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Legal Protection for Policyholders Against PT Asuransi Jiwa Kresna's Default based on the Supreme Court Decision No. 647 K/Pdt.Sus-Pailit/2021

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Abstract: Based on Decision Number 389/Pdt.Sus-PKPU/2020/PN Niaga Jkt.Pst (Decision 389), policyholders of PT Asuransi Jiwa Kresna (PT AsJK) were considered applicants for a Posponement of Indebtedness Payout Responsibility (PeKPU) and therefore had special legal protection through homologation. However, according to Supreme Court Verdict Num. 647 K/Pdt.Sus-Pailit/2021 (MA Decision 647), the homologation was declared null and void, thus unprotected policyholders, and the Financial Services Authority (OJK) never permitted it. According to MA Decision 647, policyholder protection against PT AsJK's default is the objective of this research. This normative legal research uses secondary data collected through library research. The research results indicate that because insurance policyholders lack legal status as applicants for a PeKPU against insurance companies, the legal protection provided by MA Decision 647cannot protect insurance policyholders. OJK is the only party that allows PeKPU applications. However, based on the Decision 389, OJK has been granted protection even though the Commercial Court Panel of Judges has set aside the OJK's legal conviction as a PeKPU applicant.

Keywords: Legal Protection, Insurance, Policyholders

INTRODUCTION

As a vital part of the financial system, insurance plays a vital role in supporting economic and social stability. The purpose of insurance is to mitigate potential losses by transferring risk to another party, namely the insurance company. Insurance was developed due to the many risks in various social and business areas , as a financial instrument that provides protection or guarantees for the economic well-being of individuals and organizations against risk, insurance has become one of the best options for long-term and future investment because it not only serves to mitigate the negative impacts of business but also provides protection for life, assets, and personal liability.

A legal expert named Robert I Mehr in his opinion, where insurance is a way to minimize risk through the unification of risky actions, so that individual losses that can be

predicted through collective action can be divided and distributed proportionally among all the choices of actions that are combined. Insurance is normatively regulated in Act Num. 40/2014 about Insurance (Insurance Act).

Types of insurance include health insurance, personal accident insurance, property insurance, travel insurance and life insurance. In reality, PT AsJK experienced a payment default. This case began on February 20, 2020, when PT AsJK sent a letter to all policyholders regarding policies whose payments were postponed. In the letter, PT AsJK explained that Investment-Linked Insurance Products (PAYDI) were not related to the securities currently under investigation by the Attorney General's Office in connection with PT AsJK (Persero)'s payment default case. However, PT AsJK decided to extend the investment period of its policies for at least 6 months, starting from February 11, 2020 to August 10, 2020. However, PT AsJK failed to fulfill its promise and, as a result, the policyholders reported PT AsJK to the Financial Services Authority (OJK) in South Jakarta for three months.

Policyholders claim that the total unpaid claims by the defaulting PT AsJK amount to Rp 6.4 trillion, and these claims are due to 8,900 policyholders out of a total of 11,000 currently in trouble. With the Financial Services Authority (OJK) restricting PT AsJK's operations, policyholders must take reasonable steps to obtain their rights. One way they can do this is by filing a request for a PeKPU above PT AsJK with the Commercial Court at Central Jakarta District Court.

Various efforts by Policyholders based on Act Num. 37/2004 about Bankruptcy and PeKPU (Bankruptcy Act), requesting a PeKPU against PT AsJK have yielded results, as based on the Temporary PeKPU Decision Number 389/Pdt.Sus-PKPU/2020/PN Niaga Jkt. Pst. (Temporary 389 Decision) where this request was granted, for a maximum of 45 days started by the decision pronounced. Regarding to Temporary PeKPU Decision, on January 22, 2021, a Permanent PeKPU Decision was issued based on Decision Number 389/Pdt.Sus-PKPU/2020/PN Niaga Jkt. Pst. (Permanent 389 Decision), one of the rules of which is to grant the Permanent PeKPU Request within a period of 14 days, calculated started from date of the pronounced decission.

According to Permanent 389 Decision, PT AsJK and the Policy Holders signed a Peace Agreement (Homologation) on February 10, 2021. This agreement was declared valid and legally binding based on Permanent 389 Decision. In another ruling, it was stated that the PeKPU application had legally expired. Ultimately, the other policy holders rejected PT AsJK's homologation. As a result, they filed a cassation appeal on February 25, 2021, with the main demand being to cancel the homologation between PT AsJK and the previous policy holders. Ultimately, based on Supreme Court (MA) Decision Number 647 K/Pdt.Sus-Pailit/2021 (MA Decision 647), it resolved to fulfil, requests of the other cassation petitioner. This invalidated the homologation made on February 10, 2021, which was empowered by MA Verdict Num. 3 PK/Pdt.Sus-Pailit/2022 dated January 24, 2022 (Judicial Review).

Policyholders hoped that their claims would be paid by PT AsJK, either in part or in full, following the homologation granted by the Commercial Court at the Central Jakarta District Court. However, the Supreme Court subsequently annulled the homologation in the cassation and judicial review cases. Consequently, policyholders' efforts to regain their rights have failed, and they will have to pursue further legal action in the future. With the cancellation of the homologation, PT AsJK faces legal consequences. PT AsJK may revert to its previous state (not in a PeKPU) and/or may remain in default, unable to pay its obligations to policyholders. Consequently, policyholders, despite having paid premiums, still lack justice and legal protection.

From the background above, the problem is formulated, how well do policyholders have legal protection against PT AsJK's default based on MA Verdict Num. 647 K/Pdt.Sus-Pailit/2021?

METHOD

Legal issue studied are normative research through a legislative and case approach, using secondary data, which is collected through literature and analyzed qualitatively.

RESULTS AND DISCUSSION

The Supreme Court at the cassation level, according to MA Decision 647, after thoroughly reviewing Decision 389, finally assessed that the application of norms in PeKPU was inappropriate. According to Chapter 223 and Chapter 2 verse (5) of the Bankruptcy Act, the OtJK Act, and Chapter 50 verse (1) of the Insurance Act, when it comes to filing a PeKPU application against businesses involved in the insurance industry, creditors lack legal standing.

Judge consideration of decision show, Supreme Court judge considered and adjudicated using references from the norms at Chapter 223 conjunct to Chapter 2 paragraph (5) of Act Number 37/2004 about Bankruptcy and PeKPU and also linked to Chapter 50 verse (1) of the Insurance Act. The Supreme Court judge used this legal basis to grant the cassation application submitted by the applicant because if seen in the case of PT AsJK the PeKPU application was submitted by one of the policy holders who did not have legal standing, therefore it brought the reason for Decision 389 to be contrary to Chapter 223 conjunct to Chapter 2 verse (5) of the PeKPU Act conjunct to Chapter 55 of the OJK Act in conjunction with Chapter 50 verse (1) of the Insurance Act which in regulation clearly states the owner of the authority to submit a bankruptcy application or PeKPU against a company engaged in the insurance sector is the Chancellor of the Exchequer which then shifted to Authority of Financial Services.

The Supreme Court judge reconsidered that the prior court who stated PeKPU decision, in conjunction with the PeKPU decision, interpreted the provision regarding party authorized filing a PeKPU application for an insurance company, which contains a clear norm, namely the OJK, so that the judex facti interpreted the provision incorrectly. Although the judge has the authority to interpret a statutory provision, such interpretation can only be justified if there is a strong reason to do so. The considerations used by the judge in this point demonstrate an effort to consistently enforce the regulation based on firmly regulated norms and the Supreme Court judge correctly emphasized that the authority to file a PeKPU application against insurance enterprise is an absolute infalible of Authority of Financial Services, as stipulated in the relevant statutory regulations, namely Chapter 50 of the Insurance Act, which regulates the requirements and procedures for bankruptcy applications against insurance companies.

The interpretation made by the judex facti is considered inappropriate because the norms in the provisions are clear and do not require further interpretation or interpretation. Supreme Court judges firmly declare although judge has the authority to interpret the provisions of the norms, this can be applied if the norms regulated in the regulations are unclear or there is ambiguity that requires clarification through legal interpretation, whereas in this case the regulations regarding the authority of the OJK in filing for bankruptcy have been explicitly regulated and do not give rise to doubt. The action of the judex facti in interpreting these provisions, according to the author, is considered to have exceeded the limits of its authority, so that the judex facti decision is inconsistent with the applicable legal basis. The legal basis used by the Supreme Court judge in granting this cassation reinforces the principle that strict legal norms must be respected as they are without the need for

unnecessary interpretation as an affirmation to understand the limits of the judge's interpretive authority to ensure that the application of the law remains in accordance with the hierarchy and intent of the legislation in question to provide stronger legal certainty for the parties involved.

Then by the considerations, Supreme Court also emphasized where the prior court was wrong at the examination also decision on the application for PeKPU based on the use of legal instruments for government administration, namely the Ruler Administration Act. In previous court decision, Chapter 53 verse (3) was used, which is the basis for a positive but fictitious decision, meaning a passive attitude or act of neglect by state administrative officials towards decisions that do not issue written state administrative decisions by individuals including bodies. If there is neglect from the official, legally the decision can be equated with agreement and the legal entity or individual who made the provision must submit an application to the court.

The Commercial Judge applied basis of lex special derogate legi generaly, which considers that the State Administration Act should be prioritized as the legal basis that precedes the application of the Insurance Act and the Bankruptcy Act. The principle of lex specialis derogate legi generalis does refer to specific regulations, but if we observe the PT AsJK case, this principle should not be applicable because the legal basis used is the Ruler Administration Act, which is not a specific regulation when compared to the Bankruptcy Act which should be used to examine and decide on Decision 389.

The Supreme Court in the verdict issued a statement that Decision 389 as the basis for homologation was wrong, so that the homologation which was declared null and void had implications for the debtor being declared bankrupt, as regulated in Chapter 291 verse (2) of the Bankruptcy Act which requires the debtor to be declared bankrupt if the homologation agreement is cancelled, but by condition of PT AsJK the Judge ruled and confirmed, because the prior court decisions which were the basis for the homologation agreement were cancelled, the position of PT AsJK returned to its original legal condition before the existence of Decision 389 and homologation.

An important aspect that can be underlined in this case is regarding how the Supreme Court judges used the correct legal basis to assess the legal standing in the submission of the PeKPU requested against PT AsJK. The legal basis that regulates this matter is Chapter 223 conjunct to Chapter 2 verse (5) of the Bankruptcy Act which states that a request for bankruptcy against a company in the insurance sector can only be submitted by the OJK, not by the insured party who has no legal standing at all, therefore the Panel of Judges of Supreme Court reasoned, PeKPU verdict which was being basis for the homologation was contrary to the applicable legal provisions and thus, the cassation request submitted by the applicant could be accepted.

Legal protection for insurance policy holders as applicants for PeKPU against PT AsJK's default after the MA Decision 647, in the context or perspective of legal certainty has not been created and has not provided justice for policy holders, but it should be realized that this decision as a state of law must be based on legal certainty that the OJK is the only institution that is positioned as an applicant for PeKPU against insurance companies, not policy holders, so that Decision 389-Tetap must be revoked.

CONCLUSION

Based on this research description, it can be concluded that because insurance policyholders do not have legal status as applicants for PeKPU (Deferred Payment Suspension) against the insurance company's default, MA Decision Number 647 K/Pdt.Sus-Pailit/2021 does not provide legal protection to insurance policyholders. However, based on the Commercial Court Decision at the Central Jakarta District Court Number 389/Pdt.Sus-

PKPU/2020/PN Niaga Jkt. Pst., protection has been provided even though the Commercial Court Panel of Judges set aside the legal conviction of the Financial Services Authority (OJK) as the applicant for PeKPU . In addition to losing risk coverage, policyholders also lose their rights to claims because the insurance company failed to do so, so that the policyholders have no opportunity to obtain justice. In this case, the OJK is the sole applicant for PeKPU , but did not follow up on the policyholder's request of applying for PeKPU against the insurance company, so that the policyholders have no opportunity to obtain further just legal action.

If there are no amendments granting policyholders rights but the OJK does not respond, then the OJK must evaluate and improve its internal mechanisms to ensure a timely and transparent response. The transparency of the PeKPU application review process and the reasons for rejection (if any) must be increased because a delay in the OJK's response can cause financial losses for policyholders and undermine public trust in the supervisory agency.

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