CHARACTERISTICS OF PRELIMINARY RIGHTS FOR INSURED IN GETTING REPAYMENT OF LOSSES ON BANKRUPT INSURANCE COMPANIES

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ABSTRACT

In the business world and all its competition, debt is not a bad thing for businesses whether small, medium, or even large businesses, as long as the debt can still be paid back. A company is also not immune to the events of debts, and the accounts of these debts are companies called solvable, which means they are able to pay their debts, there is also a company called insolvency, which means the company is unable to pay its debts. For companies that cannot afford to pay their debts, the law has provided instruments for settlement, among others, can follow the rule of law guarantees, or the rule of bankruptcy when the conditions are met. Both of these instruments have their own characteristics. Based on the bankruptcy law, the debtor who is determined to be bankrupt will become ineligible for his property until the bankruptcy is over, also not for the insurance company. Insurance companies that have decided bankruptcy will experience payment constraints for the insured party filing a claim, especially when it is not based on the existence of norms or understanding of good norms. This research is a normative study. The results obtained in this study are the insured party can still get the rights through his claim, and its nature can precede with certain conditions.

Keywords: insurance; insolvency; insured

INTRODUCTION

For a company, debt is not a bad thing as long as the company can still pay back. Such companies are called solvable companies, which means companies that are able to pay their debts. Conversely, if a company that is no longer able to pay its debts is called insolvency, it means it cannot afford to pay.[1]

Through the decline of the national economy, we can be sure that there will be more and more problematic businesses that will not be able to carry out their obligations to creditors. One legal tool that becomes the basis for settling debts other than through Burgerlijk Wetboek (hereinafter referred to as BW) is through Bankruptcy Law regulated in Act Number 37 of 2004 Concerning Bankruptcy and Deferral of Debt Payment Obligations (hereinafter referred to as KPKPU Law).

The settlement of the case of bankruptcy loans is much sought after by business actors, because when compared to defaults, this bankruptcy does not take long, the requirements for being able to file for bankruptcy are quite simple, namely only with the existence of debt and the existence of at least 2 (two) creditors , also one of the creditors has matured, this is confirmed through Article 2 paragraph (1) of the KPKPU Law.

Through all the articles in the KPKPU Law it is increasingly giving direction that the characteristics of bankruptcy law are presented in the context of business interests. The main purpose of the bankruptcy process for the company is to accelerate the liquidation process in the context of distributing company assets to pay debts. Thus the company that was bankrupt soon ended with the acceleration of the settlement of the liquidation process.[2]

All companies can go bankrupt. One company that did not escape the threat of bankruptcy is an insurance company. Insurance has important benefits during the construction period, especially in the effort

[1] Victor M. Situmorang dan Hendri Soekarso, *Pengantar Hukum Kepailitan di indonesia*, Rineka Cipta, Jakarta, 1994, h. 1.

[2] Hadi Shubhan, *Hukum kepailitan: Prinsip, Norma, dan Praktik di Peradilan*, Kencana Prenada Media Grup, Jakarta, 2008, h. 198.

to absorb private capital through insurance premiums obtained from policyholders. Life insurance, too, has an important role to protect one's life from catastrophic unexpected events.

Behind the protection of the security provided by insurance services, insurance companies like other companies are inseparable from the threat of bankruptcy. If an insurance company experiences bankruptcy, then the right and obligation to take care of and control the assets including the bankrupt assets are no longer in the insurance company.

This certainly raises concerns for the insured, that is when the insurance company is decided bankrupt, then how its position as the insured party who actually still has the right in the form of insurance protection until the premium deadline ends. Is the insured party the money must be returned on the basis of compensation from the insurance company, or must give up the remaining time of insurance protection from insurance companies that are no longer able to provide protection because it has been decided bankruptcy. This is especially risky for the insured party affected by the disaster before the insurance company is declared bankrupt, and it turns out the insurance company has been declared bankrupt when the insured will claim for the disaster suffered by him. Also considering, this bankruptcy case is a case that requires the judge to quickly give the verdict, ie the time limit is only 60 (sixty days) since the request for bankruptcy is received, as stipulated in Article 8 paragraph (5) of the KPKPU Law.

PROBLEM FORMULATION

The problem that will be discussed in this paper is the characteristic of overriding rights for the insured in obtaining repayment of compensation to the insurance company that is decided on bankruptcy.

RESEARCH METHOD

This research is a normative research. The approach method used in this research is the statutory approach (statue approach).

DISCUSSION AND RESULT

The Existence of Bankruptcy Law

The term bankrupt is found in the treasury of Dutch, French, Latin and English, with different terms. In French, the term "failite" means strike or traffic jam in making a payment. Therefore people who strike or freeze or stop paying their debts in French are called failliet. For the same meaning in English the term "faliure" is known, and in Latin the term "fallire" is used.[3]

Philosophically the birth of bankruptcy, which the law about bankruptcy itself has existed since Roman times. The word bankrupt, which in English is called bankrupt comes from an Italian law called banca rupta. In the middle Ages in Europe, bankruptcy was practiced by destroying the benches of bankers or traders who fled silently carrying the creditors' property.[4]

The beginnings of bankruptcy regulations in Indonesia are included in commercial law, even though it has been regulated in the Commercial Law Code (hereinafter referred to as KUHD). The bankruptcy regulation is also regulated in a separate regulation, namely in the Faillissements Verordening (Staatsblad Year 1905 Number 2176 jo. Staatsblad Year 1906 Number 348), which also applies to the Chinese and Foreign Easterners.[5]

Initially, there were 2 (two) types of bankruptcy regulations imposed in Indonesia, this is a consequence of the distinction between traders and non-traders. When enacted, the KUHD was divided into 3 (three) books, one of which was the third book that regulates bankruptcy under the title (Van de Voorsieningen in Geval van onvermogen van kooplieden). The arrangements can be found in articles 749 through Article 910 of the Indonesian Criminal Code, which is then revoked by Article 2 of the Verordening invoice van de Faillissements Verordening (Staatsblad Year 1906 Number 348), namely bankruptcy regulations for traders. In addition, bankruptcy regulations can also be found in the Reglement op de Rechtsvordering (RV). Which was then revoked by Verordening ter Invoering van de Faillissements Verordening. Thus, before 1906 there were 2 (two) types of bankruptcy regulations in force in the Dutch East Indies.[6]

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[3] Zainal Asikin, *Hukum Kepailitan dan Penundaan Pembayaran di Indonesia*, Edisi Revisi, PT. Raja Grafindo Persada, Jakarta, 1994, h. 24.

[4] *ibid.*

[5] Rachmadi Usman, *Dimensi Hukum Kepailitan di Indonesia*, Gramedia Pustaka Utama, Jakarta, 2004, h. 2.

[6] *ibid*, h. 3.

In its development, Faillissements Verordening was amended to adjust conditions and improve bankruptcy provisions contained therein. On April 22, 1998 the Government promulgated Government Regulation in lieu of Law Number 1 of 1998, concerning Amendment to the Bankruptcy Law. In the next time, Perppu Number 1 of 1998 was stipulated to become Law Number 4 of 1998, concerning the Establishment of Government Regulations in lieu of Law Number 1 of 1998 concerning Amendments to the Law on Bankruptcy into Law.

Law Number 4 of 1998 in its development, felt many shortcomings and weaknesses contained in the Act, so that changes are needed to some provisions in it. With these many weaknesses, a new law is needed that can accommodate the interests of all parties, both creditors and debtors, so Act Number 37 of 2004 concerning Bankruptcy and Delaying Obligations for Debt Payment.

Article 1 of the KPKPU Law confirms that bankruptcy is a general confiscation of all the assets of bankrupt debtors whose management and settlement is carried out by the Curator under the supervision of the Supervising Judge as regulated in this Law. Bankruptcy is a condition where the debtor is unable to make payments on debts of his creditors. Whereas bankruptcy is a court decision which results in general confiscation of the entire assets of bankrupt debtors, both existing and future ones.

In principle, the regulation of bankruptcy matters is an embodiment of Article 1131 and Article 1132 BW. It is affirmed in the Article that all material debts, both movable and immovable, both existing and new will be in the future, will be borne by all individual engagements, and such material will become a joint guarantee for all those who are in charge of at him. The formulation of Article 1131 BW, shows that every action taken by a person in the field of assets will always have an effect on his assets, both of which are increasing the amount of his assets (credit), and which will later reduce the amount of his assets (debit). Article 1132 BW stipulates that each party or creditor who is entitled to the fulfillment of the agreement, must obtain the fulfillment of the agreement from the assets of the obliged party (debtor) in Parri Passu and Pro average or proportional basis, which is calculated based on the amount of the respective receivables compared to the receivables they as a whole, of the debtor's entire assets.[7]

A bankruptcy law can fulfill the objectives below:[8]

1. Increase efforts to return wealth. All debtor wealth must be held in the same pool of funds - called bankruptcy assets - provided for payment of creditors' demands. Bankruptcy provides a forum for collective liquidation of debtor assets;
2. Give balanced and predictable good treatment to creditors. Basically, creditors are paid pari passu; they receive a pro rata share of the collection of funds according to the size of each claim. Basic procedures and regulations in this relationship must be able to provide certainty and openness. Creditors must know in advance about their legal position;
3. Provides practical opportunities for the reorganization of ailing company, but it is still potential if creditors' interests and social needs are better served by retaining debtors in their business activities. Bankruptcy which is a decisive action in the form of a decision, which contains the inability of a person to take legal actions related to his assets, then to that person all assets (which meet the elements of Article 1131 BW) that can be transferred, will be confiscated, and are under the management of the Curator with the help of supervision of the Supervising Judge.

With the bankruptcy law, it can provide a mechanism whereby creditors can jointly determine whether the debtor company should continue business continuity or not, and can force minority creditors to follow the scheme because the bankruptcy voting procedure is needed as a collective proceeding tool. That is, without a bankruptcy law, each creditor will compete individually to claim the debtor's assets for their own interests. Therefore, bankruptcy law overcomes the so-called collective action problems arising from the individual interests of each creditor.

[7] Kartini Muljadi, *Prosiding Masalah Kepailitan Dari Wawasan Hukum Bisnis*, Pusat Pengkajian Hukum, Jakarta, 2005, h. 164.

[8] Jerry Hoff, *Undang-Undang Kepailitan Indonesia (Indonesian Bankrupcty)*, Tatanusa, Jakarta, 2000, h. 9-10.

Common Aspect of Insurance Company

The definition of insurance by default can be traced from the legislation and several books relating to insurance. Hasan Ali in his book interpreted insurance as an agreement in which the guarantor promised to the guaranteed party, to receive an amount of premium as compensation for losses that might be suffered by the collateral, because the consequences of an event were not yet clear. [9]

The definition of insurance can also be seen from Law No. 40 of 2014 concerning Insurance (hereinafter referred to as the Insurance Act) in General Provisions Article 1 which states that Insurance is an agreement between two parties, namely the insurance company and the policy holder, which is the basis for receiving premiums by insurance companies in return for:

1. Provide compensation to the insured or policyholder due to loss, damage, costs incurred, loss of profits, or legal liability to third parties that may be suffered by the insured or policyholder due to an uncertain event; or
2. Give payments based on the death of the insured or payments based on the life of the insured with benefits the amount of which has been determined and / or based on the results of fund management.

The definition of insurance in the insurance law is broader when compared to the existing definition of insurance in the Criminal Code. Article 246 KUHD explicitly only covers loss insurance. Whereas in the General Provisions Article 1 of the Insurance Law covers life insurance as well as life insurance.

In insurance contained four elements, namely:[10]

1. Participants (insured) who promise to pay premiums to the guarantor, at the same time or gradually;
2. The insurer promises to pay a sum of money (compensation) to the participant, at the same time or gradually if something happens that contains an uncertain element;
3. An uncertain event (not known beforehand);
4. Interests (interests) that may suffer losses due to uncertain events.

The conventional forms of insurance, in general, are:[11]

1. Mutual insurance (mutualle assurance). This form of insurance is usually also referred to as mutual insurance or guarantee, which is an association agreement between the insurance participants. Coverage is based on an accident that befell one of their people. This was done on the basis of the loss of one member. The existence of large losses are borne by members of the insurance together.
2. Insurance compensation (schade verzekering). This insurance is an agreement in which the insurer promises to compensate a participant. Reimbursement is given to someone as an insured who suffered a certain loss, for example fire insurance. Insurance groupings arising based on causes that are not life, disability or death must be insured with the property insurance company.
3. Insurance of some money (sommen verzekering). An amount of money insurance is an insurance agreement in which the insurer promises to pay someone who becomes the insured, where the amount has been determined in advance. Payment of insurance claims is based on a certain loss such as life insurance.
4. Insurance premiums (verzekering premiums). Premium insurance is an insurance agreement between an insurance companies on the one hand as a guarantor and insurance participants as an insured on the other. However, insurance participants as insured individually have no legal relationship with each other;
5. Mutual insurance (orderlinge verzekering). Mutual insurance is a group agreement consisting of the guarantor and the insured as a member. The participants do not pay a premium, but rather pay a kind of contribution to the association's administrators. As members of the association, they will receive payment if the conditions of the insured are fulfilled from an event which at the time could not be determined when it occurred;
6. Mandatory insurance. Said to be mandatory because there is one product that obliges other

[9] Hasan Ali, *Asuransi Dalam Perspektif Hukum Islam*, Kencana, Jakarta, 2004, h. 58.

[10] Khotibul Umam, *Memahami dan Memilih Produk Asuransi*, Pustaka Yustisia, Yogyakarta, 2011, h. 3.

[11] Kuat Ismanto, *Asuransi Syariah: Suatu Tinjauan Asas-Asas Hukum Islam*, Cetakan Pertama, Pustaka Pelajar, Yogyakarta, 2009, h. 38.

parties to enter into an agreement. The party that requires it is usually the government, but is not always monopolized by the government. The government in the coverage agreement occupies a position as a guarantor. The government in making policies requires this to the community members. The policy is usually based on the consideration of protecting the weak from the dangers that will befall him. But it also aims to raise funds for more important purposes.

Every party conducting an insurance business is required to obtain business from the Minister of Finance, except for companies that carry out a Social Insurance Program.

Specifically for State-Owned Enterprises that carry out Social Insurance Programs, their functions and duties as organizer of the program are set forth in a Government Regulation. This means that the government has indeed assigned the State-Owned Enterprise concerned to implement a Social Insurance Program that has been decided to be implemented by the government. Therefore, for the State-Owned Enterprises in question it is not necessary to obtain a permit from the Minister of Finance.[12]

Every insurance business is carried out by an Insurance Company. Insurance Companies include Insurance Companies and Insurance Support Companies Based on this provision, each Insurance Company can only run the type of business that has been determined, and therefore there is no possibility of an Insurance Company that simultaneously runs a life insurance and life insurance business.

At the beginning of the establishment of the Insurance Company must be placed a few percent of the required paid up capital, in the form of time deposits with automatic extension at a Commercial Bank in Indonesia that is not an affiliate of the Insurance Company concerned as stipulated in the Act. The deposit is the last guarantee in order to protect the interests of policyholders. Placement of these deposits:[13]

1. Must be on behalf of the Minister of Finance for the benefit of the company concerned;
2. Must be adjusted to the development of business volume, the amount of which is determined by the Minister of Finance provided that the amount of the deposit referred to is not less than what was required at the beginning of the establishment;
3. Can be disbursed with the approval of the Minister of Finance upon request (1). liquidator in the event that the company is liquidated; (2) the relevant company in case its business permit is revoked at the request of the company concerned provided that its obligations have been settled.

Starting from here it can be seen how big the role of the Minister of Finance is in the insurance field, even the role of the Minister of Finance has been needed since the time the insurance company will start its business.

Various legal aspects that can arise in the risk coverage agreement, include the following:[14]

1. Legal aspects are promissory or certain rights and obligations or liabilities for a certain risk are declared true at all times;
2. Legal aspects that are affirmative or binding rights, and or certain liability obligations for a risk are declared true at the present time but not necessarily in the future.

There are several principles so that the insurance agreement system can be implemented properly, among others:[15]

1. The principle of Insurable Interest (Insurable Interest);
2. The Principle of Good Faith (Utmost Goodfaith);
3. The principle of balance (indemniteit principle);
4. Subrogation Principle;
5. Causaliteit Principle;
6. Principle of Contribution;
7. Follow the Fortunes Principles.

It should also be noted that vigilance against things that can be detrimental, this is in the insurance terminology called Hazard, which is as follows:[16]

1. Physical Hazard, in the form of the condition of certain goods or objects which due to their

[12] Abdulkadir Muhammad, *Hukum Asuransi Indonesia*, Citra Aditya Bakti, Bandung, 2002, h. 26.

[13] *ibid.*, h. 37.

[14] Eman Radjagukguk, *Instrumen Hukum Ekonomi Untuk Mewujudkan Perilaku Ramah Lingkungan*, Seminar Nasional Hukum Lingkungan di Jakarta Tanggal 1-2 Mei 1996, Jakarta.

[15] H. Man. Sastrawidjaja dan Endang, *Hukum Asuransi, Perlindungan Tertanggung, Asuransi Deposito, Usaha Perasuransian*, Alumni, Bandung, 2004, h. 55.

[16] Hasyimi Ali, *Pengantar Asuransi*, Bumi Aksara, Jakarta, 2002, h. 85.

nature, usefulness, situation and / or condition can increase the risk;
2. Moral Hazard, in the form of conditions caused by humans related to mental, which tends to cause harm;
3. Legal Hazard, in the form of a situation that can heighten the risk conditions due to the neglect of various legal obligations.

Although several principles, rules that have been specifically formed, and things that need to be watched out for in the whole insurance business have been confirmed, it is not impossible for such insurance companies to request and decide on bankruptcy.

Bankruptcy of Insurance Company

Article 2 Paragraphs 1-5 of the KPKPU Law show that parties who can file bankruptcy applications for a debtor are:
1. The debtor concerned;
2. Creditors or creditors;
3. The Public Prosecution Service;
4. Bank Indonesia if the debtor is a Bank;
5. Capital Market Supervisory Agency (Bapepam) in terms of its creditors, stock exchanges, clearing and guarantee institutions, deposit and settlement institutions;
6. The Minister of Finance, in the case of debtors, insurance companies, reinsurance companies, pension funds or State-Owned Enterprises engaged in the field of public interest.

As is the case with banks and securities companies, the KPKPU Act also distinguishes insurance companies, reinsurance, pension funds and BUMN engaged in the public interest with other debtors. If the debtor is an insurance company, a reinsurance company, a pension fund and a state-owned company engaged in the public interest, then the request for a bankruptcy statement can only be submitted by the Minister of Finance. The existence of different treatment from other debtors is because this institution manages general public funds. This is also done in order to protect the interests of the community so that not everyone can bankrupt these institutions.[17]

In accordance with the Insurance Act, the Minister of Finance has the right to revoke an insurance company business license. The Minister of Finance in accordance with the KPKPU Law, based on public interest, can ask the Commercial Court that the relevant company be declared bankrupt. In the event that the insurance company is filed for bankruptcy, the insurance company's assets need to be protected so that policyholders can continue to obtain their rights proportionally. To protect the interests of the polish holders, the Minister of Finance is authorized to ask the Commercial Court so that the insurance company concerned is declared bankrupt so that the company's assets are not used for the interests of the management or business owners without regard to the interests of the polish holders. The Minister of Finance is given the authority to prevent unauthorized activities from the insurance company whose license has been revoked from the possibility of a wider loss to the public.[18]

This provision is needed with the aim of building the level of public trust in insurance companies and reinsurance companies as risk management institutions and public funds, which have a strategic position in the development and economic life of the State.

Nevertheless, the Insurance Law regulates different matters, in Article 50 it is stated that the authorities in filing bankruptcy applications for insurance companies, sharia insurance companies, reinsurance companies, or sharia reinsurance companies, that is the Financial Services Authority. The difference between the regulation between the KPKPU Act and the Insurance Act is actually not a decrease in nature, because the nature of the main tasks and functions of the Financial Services Authority makes the Financial Services Authority feasible to be the party requesting bankrupt insurance companies, in addition to the Minister of Finance. Due to the conflict of norms, based on the principle of Lex Specialist Derogat Legi Generalis, the norm in the Insurance Law will be used.

This limitation is carried out solely in the interest of the State and does not violate any provisions in the 1945 Constitution. An insurance company is a company that is unique in nature,

[17] Imran Nating, Per*anan dan Tanggungjawab Kurator dalam Pengurusan dan Pemberesan Harta Pailit*, Rajawali Press, Jakarta, 2005, h. 37.

[18] Bagus Irawan, *Aspek-Aspek Hukum Kepailitan; Perusahaan; dan Asuransi*, Alumni, Bandung, 2007, h. 39.

whose characteristics involve a variety of interests that must be protected, particularly the interests of consumers (insurance policy holders) which are usually very large in number. Can reach hundreds of thousands or even millions of people, and the interests of insurance companies to maintain the company. All interests relating to insurance must be recognized, guaranteed and protected in a balanced manner both the interests of insurance consumers and the interests of people who are not insurance consumers. Insurance companies are prudential financial institutions, which absorb, process and control public funds, even the majority of their wealth is the accumulation of public funds and only a small portion is the company's capital. Some of the accumulated community capital is partly used to finance national economic development.[19]

Therefore, bankruptcy statements against insurance companies can shake people's economic lives. Furthermore, bankruptcy statements towards insurance companies will cause a bad image of the company in general in the eyes of the public, which in turn will lead to reduced or even loss of public confidence in the insurance company.

Therefore, bankruptcy statements against insurance companies can shake people's economic lives. Furthermore, bankruptcy statements to insurance companies will cause a bad image of the company in general in the eyes of the public, which in turn will lead to a reduction or even loss of public trust regarding the resolution process, the mechanism as stipulated in the KPKPU Law. Requests for bankruptcy are fast events, because based on Article 8 paragraph (4) of the KPKPU Law, it is confirmed a maximum of 60 (sixty) days after the application is submitted, there must be a Bankruptcy Decision, the long process of bankruptcy is after the bankruptcy Decision. After the verdict of the bankruptcy statement is made, all the assets of the bankrupt debtor will be confiscated and become bankrupt. All assets will be managed by a curator under a supervisory judge in several stages, namely: against an insurance company.

1. The first step taken by the curator in issuing bankruptcy assets for the payment of creditors is to announce the bankruptcy of the debtor in the newspaper to find out the creditors of the bankrupt debtor;
2. The second stage, if necessary, the curator with the approval of the creditor's clerk to continue the profitable debtor's business on bankrupt assets;
3. The third stage, holds a debt verification (matching) meeting as a determination of the classification of bills included in bankrupt assets;
4. The fourth stage, bankrupt debtors can submit a peace plan to all creditors together as a process of settling their debts;
5. The fifth stage, if the bankrupt debtor does not submit a peace plan, then the next process is the stage of bankruptcy property acquisition or what is often called the insolvency stage. If the bankrupt debtor is able to meet the payment of his debts to the creditors. The curator will also sell bankrupt assets in public or under his hands and compile a distribution list with the permission of the Supervising Judge. The proceeds of the sale of bankrupt assets plus the results of collection of receivables less the costs of bankruptcy and debt of bankrupt assets are assets that can be distributed to creditors, so the last stage in this case is rehabilitation;
6. The sixth stage, in the event that bankrupt assets are able to meet the payment of debts of bankrupt debtors to their creditors, the next step is to rehabilitate or restore the status of the bankrupt debtor to be the full legal subject of their assets. The main requirement for rehabilitation is that the bankrupt debtor has paid all the debts of the creditors with proof of proof of repayment from the creditors that the debts of the bankrupt debtor have been paid in full.

Bankruptcy results in all debtors' assets and everything obtained during bankruptcy is in general confiscation from the moment the verdict of the bankruptcy statement is pronounced.

After the verdict of bankruptcy is passed, the debtor who is declared bankrupt loses the right to manage and control his assets. All assets will become bankrupt. The curator determined in the decision on the bankruptcy statement shall immediately be tasked with the management and control of the bankruptcy bankruptcy, under the Supervisory Judge, even though the verdict is proposed in the form of a legal

[19] *ibid.*, h. 42.

appeal in the form of cassation or reconsideration. The curator in bankruptcy is a party that has been determined by law to conduct the management and control of bankrupt assets.[20]

The first step that must be taken by the curator after the bankruptcy decision is made in the process of managing and controlling bankruptcy assets is to announce the debtor bankruptcy in the State Gazette of the Republic of Indonesia and in at least 2 (two) daily newspapers stipulated by the supervisory judge. The requirement for bankruptcy to be announced in a newspaper is to be known to the creditors of the bankrupt debtor. The announcement of bankruptcy also has a very strategic meaning, because creditors do not necessarily know of the existence of bankruptcy from the debtor.[21]

Debtors who have been declared bankrupt by the Commercial Court by their verdict are given the opportunity by the Law to propose a peace plan (accoord) with their creditors. Peace in a bankruptcy case occurs through a supervisory judge. Peace in bankruptcy is more directed at the process of settling debtors' debts through the acquisition of bankrupt assets.[22]

Creditors in Bankruptcy Law and Security Law

There are different types of creditors based on Guarantee Law and Bankruptcy Law. Creditors in the Guaranteed Law whose payments take precedence are preferred creditors and privileged creditors, this is based on Article 1132 and Article 1134 BW.

Preferred creditors are regulated in Article 1132 jo. 1133 BW, namely creditors born because of special guarantees who have special guarantee rights. Special collateral binds one item specifically as debt repayment, so that for one or more creditors, debt repayment will take precedence based on the nature of special collateral in the form of droit de preference or preference.

Privileged creditors are regulated in Article 1134 BW, which is one of the creditors who are privileged and prioritized repayment of their debts because the law which gives them is based solely on the nature of their receivables, not because of collateral agreements made by the parties such as preferred creditors. Creditors' rights that occur because of this Law are technically called privileges.

Article 1138 BW mentions that there are 2 (two) types of privileges, namely special privileges regulated in Article 1139 BW, and general privileges in Article 1149 BW. The difference is that general privilege means more privileged billing rights in taking payment of the sale proceeds in the execution of all debtors' assets, while special privileges are accounts receivable that are privileged against certain objects.

Privileged creditors and preferential creditors both receive repayment prior to payment, but in general preferential creditors pay their debts more than privileged creditors, except by law determined otherwise based on the nature of the receivables (Article 1134 BW). To find out the characteristics of the receivables, which are sorted according to their priority in general and special privileges, can be seen in Articles 1139 and 1149 BW, in general the order of the priority rights is as follows:

1. Article 1139 number (1) BW, namely the cost of the case for the auction of certain objects (special privileges);
2. Article 1149 number (1) BW, which is the cost of a case caused by the auction and settlement of an inheritance (public privilege);
3. Pledge, Mortgage, Mortgage and Fiduciary (preferred creditor);
4. Other Privilege;
5. Concurrent creditors.

Creditors in Bankruptcy Law are a bit more different.

Elucidation of Article 2 paragraph (1) of the KPKPU Law classifies creditors in bankruptcy divided into 3 (three) types, namely concurrent creditors, preferred creditors, and separatist creditors. However, creditors in Bankruptcy Laws whose debts take precedence over payments are preferred creditors and separatist creditors. Article 60 paragraph (2) of the KPKPU Law confirms that upon the demand of a Curator or a privileged creditor whose position is higher than the right holder creditor as referred to in paragraph (1), the right holder's creditor must submit part of the proceeds of the sale for an amount equal to number of privileged bills.

Elucidation of Article 60 paragraph (2) of the KPKPU Law explains that the Privileged Creditor

[20] *ibid*.

[21] *ibid.*, h. 135.

[22] *ibid.*, h. 140.

is as referred to in Articles 1139 and 1149 BW. Articles 1139 and 1149 BW regulate the Privilege Creditor (General Privilege and Special Privilege in Guarantee Law). While the intention of the creditors in Article 60 paragraph (1) of the KPKPU Law is as stated in Article 55 paragraph (1) of the Bankruptcy Law. Article 55 Paragraph (1) of the KPKPU Law confirms that by taking into account the provisions referred to in Article 56, Article 57, and Article 58 of the KPKPU Law, each creditor holding a mortgage, fiduciary security, mortgage, mortgage or other collateral rights, can execute their rights as if bankruptcy did not occur.

Based on the aforementioned arrangement, it can be taken into account that in the Bankruptcy the privileged creditor takes precedence over the material security creditor creditor, which means that the preferred creditor takes priority over the payment of the separatist creditor. If the term creditor is converted into a term in the regulation of Guarantee Law, then it means that in the Bankruptcy Law, the Privilege Creditor has a higher position than the Preferent Creditor.

Thus, the level of preference rights in debt repayment of each creditor when based on the Law of Guarantee and Bankruptcy Law looks different. In Guarantee Law, the priority level of debt payment for each creditor is: (1) Privilege Creditor (privilege); (2) Preferred Creditors (precedence). Whereas in Bankruptcy Law, the priority level of debt repayment of each creditor takes precedence: (1) Preferred Creditors (privileged); (2) Separatist Creditors (precedence).

Considering the nature of the privileged creditor (in the guarantee law) is the creditor privileged by the Act because of the nature of the engagement, not because of a special guarantee agreement, it can be seen that in the insurance agreement, the nature is different from other agreements, which is the nature of the debt and the nature of the situation is unexpected, then first, the insurance agreement is creditors (such as claims from the insured on the hospital, car repairs, or whatever it is) should be categorized in the category privileged by the Act (creditor privilege), this is also some mentioned in Articles 1139 and 1149 BW. Second, Article 52 of the Insurance Law stipulates that accounts receivable take precedence, meaning that the provisions in this Article are arrangements regarding creditor privileges (in guarantee law) or preferred creditors (in bankruptcy law), which are accounts receivable that are privileged based on the mandate of the Act based on nature of the engagement.

Based on the above explanation, the position of the insured party, in this case is the claim, when the insurance company is bankrupt, it is the preferred creditor (creditor privilege in Guarantee Law), and the repayment takes precedence over separatist creditor (preferential creditor in Guarantee Law).

Lawmakers provide maximum protection for policyholders by giving primary rights (the highest rights in policyholders exceed the rights of other creditors). Ideally, this would be very good to foster the trust and attractiveness of policyholders towards the insurance industry.

CONCLUSION

The character of bankruptcy in insurance companies is basically the same as the character of companies with other legal entities. It's just that there are differences in the authority of the applicant. Requests for bankruptcy by insurance companies can only be made by the Financial Services Authority to the Commercial Court, which is based on the request of creditors. This has indeed caused controversy, but the consideration is that insurance companies are prudential financial institutions, which absorb, process and control public funds, even the majority of their wealth is the accumulation of public funds and only a small portion is the company's capital. Some of the accumulated community capital is partly used to finance national economic development. The rest after bankruptcy is decided, the insurance company must bear the loss of its customers, pay its debts, and carry out all applicable legal processes. Creditors from an insurance company that has been declared bankrupt, it is included in the category of preferred creditors (Privilege creditors in Guarantee Law). Thus the insurance policy holder of the insurance company has the right to submit claims of fulfillment of debt payment obligations to the insurance company and will be paid with precedence from other creditors.

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