an agreement or consensus, even though the agreement is only reached verbally and the policy has not been signed⁷.

Insurance is one type of special agreement regulated in WvK. For the validity of the insurance agreement, Article 1320 BW is also strengthened by Article 251 WvK which is a notification obligation that legal requirements for insurance must meet the provisions of Article 1320 BW.

Insurance agreements are formed at the time of the agreement between the Insurer and the Insured even if the policy has not been submitted by the Insurer to the Insured. Article 257 WvK states as follows:

- (1) The insurance agreement is issued immediately after it is closed, the rights and obligations of the insurer and the insured will take effect from then on, even before the policy is signed.

⁷ Kartini Muljadi dan Gunawan Widjaja, *Perikatan yang Lahir dari Perjanjian*, Raja Grafindo, Jakarta, 2003, p. 35.

- (2) The closure of the agreement issues an obligation for the insurer to sign the policy within the stipulated time and submit it to the insured.

An agreement emerges rights and obligations of the parties. This is in accordance with the principle of consensualism adopted in the treaty law. In Article 1320 BW, the validity of an agreement is legalized with the agreement of those who make it. Furthermore, Article 1338 paragraph (1) BW mentions that agreement binds both parties who create it.

The form of the agreement in the insurance agreement begins with filling in the application form by the Insured. The form has been provided by the Insurer. The form not only contains personal data from the Insured regarding the object of the insurance agreement but also some questions that must be filled in (answered) by the Insured. The completed form becomes an integral part of the Policy. The insurance agreement is a *contractus uberrima fidei*, i.e an agreement in which both parties are required to seriously carry out in good faith.

3.1.2. Position of Creditors as Customers of Insurance Companies in Civil Law

In principle, all debtors' assets will become collateral for their debts to all creditors. The debtor's wealth includes movable and immovable (fixed) objects and objects that have existed at the time the debt agreement was held will only be available in the future (become the property of the debtor) after the debt agreement is held. Accordingly, based on Article 1131 BW, all debtors' assets without exception will be a general guarantee for the repayment of their debts, regardless of whether they were previously agreed or not. This guarantee is general, born because of the law that it does not need to be agreed before.⁸

J. Satrio stated that from Article 1131 BW the principles of creditor external relations are summarized as follows⁹:

- a. A creditor may take payments from each part of the debtor's assets;
- b. Each part of the debtor's wealth can be sold to pay off creditor bills;

From the provisions of Article 1132 and Article 1133 BW, it is clear that the insurance policy holder is not a creditor that is prioritized or privileged. In other words, the insured is not a creditor who holds material guarantees such as mortgage, fiduciary or mortgage rights that they cannot be classified as a preferred creditor, special, separatist or other terms similar. Therefore, the position of the Insured according to BW is a concurrent creditor.

3.1.3. Legal Position of Policy Holders at Bankrupt Insurance Companies

Classification of Creditors is in Law Number 37 of 2004 concerning Bankruptcy and Delay of Obligations to Pay Debt (PKPU). Creditors can be classified into three, namely:

⁸ Rachmadi Usman, *Dimensi Hukum Kepailitan di Indonesia*, Gramedia Pustaka Utama, Jakarta, 2004, p. 12

⁹ *Ibid*, h 13.

1. Separatist creditors, namely creditors holding material guarantees, namely pledges and mortgages.
2. Preferred Creditors, namely creditors who have the right to overtake because the nature of their receivables by law is given a special position. Preferred Creditors consist of special Preferred Creditors and General Preferred Creditors.
3. Concurrent Creditors, namely creditors not included in Separatist Creditors and Preferred Creditors.

In one of the articles of the new Insurance Law, Article 52 paragraph (1) regulates explicitly that the rights of policyholders, insured or insurance participants on the distribution of wealth of bankrupt or liquidated insurance companies have a higher position than other creditors' rights. Article 52 of the Insurance Law states that:

(1) In the event that an Insurance Company, Sharia Insurance Company, Reinsurance Company, or Sharia Reinsurance Company is bankrupt or liquidated, the rights of the policy holder, the Insured, or the Participant to the distribution of their assets have a higher position than the rights of the other party.

(2) In the event that the Insurance Company or Reinsurance Company is bankrupt or liquidated, the Insurance Fund must be used first to fulfill the obligations to the Policy Holder, the Insured, or the Other Party who is entitled to insurance benefits.

Based on the above provisions, if the insurance company is bankrupt, the position of the insurance customer is the Preferred Creditors. Preferred Creditors are creditors who, by law, are solely due to the nature of their receivables, get repayment in advance. Preferred creditors have special rights, namely a right granted by law to a person with a debt so that the level is higher than that of other debtors, solely based on the nature of their receivables as stated in Article 1134 paragraph (1) BW¹⁰. Arrangements regarding preferred creditors are regulated in article 1139-1149 BW.

Article 52 paragraph (1) of the Insurance Law does not need to be contested with the Bankruptcy Law or with BW provisions. This is in line with the applicable legal principle of *lex specialis derogate lex generalis*, where the provisions of Article 52 paragraph (1) of the Insurance Law are seen as special legal provisions or rules (*lex specialis*) which must be prioritized by ignoring (overriding) provisions general law (*lex generalis*) contained in Article 1133 and Article 1134 BW. Likewise, the provisions of the Bankruptcy Law, must be set aside, because the Insurance Law itself specifically regulates and places policyholders, insured or insurance participants as creditors whose payment of rights is prioritized.

¹⁰ Agus Prawoto. *Hukum Asuransi dan Kesehatan Perusahaan Asuransi*, BPFE UGM, Yogyakarta, 1995, p. 48

However, the position of the policy holders, the Insured or the insurance participant referred to above are preferential creditors, not separatist preferred creditors, because they are indeed not holders of material guarantees such as mortgage, mortgage or fiduciary. So, the provisions of BW and the Bankruptcy Law must comply with the provisions of Article 52 paragraph (1) of the Insurance Law if the Insurance Company is bankrupt¹¹. This means that the Insurance Law must be seen as *lex specialis* towards BW because in general the provisions stated in the BW are *lex generalis*¹².

3.2. Policy Holders' Legal Efforts

3.2.1. Law protection for bankrupt insurance companies customer who are late in submitting accounts receivable to curator

Bankruptcy institutions are basically an institution that provides a solution to the parties if the debtor is in a state unable to pay off his debts. Bankruptcy institutions basically have two functions at once. First, bankruptcy as an institution providing guarantees to creditors, ensuring that the debtor will not cheat and remains responsible for all of his debts to all creditors. Second, bankruptcy as an institution that also provides protection to debtors against the possibility of mass execution by their creditors¹³.

After the decision of the bankruptcy statement from the commercial court, the next step is the bankruptcy of the assets carried out by the curator through a series of stages and bankruptcy processes as shown in the following diagram¹⁴:

Insured receivables according to Article 137 of the Bankruptcy Law can be classified as types of accounts receivable which when the collection is unclear or which gives the right to receive payments periodically. This can also be classified as a type of receivable that can be billed within one year or which can be collected after one year after the date of the decision on the bankruptcy statement. This is related to the maturity of the policy held by the insured.

The receivables of an insured policy holder whose policy has not matured can be grouped as accounts receivable which when the collection is unclear when the decision on bankruptcy statement is read. Whereas the Insured who holds an education insurance policy, for example, can be grouped as a receivable whose payments are made periodically with the invoice value to be matched when the bankruptcy decision is read. However, insured receivables can also be included in the group of receivables, as referred to in Article 137 paragraph (2) and (3) if the policy is only

¹¹ Mulhadi, *Dasar-dasar Hukum Asuransi*, Rajagrafindo Persada, Depok, 2017, p. 169.

¹² Ali Sofian, *Kepailitan Perusahaan Asuransi*, Thesis, Faculty of Law, Airlangga University, Surabaya, 2003, p. 78

¹³ Munir Fuady, *Perbuatan Melawan Hukum*, Citra Aditya Bakti, Bandung, 2005, h. 22.

¹⁴ Andy Hartanto, *Op.Cit.*, h. 85

due one year or after one year after the decision on the bankruptcy statement is pronounced. What is clear is that the position of the insured's rights or accounts is concurrent or competing creditors.

For the benefit of customer protection associated with a bankrupt company, in the future Curators are required to carry out the obligation to provide periodic reports on their activities, including if assets have been cleared. Reports are submitted not only to the supervisory judge, but to the OJK as well as the institution that filed bankruptcy on the bankrupt company.

The problem faced by a policy holder, insured or participant in insurance bankruptcy cases is a matter of rights, bills or receivables made with the mass seizure process by placing the debtor's assets in bankruptcy. This mass confiscation through a bankruptcy petition can only be done if it is proven simply through the decision of the Commercial Court, that the debtor has two or more creditors and does not pay, at least one debt that is due and can be collected.

Asuransi Bumi Asih Jaya company was sentenced to bankruptcy through Decision No. 408 K / Pdt.Sus-Pailit / 2015. Based on the decision, the appointed curator has announced through Kompas Newspaper on 13 June 2016 to invite debtors, creditors, and interested parties in the billing filing agenda. In the announcement, the deadline for submitting bills for customers of Bumi Asih Jaya Insurance policy holders is given. Press Releases Number 58/DKNS/OJK/6/2016 dated June 23, 2016 posted on the OJK website also explained that the Curator invited creditors namely PT AJ BAJ Policy Holders to attend creditor meetings and the deadline for submitting bills on August 30 2016 at 16.00 WIB. The debt matching meeting was held on 13 September 2016.

In fact, even though it was announced in a National scale newspaper, there were still many customers who did not get the information because of the lack of information submitted by the Bumi Asih Jaya Insurance itself and the Insurance Agent. As a result, until the deadline determined by Asuransi Bumi Asih Jaya curator for debt matching, the policyholders' customers did not submit their bills because of the unknown of the information.

The timing of matching accounts receivable in bankruptcy can be seen from Article 113 of Law Number 37 of 2004 as follows:

(1) At the latest 14 (fourteen) days after the decision on the bankruptcy statement is pronounced, the supervisory judge must determine:

- a. deadline for submission of bills;
- b. the deadline for tax verification to determine the amount of tax liability in accordance with the laws and regulations in the field of taxation;
- c. day, date, time, and place of meeting of creditors to match accounts receivable.

(2) The period between the date referred to in paragraph (1) letter a and letter b is at least 14 (fourteen) days.

(3) Expiration in filing claim rights in bankruptcy can be seen from Article 133 of Law Number 37 Year 2004, as follows:

(1) Receivables entered into the Curator after the period of time as referred to in Article 113 paragraph (1), with the conditions entered no later than 2 (two) days before the day of the meeting of accounts receivable matching, must be matched if there is a request submitted at the meeting and not there are objections, whether submitted by the Curator or by one of the Creditors present at the meeting.

(2) Receivables submitted after the stipulated period as referred to in paragraph (1) are not matched.

(3) Provisions for the period as referred to in paragraph (1) and paragraph (2) do not apply, if the creditor is domiciled outside the territory of the Republic of Indonesia which is an obstacle to self-report first.

(4) In the event that an objection as referred to in paragraph (1) is filed or in the event of a dispute regarding the existence or absence of obstacles as referred to in paragraph (3), the Supervisory Judge shall make a decision after asking for advice from the meeting.

Insurance Customers on the one hand are preferential creditors in case their insurance is bankrupt. That is, the customer has the right to get a repayment in advance for his receivables. On the other hand, the timing of the matching of accounts receivable determined by the Bankruptcy and PKPU Laws provides a closing gate if information about bankruptcy status does not reach the policyholders.

The Bankruptcy Law and PKPU do not have clear and explicit arrangements regarding expiration filing claims. In the stage of the bankruptcy process, the end of bankruptcy has no time limit determined by the Act. This is intended to anticipate the possibility of obstacles in the distribution of receivables that take a long time¹⁵.

The Bankruptcy Law has not fully accommodated the interests of policyholders, insured or insurance participants who are bound by mutual insurance agreements with insurance companies declared bankrupt. The current bankruptcy law is still a matter of preventing bankruptcy from happening easily. However, the Bankruptcy Act accidentally regulates many matters relating to legal actions that can be carried out by a policy holder, insured or insurance participant, even though they must go through a Curator or BHP in order to protect their rights, including¹⁶:

- a. Requested the curator to take *actio pauliana*¹⁷

¹⁵ Andy Hartanto, *Op.Cit.*, p. 85

¹⁶ Mulhadi, *Op.Cit.*, p.172

¹⁷ *Ibid.*, p. 173

Actio pauliana is an institution that protects creditors' rights from bankrupt debtors' actions that harm creditors. In relation to bankruptcy, *actio paulina* is a kind of legal resource given to the curator to cancel legal actions carried out by the debtor before the declaration of bankruptcy is dropped, if the curator considers that legal actions (such as engagements) carried out by the debtor harm the interests of creditors.

Law No. 37 of 2004 concerning Bankruptcy regulates the provisions of *Actio paulina* in Article 30, 41 up to Article 47. According to Articles 41 and 42, there are at least four conditions that must be fulfilled in order to be able to conduct *actio paulina*, they are :

- 1) The debtor has carried out a legal act that is not required to do so;
- 2) The legal action is carried out within one year before the decision on the bankruptcy statement is pronounced;
- 3) These legal actions have harmed the interests of creditors;
- 4) The curator can prove that at the time the legal action is carried out, the debtor and the party with whom the legal action is carried out should know that the legal action will cause harm to / the creditors.

The curator or inheritance center is the only party that can cancel the legal actions committed by bankrupt debtors based on the *actio pauliana* concept. Based on this authority, the curator actively studies and investigates all legal actions committed by bankrupt debtors, prior to bankruptcy, especially against legal actions carried out / carried out within one year prior to bankruptcy.

a. Request verification (matching) of receivables

The process of matching accounts receivable is the determination of the classification of incoming bills against the bankruptcy of the debtor, in order to specify how much the receivables can be paid to each creditor, which are classified into a list of recognized receivables or which are temporarily recognized. The process of matching these receivables is carried out in a stage called the Verification Meeting¹⁸. The verification meeting has a main event to check and certify incoming bills (previously prepared by the curator)¹⁹. The importance of holding this verification meeting is to avoid fictitious creditors deliberately held by debtors with bad intentions²⁰.

In this process, the creditor (the Insured) has the right to request verification of the receivables in accordance with the receipt for the premium he has paid to the debtor (Insurance Company). Of course, the receivables submitted matching is first classified by the curator, whether they are included in the group of recognized receivables or the group of receivables that are recognized temporarily. If the Insured's receivables are in the recognized category, then it will be

¹⁸ Rudhy A. Lontoh, *Penyelesaian Utang-Piutang*, Alumni, Bandung, 2001, p. 389.

¹⁹ Zainal Azikin, *Hukum Kepailitan dan Penundaan Pembayaran di Indonesia*, Raja Grafindo Persada, Jakarta, 2002. p. 85.

²⁰ *Ibid*, p. 139

easier to determine their position, whether as a preferred creditor or concurrent. If the position is a preferred creditor, the repayment of the receivables does not cause difficulties in its settlement because it is guaranteed by law.

a. Accord

There are two types of accords stipulated in the Bankruptcy Law, i.e accord in Bankruptcy and accord in PKPU (Delaying Obligations of Debt Payments). Article 144 of the new Law states that bankrupt debtors have the right to offer peace to all creditors (accord in bankruptcy). The same provision can also be found in Article 265 (peace in PKPU), which states that the Debtor has the right at the time of submitting a PKPU application or after that offers a peace to the creditor. However, the main right to submit a bid for a peace plan in bankruptcy (as well as in PKPU) is in the hands of the Debtor. Even though it is open, it is possible that a accord offer is submitted by creditors (especially in PKPU).

Accord in Bankruptcy is carried out after the bankruptcy decision. Therefore, the initiative to carry out peace in bankruptcy always comes from the bankrupt party (debtor) both for its own application and at the request of its creditors. Whereas peace, in PKPU can be done at the initiative of creditors that in this process it is possible to regain their rights, either in the form of a collection of premiums or other rights, as a result of the engagement between the Insured and the Insurer as agreed in the policy²¹.

3.2.2. Implementation of Insurance Company Customers' Rights

Fred B.g. Tumbuan stated that if due to his actions someone caused a loss then he had the obligation to pay compensation and at that time he also had a debt, had an obligation to perform an performance. Thus, debt is equal to performance²².

Debt in bankruptcy law is a performance debt not only in the form of money debt as a result of a debt agreement. According to Asser, debt is an obligation that must be carried out against other parties. This obligation is born from an agreement made between legal subjects. Engagement is generally interpreted as the legal relationship of assets between two or more people based on which one person against another has the right to an achievement and another person to that person is obliged to fulfill the performance²³.

The policy holder who has submitted the conditions in accordance with Article 10 of the General Terms of Policy of the PT Asuransi Jiwa Bumi Asih Jaya does not receive definite

²¹ *Ibid*, h. 175

²² Fred BG Tumbuan, "*Mencermati Makna Debitor, Kreditor dan Utang Berkaitan Dengan Kepailitan*", 2005, h. 7, dalam Hadi Shubhan, *Op.Cit.*, p. 35

²³ C. Asser's, *Peng kajian Hukum Perdata Belanda. Jilid III- Hukum Perikatan*, Dian Rakyat, Jakarta, 1991, h. 23 dalam Hadi Shubhan, *Op.Cit.*, hp. 293

assurance and protection for the payments made by Bumi Asih Jaya. The Bumi Asih Jaya Party does not provide certainty about the time payments are made to policyholders.

Most insurance agreements are marketed through insurance agents; these agents are also customer coordinators in case the insurance company is bankrupt. The agent's responsibility is not limited to merely looking for insurance customers, but also as a liaison if there is a problem in the implementation of insurance, because the obligation for insurance agents, insurance brokers, reinsurance brokers and insurance companies to provide information that is true, not false, and/or not misleading the policy holder, the insured, or the participant regarding the risks, benefits, obligations and imposition of costs related to the insurance product/Islamic insurance product offered. This obligation relates to the principle of utmost good faith and so far only charged to the insured, policy holder, or insurance participant.

The Central Jakarta District Court, on August 8, 2018 sealed the life insurance building of PT Bumi Asih Jaya, located on Jalan Matraman Raya, East Jakarta. PT Bumi Asih Jaya's sealing curator, Kevin stated that based on the legal strength it was fixed and the assets would be handed over to the curator to be assessed and auctioned²⁴.

Most Bumi Asih Jaya insurance policyholders choose to buy Bumi Asih Jaya insurance products from Insurance Agents. When Asuransi Bumi Asih Jaya was declared bankrupt, these Insurance Agents did not provide clear information to policyholders. The duty and responsibility of the agent to the policy holder is to maintain good relations with the policy holder, hence, where a problem appears the agent should be willing to provide or help find a solution. Insurance agents in the case of Bumi Asih Jaya insurance should be able to act as coordinators of policyholders to be able to submit their receivables to the curator.

The assets owned by Asuransi Bumi Asih Jaya are worth 1.1 trillion rupiahs, while the value of liabilities to customers is 1.7 trillion. Bankruptcy can only end if the creditors receive their receivables either by means of peace or insolvency. Based on Article 178 paragraph (1) UUKPKPU, Insolvency occurs by law if peace does not occur and bankrupt assets are in a state unable to pay all debts that must be paid, "Insolvency is the last phase in bankruptcy where publicly traded auction, sale proceeds the auction is then distributed to creditors according to the amount of the bills recognized in the verification meeting²⁵. The juridical consequence of insolvency is to immediately settle bankrupt assets publicly or underhanded and make a list of the

²⁴ Joko Supriyanto, *Nasabah Dirugikan Miliaran, PN Jakpus Segel Kantor Asuransi Jiwa PT Bumi Asih Jaya* dalam <http://wartakota.tribunnews.com/2018/08/08/nasabah-dirugikan-miliaran-pn-jakpus-segel-kantor-asuransi-jiwa-pt-bumi-asih-jaya> posted on the Wartakotalive on 8 August 2018 accessed on 12 August 2018

²⁵ Hadi Shubhan, *Op.Cit.* p. 144

distribution of receivables with the permission of the supervisory judge. The distribution of each creditor's receivables is carried out according to their rank²⁶.

The curator carries out all legal actions both the management and transfer of bankrupt assets under the supervision of the supervisory judge. From this proposition, the curator determines the completion of the settlement of bankruptcy assets. Therefore, the Law is very strict and detailed giving what the curator has and what tasks the curator must carry out²⁷.

The curator also has the authority to provide certainty about the continuation of the reciprocal agreement at the request of the party that entered into an agreement with the debtor, including in this case accepting compensation claims from the party that entered into an agreement with the debtor if he does not provide an answer or is guaranteed ability to implement the agreement²⁸.

The curator has legal responsibility for his work as stated in article 72 of the Bankruptcy Act that the curator is responsible for his mistakes or negligence in carrying out the management duties and/or settlement that cause losses to bankrupt assets. In relation to the responsibility of the curator, the curator must submit a report to the supervisory judge regarding the condition of the bankrupt assets and the execution of their duties every 3 (three) months²⁹.

The curator must be responsible for bankruptcy, therefore the curator must immediately seek bankruptcy security, for example, immediately save letters, money, jewelry, effects, and other securities. In fact, the curator can seize bankrupt assets with the approval of the supervisory judge. The curator is also authorized, with the approval of the supervisory judge, to transfer bankruptcy assets as long as it is necessary to cover bankruptcy costs or if the restraint will result in loss of bankrupt assets³⁰.

Creditors' bills are submitted to the curator by attaching documents or proof of evidence so that the creditor concerned has material rights such as mortgage, mortgage, fiduciary, retention, and others. All of these bills are examined by the curator and matched with the notes and information of the bankrupt, which is then included in a list of receivables. The approved receivables are included in the list of recognized receivables, and those disputed are included in a separate list by listing the reasons for their rebuttal, and the list of doubtful or transient accounts is

²⁶ Andy Hartanto, *Op.Cit.* p. 90

²⁷ Hadi Shubhan, *Op.Cit.* p. 108

²⁸ *Ibid*, p. 114

²⁹ *Ibid*, h.. 116

³⁰ *Ibid*, p. 136

recognized, ie if the curator only denies the right to take precedence or the existence of retention in a receivable³¹.

The curator has responsibility to the debtor and creditor. This responsibility arises from the existence of legal relations arising from the authority granted by the Act. The curator is responsible for bankrupt assets. Bankruptcy is the interest of the debtor and creditor. If a bankrupt asset suffers a loss, it is directly a loss of creditors and debtors.

Customer policyholders can take legal action by means of resistance through submitting a letter of objection to the Supervisory Judge of the curator's actions.

Article 77 paragraph (1) of the KPKPU Law states that every creditor, creditor committee, and bankrupt debtor can submit an objection letter to the Supervisory Judge on the actions taken by the curator or request the Supervisory Judge to issue a warrant so that the curator does certain deeds or does not comply what has been planned.

The legal effort that can be made by Bumi Asih Jaya Insurance customers as policy holders is to file a lawsuit based on Unlawful Acts to the District Court. The lawsuit is based on Article 1365 BW. The definition of Act Against the Law (*Perbuatan Melawan Hukum/PMH*) states that any act against the law that brings harm to another person requires the person who causes harm to compensate for the loss. In the event that the curator does not specify the insurance customer data properly and information about the return of the debtor's assets is not accepted by all the customers, this will cause a loss to the customer.

4. CONCLUSION

Legal Relations between Insurance Companies and Insurance Company Customers are civil relations in the form of agreements. Legal Position of Policyholders in Bankruptcy Insurance Companies is regulated by the Insurance Law, i.e Article 52 paragraph (1) regulates explicitly that the rights of policyholders, insured or insurance participants on the distribution of wealth of bankrupt or liquidated insurance companies have a higher position than the rights other creditors. Based on the provisions above, if the insurance company is bankrupt, the position of the insurance customer is the preferred creditor. Preferred creditors are creditors who, by law, are solely due to the nature of their receivables, get repayment in advance.

Legal remedies for customers of policyholders who have not received their receivables in the condition of their insured bankruptcy companies are the responsibility of the curator. The Customer can file a lawsuit in court for the loss suffered by the way the curator conducts bankruptcy assets based on illegal acts.

³¹ Rudhy A.Lontoh, *Penyelesaian Utang Piutang Melalui Pailit atau Penundaan Kewajiban Pembayaran Utang*, Alumni, Bandung, p. 390-391 in *Ibid*, p. 138 – 139

Suggestion

For the benefit of customer protection related to with a bankrupt company, in the future curators are required to carry out the obligation to provide periodic reports on their activities, including if assets have been cleared. The report is submitted not only to the supervisory judge but also to OJK as an institution that filed bankruptcy on the bankrupt company.

Insurance agents in the case of Bumi Asih Jaya insurance should be able to act as coordinators of policyholders to be able to submit their receivables to the curator so that no customers experience delays in information regarding bankruptcy.

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