



## Legal Consequences of Bankruptcy Decisions Against Pt. Asuransi Jiwa Kresna (Study of The Supreme Court Decision Number: 647 K/Pdt.Sus-Bankruptcy/2021)

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**Abstract** - The purpose of this thesis research project, which was the study of Supreme Court Decision Number 647 K/Pdt.Sus-Bankruptcy/2021, titled Legal Consequences of Bankruptcy Decisions Against PT Asuransi Jiwa Kresna, was to ascertain and comprehend the legal ramifications of a bankruptcy decision against an insurance company that affect clients and the business itself. The results of this thesis study show that consumers will have a harder time getting their benefits as a result of PT Asuransi Jiwa Kresna's bankruptcy since the curator will now be in charge of the company's assets instead of the company itself. When curators file for bankruptcy, the process of selling assets usually takes a long period. When the liquidation is finished, a number of costs, such as taxes and curator fees, will also be subtracted from the revenues. The consumer's revenue share will therefore be smaller. As a responsible move, in order to fulfill their responsibilities, debtors might submit a Financial Restructuring Plan (RPK) to OJK. The case underscores the crucial role of regulatory oversight in safeguarding policyholder interests and maintaining financial stability in the insurance sector. Regulatory authorities like OJK need to have clear mechanisms in place for early detection of financial distress among insurers and prompt intervention when necessary. This may involve implementing stricter capital requirements, conducting regular financial audits, and establishing contingency plans for insolvent insurers.

**Keywords:** Bankruptcy, Postponement of Debt Payment Obligation (PKPU), Financial Services Authority (OJK), Asuransi Jiwa Kresna.

### I. INTRODUCTION

One of Indonesia's primary priorities is implementing development, especially in the economic domain. The Indonesian government has implemented a strategy that limits excessive government intrusion in the economic and business realms, with the aim of fostering a business-friendly atmosphere and climate Maya S. Karundeng (2022). When credit is used to purchase goods or services, a debt is created that needs to be repaid within a set period of time. If a loan is not repaid, the borrowing party, known as the debtor, may file a loan Payment Obligation Delay (PKPU) in an effort to avoid bankruptcy.

Limited Liability Companies (PT) are a commercial form that has garnered significant interest from Indonesian entrepreneurs. This is a result of PT's enhanced ability to raise capital and use it to produce profits for its own institutions and shareholders. It also has greater potential for commercial expansion. Furthermore, the administration unveiled a foreign investment strategy (FI) in an effort to accelerate the nation's economic growth Erizka Permatasari (2023).

Foreign investment (FI) refers to any investment activity made in Indonesia by foreign investors, including people, corporations, and foreign governments. These investors could establish joint ventures with domestic investors or utilise all of their foreign funds. Borrowing

and lending are commonplace in business. Usually, the purpose of this loan activity is to expand the business and take part in other initiatives that support the viability of the organisation. The data and performance of the company will be assessed before the debtor extends a loan offer. If an assessment shows that a business has room to grow, a loan will be given with interest intended to be paid back. But the company will not always be lucky when running its business. Threats to the business's viability could result in loan nonpayment or insolvency, and the company might then be declared bankrupt at the request of the relevant debtor in line with the Bankruptcy Law.

Because the globe and business competition are ever-changing, companies must always be ready to face ever-increasing levels of business competition in order to maintain commercial continuity. Nevertheless, it cannot be denied that a business may experience operational failure. A corporation may fail for a number of reasons, including as incompetent management, adverse economic conditions, natural disasters, and errors or negligence on the part of the board of directors. as demonstrated by the bankruptcy of PT Asuransi Jiwa Kresna. On February 20, 2020, all of the company's clients got a letter informing them that their policy payments connected to investments (PAYDI) would be postponed. This marked the beginning of the PT Asuransi Jiwa Kresna default case. According to the letter, this was done since there was a PT Asuransi Jiwasraya default case at the time and it was intended to save and protect customer monies. It was explicitly stated by the management that PT Asuransi Jiwa Kresna products were unrelated to the Jiwasraya issue, and that the reason for extending the policy investment time was to stop excessive cash withdrawals, or "rushes." According to Kurniadi Sastrawinata, president and director of Asuransi Jiwa Kresna, the policy investment redemption period has been extended by six months, with a new deadline of August 10, 2020, as opposed to February 11, 2020.

Three months after the letter was published, on May 14, 2020, PT Asuransi Jiwa Kresna wrote another letter to its customers, this time informing them that payments on the Kresna Link Investa (K-LITA) and Protecto Investa Kresna (PIK) policies would be delayed again because of problems with the liquidity of the investment portfolio and a force majeure. Specifically, the letter mentioned difficulties brought on by the Covid-19 pandemic that struck in 2020, causing a global crisis that threatened the company's financial stability. All insurance contracts that were due to mature between February 11, 2020, and February 10, 2021 were therefore postponed. In addition, the payout of benefits from matured investments will be delayed; it will happen between May 14, 2020, and February 10, 2021. The administration then notified the clients that this payment would be delayed in a letter with the number 017/KL-DIR/V/2020.

The company followed up with a letter four days later detailing its settlement obligations, which policyholders must receive no later than thirty days after the policy's issuing date. However, as this wasn't completed until June 18, 2020, the company wrote another letter stating that it will pay the policyholders of K-LITA and PIK IDR 50,000,000 (fifty million rupiah) as the initial stage payment. PT Asuransi Jiwa Kresna's last letter was sent on July 17, 2020, and almost a month had gone by when the office building had to be evacuated due to positive Covid-19 instances. The business reiterated in that letter that the rise in Covid-19 instances would cause the settlement for policy payments above Rp 50,000,000 (fifty million rupiah) to be postponed until August 3, 2020.

After several payments were delayed, customers who were policyholders eventually asked the Financial Services Authority (OJK), which regulates the financial sector, to intervene and assist in resolving the matter. As an organisation with jurisdiction over financial regulation and supervision in the banking industry, capital markets, insurance, pension funds, financing institutions, and other financial service institutions, OJK has the authority to impose sanctions for limiting business activities in order to make sure that PT Asuransi Jiwa Kresna can fulfil its obligations regarding past-due customer policy payments. On August 14, 2020, OJK finally issued the letter Limitation of Business Activities (PKU) with number S-342/NB/2/2020, which included a statement of suspension of PT Asuransi Jiwa Kresna's business activities, Indonesia CNN (2020). As a result, none of the business divisions may allow PT Asuransi

Jiwa Kresna to carry out any additional insurance closing procedures. Prior to this, in February 2020, OJK conducted an evaluation of the company's performance for the 2019 period and found a number of violations, mostly related to the K-LITA product. OJK consequently made a number of orders, including:

1. PT Asuransi Jiwa Kresna is required to fulfill policy payment claims submitted by customers.;
2. It is necessary to create a financial restructuring plan that outlines the stages involved in the financial restructuring, the commitment of the company's controllers or shareholders to resolve problems, and the specific claim payment schedules supported by reliable and realistic sources of funding;
3. It is necessary to create a financial restructuring plan that details the measures to be taken, the shareholders' resolve to settle this default case, and the payment schedule, supported by realistic and reliable sources of funding.
4. We will be discontinuing the K-Lita product to protect consumers and prevent problems

On September 10, 2020, PT Asuransi Jiwa Kresna was sued last time for alleged insurance offenses, including fraud, embezzlement, and money laundering against Polda Metro Jaya. TBL/5422/IX/YAN 2.5/2020/SPKT PMJ was the registration number used to file the lawsuit. The Central Jakarta District Court rendered an interlocutory decision in case No. 389/Pdt/Sus/PKPU/2020/PN Niaga Jkt.Pst on December 10, 2020. The applicant, Putusan PN JAKARTA PUSAT (2021), represented himself as a client of PT Asuransi Jiwa Kresna through LQ Indonesia Lawfirm. The ruling states that the PKPU would be shut down. The interim PKPU is only in force for a maximum of 45 days following the date of the decision, according to file 389/Pdt/Sus/PKPU/2020/PN Niaga Jkt.Pst. Through his lawyer at LQ Indonesia Lawfirm, Lukman Wibowo filed this file on behalf of PT Asuransi Jiwa Kresna.

Aside from being legally flawed, PKPU Decision No. 389/Pdt/Sus/PKPU/2020/PN Niaga Jkt.Pst, which was validated on February 10, 2021, had both positive and negative aspects. It concluded the PKPU process amicably (homogenization). A lengthy court battle over the PT Asuransi Jiwa Kresna issue culminated with the Supreme Court (MA) declaring the corporation insolvent on June 8, 2021. This verdict is contained in Decision 647 K/Pdt.Sus-Bankruptcy/2021.

The following are the research topic and aims of this study, which are based on the previous description: what the Supreme Court's Decision Number 647 K / Pdt.Sus-Bankruptcy / 2021's Bankruptcy's Legal Consequences on Customers and PT. Kresna Life Insurance, how to Liability of PT Asuransi Jiwa Kresna Against of Customers Due to Bankruptcy. The research aims to investigate the legal ramifications resulting from bankruptcy decisions against PT. Asuransi Jiwa Kresna, with a particular focus on analyzing the implications outlined in the Supreme Court Decision Number: 647 K/PDT.SUS-BANKRUPTCY/2021. so therefore the writer is interested in conducting in-depth research with the title "Legal Effects of Bankruptcy Decision on PT Asuransi Jiwa Kresna (Study of Supreme Court Decision No. 647 K/Pdt.Sus-Bankruptcy/2021)"

## **II. METHOD**

In order to do this legal study, a category of legal normative studies will be used. Normative legal research involves analyzing legal principles and norms to develop recommendations or arguments about what the law should be. When conducting normative legal research, it's crucial to define clear boundaries and select appropriate legal literature materials to ensure comprehensiveness and reliability. which entails looking through legal literature materials such as books, journals, papers, laws and regulations, and other scientific works. The methodology used is a case and law approach.

## **III. RESULT AND DISCUSSION**

### **3.1 Legal Effects of Bankruptcy Caused by Supreme Court Decision Number 647 K/Pdt.Sus-Bankruptcy/2021 on Customers and PT. Asuransi Jiwa Kresna**

KUHD Article 246 regulates coverage, which is also referred to as insurance. In an agreement with an insured party, an insurer agrees to indemnify the latter against any loss or damage arising from an unpredictable occurrence (eventemen) as soon as the insurer receives payment. Zainal H. Asikin (2013). The insurance policy serves as formal documentation proving the insurer-insured relationship's legality.

Insurance companies are monitored while doing their tasks by the Financial Services Authority (OJK). 2020 OJK: OJK is a neutral, autonomous organization that runs without funding from outside sources. Establishing robust financial industry regulation, boosting economic competitiveness, and safeguarding public and consumer interests were the main reasons behind OJK's founding as the regulatory body for all financial services operations. This involves making certain that everything is done in a responsible, equitable, and open way.

When a court issues a bankruptcy decree, the debtor's whole estate, including any assets held now and in the future, is often seized Bernadetha Aurelia Oktavira (2022) . The UUK 2004's Article 2 paragraph (1) and Article 8 paragraph (4) specify the requirements for being declared bankrupt as follows:

1. Has two or more creditors at least;
2. There is a debt that is due and payable but is not fully paid by the debtor;
3. Both of these facts are easily demonstrated

When a Limited Liability Company (PT) is declared bankrupt, it does not instantly cease to exist and dissolve; instead, it keeps its legal status and may carry on in certain situations (especially those involving the management of bankruptcy assets and the distribution of company assets) Purbandari (2017). An insolvent PT will either enter the bankruptcy stage and follow the company's order, which is liquidation and dissolution, or it will go through rehabilitation to get back to its pre-bankruptcy state if the company pays its debts and exhausts its bankruptcy assets.

By utilizing PKPU, debtors can improve their financial situation, allowing them to resolve debt disputes amicably and stave off going bankrupt immediately. PKPUs are essentially granted to bankrupt debtors as a means of providing peace, either through complete or partial debt settlement. Debt restructuring is one way to put the peace plan into action; this involves coming up with a new payment schedule to pay off the debt. Theoretically, then, PKPU aims to protect the interests of both creditors and debtors. Applications for PKPU may be submitted by Bank Indonesia, OJK, Debtor, Creditor, Attorney, and Finance Minister, among other parties.

On November 18, 2020, PT Asuransi Jiwa Kresna (PT AJK), also referred to as the PKPU respondent, was sued by Br. Lukman Wibowo, generally known as the PKPU applicant, for postponement of debt payment obligations (PKPU). The lawsuit claimed that PT AJK had failed to pay Kresna Link Investa (K-Lita) insurance funds. The case timeline will go into great detail about this action's details:

- a) PT Asuransi Jiwa Kresna is an insurance company that offers unit-linked insurance products. It assures customers that their investments would provide a high rate of return, up to 9%. The products that are offered are Kresna Link Investa (K-Lita) and Protecto Investa Kresna (PIK).
- b) The creditor will be paid the whole amount invested in K-Lita, a non-guaranteed insurance product that is part of the PAYDI investing environment, in accordance with the terms and conditions that have been agreed upon.
- c) The policyholder whose investment term was delayed by six (six) months was the PKPU applicant in this matter. This information was disclosed by the PKPU respondent via Letter Number: 001/KL-DIR/2020 on February 20, 2020. Payments for the policy investment were expected between February 11, 2020, and August 10, 2020.
- d) On May 14, 2020, the PKPU responder sent out a second letter deciding to postpone the policy payments that were due on February 11, 2020, by one year, or until February 10, 2021. Furthermore, it said that owing to a force majeure event—specifically,

liquidity problems in the investment portfolio—benefit payments will stop on May 14, 2020, and February 10, 2021 (underlying investment).

- e) On May 18, 2020, the PKPU respondent sent a third letter explaining a procedure for addressing policy payment liabilities. Customers were notified in a fourth letter dated June 18, 2020, that policy payments would only be made to individuals who had K-Lita and PIK policies worth IDR 50,000,000 (fifty million rupiah) and that the payment process would take seven (seven) working days from the date of issuance.
- f) However, on July 17, 2020, the PKPU responder finally made the decision to again defer the policy payment until August 3, 2020, citing employee reports of positive occurrences and the Covid-19 increase that had entered the office. In the end, it became out that every promise made by the PKPU response was empty and unfulfilled.

The PKPU Applicant asks the a quo case's judicial panel to:

1. Grant full approval to this temporary PKPU application, including all related legal consequences; 2. Construct a temporary PKPU that expires after 45 (forty-five) days from the date of this ruling.
2. Designate a Central Jakarta District Court Commercial Judge to act as the Respondent's Supervisory Judge during the PKPU process;
3. Schedule two meetings:
4. The Republic of Indonesia's Ministry of Law and Human Rights' administrators and curators, specifically:
  - i. Ronaldo P. Batubara, S.H., M.H., Manager and Curator; registered with the Ministry of Law and Human Rights of the Republic of Indonesia; proof of curators and managers number: AHU- 160.AH.04.03-2018; office address: "AP&R", Jalan Tembaga Raya Number J/165A, Kemayoran, Central Jakarta;
  - ii. AHU- 33.AH.04.03- 2020, dated January 16, 2020, proof of curators and administrators number: Ivan Nugroho, registered at the Ministry of Law and Human Rights of the Republic of Indonesia; office address: Millennium Centennial Center Building, 2nd Floor, Unit 2C, Jalan Jend, Sudirman Kav 25 South Jakarta;
  - iii. iii. Beresman Jupiter Siagian, S.H., Administrator and Curator, registered with the Ministry of Law and Human Rights
  - iv. The curator and administrator, Arslan Ruslan, S.H., LL.M., is registered with the Ministry of Law and Human Rights of the Republic of Indonesia. His office address is at the Millennium Centennial Center Building, 2nd floor, Unit 2C, Jalan Jend, Sudirman Kav 25 South Jakarta. The proof of his registration is AHU- 34.AH.04.03.2020, dated January 16, 2020.

as the Administrator/Management Team of the PKPU Process of the PKPU Respondent;

- a. Compel the parties named in the registered letter, the PKPU Respondent (debtor) and the PKPU Applicant (creditor), to appear at the appointed hearing times;
- b. Determine all costs associated with managing the court and the compensation for management services after the PKPU concludes;
- c. The PKPU Respondent bears the entire cost of the PKPU.

Taking into account that the requirements of UUK Article 224, Paragraph 1 are met:

"The request for a deferral of the debt payment obligations outlined in Article 3 must be made to the Court. in accordance with Article 224, according to Article 222. The application must be signed by the applicant and his attorney"

Referring to the special power of attorney dated November 17, 2020 and associated with Exhibit P-1, an Identity Card (KTP) in the name of Lukman Wibowo, Wiraswastam, with an address at Jalan Badan Singa No 9, RT 006/RW 004, Lebak Siliwangi, Coblong, Bandung City, it can be shown that the requirements of Article 224 paragraph (1) UUK have been met.

Fulfilling the conditions outlined in Article 222 Paragraph (1) UUK: "Postponement of Debt Payment Obligation shall be filed by a Debtor who has more than 1 (one) Creditor or by a

Creditor," while keeping in mind that the applicant was formerly a policyholder who had made cash premium payments and had been recognized by the PKPU Respondent as a Kresna Link Investa (K-LITA) policyholder. Therefore, in this case, the PKPU Applicant is the creditor and the PKPU Respondent is the debtor.

The author concludes that the Respondent has numerous creditors, including Budiman Halim, Rianati Yoga, Anita Halim, and Lukman Wibowo as the PKPU Applicant, creditors I, II, and III. It has been established that the PKPU Respondent has taken extra time and delayed payment of investments and investment policies in order to create debt, in addition to the Petitioner, Budiman Halim as creditor I, Anita Halim as creditor II, and Anita Halim as creditor III. in order to fulfill the conditions of UUK Article 222, Paragraph 1. The UUK's Article 222 paragraph (3) states Indonesia Pemerintah Pusat (2004):

"A creditor who anticipates the debtor will not be able to meet its obligations that are due and payable" may ask to be granted PKPU, which will enable the debtor to present a peace plan to its creditors that includes an offer to pay off all or a portion of the debt. Keeping in mind that a settlement plan has been created for each policy owned by the PKPU Applicant, in compliance with the Collective Labor Agreement (CLA), to which nearly 90% (ninety percent) of the policyholders have given their approval and signed, and that the PKPU Respondent will subsequently make payments in line with the stages of the payment plan that have been agreed upon. Meanwhile, it has been determined that the debtor's inability to keep up with its debt payments is due to the continuous repayment delay, which the PKPU Respondent was also unable to resolve. Considering this, paragraph (3) of article 222 has been met.

Based on Law Number 30 of 2014 Governing Government Administration (AP Law), specifically Article 53 paragraph (3), the Panel of Judges of the Commercial Court granted PT AJK's PKPU application. The Insurance Law, the Bankruptcy and PKPU Laws, and the Legal Theory of *lex specialis derogate legi generalis* were superseded by this, as decided by the Panel of Judges. OJK and the institutions covered by Law Number 30 of 2014 are state institutions, which serves as the foundation for the application of this legal concept. The PT Asuransi Jiwa Kresna PKPU verdict was filed by a PKPU applicant who did not have the legal standing to file a PKPU.

Article 223 of the UUK states that "In the event that the debtor is an insurance company, reinsurance company, pension fund, or State-Owned Enterprise engaged in the public interest, the application for bankruptcy declaration can only be submitted by the Minister of Finance (currently it has been transferred to OJK)" As so, the ruling has misconstrued the law. On December 10, 2020, the Panel of Judges granted the PKPU petitioner's complete request, and the PKPU Respondent was put into a temporary PKPU state for 45 (forty-five) days. In actuality, however, PT AJK's peace plan was approved by 94.90% of the creditors present, according to a report on the voting that was given to the supervising judge. The judges' panel finally opted to postpone the Peace Ratification Session due to the PKPU Respondent's promise and proof that it could implement the Final Peace Plan in a fashion that is consistent with its current assets, operations, and finances (Homoglas). This homogeneity agreement was then signed under Number 389/Pdt/Sus-PKPU/2020/PN.Niaga Jkt Pst on February 10, 2021. Since then, it has fulfilled with every criteria listed in Article 285 Paragraph (1) Jo. and Article 284 (3) Paragraph concerning Bankruptcy and Suspension of Debt Payment Obligations in Law Number 37 of 2004, Lukman Wibowo (2020).

Other creditors, namely Nelly, Anna Sanusi, Da Vida Nuraini, Siti Khalida Oesman, Tan Surjani, and Jo Giok Bwee, filed a cassation application on February 25, 2021, against case number 389/Pdt. Sus-PKPU/2020/PN Niaga Jkt Pst, as recorded in the Deed of Cassation Application and cassation memory of bankruptcy case Number 09 Kas/Pdt.Sus-Bankruptcy/2021/PN Niaga Jkt Pst. Henceforth referred to as "Nelly et al." by means of their legal representative in accordance with the Special Power of Attorney dated February 17, 2021.

The cassation applicant's memorandum of cassation asks the panel of judges to:

1. To accept and grant the full petition for cassation;

2. To annul the PKPU decision of PT AJK and/or the PKPU peace decision, and to declare the debtor bankrupt.

This motion for a cassation is intrinsically tied to the *judex facti*'s decision to apply the law wrongly, given the following factors:

1. The *judex facti* appealed in this cassation appears to have a *homoglasi* endorsement, enabling the filing of a cassation appeal under Article 285 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and PKPU.
2. That the *Judex Facti* decision in case Number 389/Pdt.Sus-PKPU/2020 PN Niaga Jkt Pst cannot be separated from the Temporary PKPU Decision Number 389/Pdt.Sus-PKPU/PN Niaga Jkt Pst, dated December 10, 2020, in conjunction with the Permanent PKPU Decision Number 389/Pdt. Sus-PKPU/PN Niaga Jkt Pst, dated January 22, 2021, because the two decisions serve as the basis (*causa prima*) for the imposition of this *homoglation* decision;
3. Considering the following factors, the *judex facti*'s decision to apply the law incorrectly is inextricably linked to this request for cassation.
4. That a *homoglasi* endorsement is part of the *judex facti* appealed in this cassation;
5. That the Permanent PKPU Decision Number 389/Pdt. Sus-PKPU/PN Niaga Jkt Pst, dated January 22, 2021, and the Temporary PKPU Decision Number 389/Pdt. Sus-PKPU/PN Niaga Jkt Pst, dated December 10, 2020, constitute the basis (*causa prima*) for the imposition of this *homoglation* decision; that is, the PKPU decision is necessary in order for there to be a *homoglation* decision in this case without the PKPU decision.

The *judex facti* that have been incorrectly used in PKPU cases are described as follows:

1. The Minister of Finance is the one with the legal standing and authority to file a bankruptcy or PKPU application against an insurance company. This is clear from the provisions of Article 223 in conjunction with Article 2 paragraph (5) of the PKPU Law, the OJK Law, and Article 50 paragraph (1) of the Insurance Law. Since then, the OJK has been given this authority. Due to their *mutatis mutandis* nature, the provisions relevant to the filing of PKPU will be similar to those of the bankruptcy regulation. As a result, creditors or debtors are not permitted to file a PKPU against insurance companies; only OJK is. The PKPU Law's Article 223 in conjunction with Article 2 paragraph (5), the OJK Law's Article 55, and the Insurance Law's Article 50 paragraph (1) prohibit the permanent PKPU Decision dated January 22, 2021, in conjunction with the temporary PKPU Decision dated December 10, 2020. As a result, the PKPU application in the case of PT AJK should not be accepted. This is because the PKPU application was submitted by a customer who lacks legal standing.
2. The application of Government Administration Law Number 30 of 2014 (AP Law), one of the legislative instruments of government administration. The study, discussion, and decision-making of the *judex facti* based on the AP Law was the primary error in the permanent PKPU Decision dated January 22, 2021, as well as the temporary PKPU Decision dated December 10, 2020. Taking into account that the provisions of Article 53 paragraph (3) of the AP Law serve as the foundation for a positive fictitious decision. A positive fictional decision may be made when a genuine state administrative authority decides not to issue a state administrative decision that was created by an individual or organization. The judgment is seen as legally binding because to the administrative authorities' disrespect, and both individuals and legal entities must apply to the court to determine whether their application will be approved. The judges on the Commercial Court panel feel that the Insurance Law, the Bankruptcy and PKPU Law, and the AP Law should supersede one another based on the idea of *lex specialis derogate legi generalis*. In certain circumstances, legal regulations may hold the status of *lex specialis*; but, in relation to other legal norms, they may also hold the position of *lex generalis*. Since the general norms are *lex generalis*, they take effect automatically in the absence of any specific restrictions. General regulations take effect provided that no other special regulations apply to them, and special regulations supplement

and improve general regulations. In this case, the *lex specialis* regulation is the Government Administration Law, as demonstrated by PKPU Case Number 389/Pdt-Sus-PKPU/2020/PN-Niaga.Jkt.Pst. However, if you refer back to the AP Law, you'll notice that in addition to the courts and the OJK, it also regulates other legal organizations. Law Number 30 of 2014 is not exceptional legislation in comparison to Law Number 37 of 2004 regarding bankruptcy and PKPU and the Insurance Law. As a result, as a special law, Bankruptcy and PKPU Law Number 37 of 2004 applies in this specific instance. The legal maxim *lex specialis derogate legi generalis*, which stipulates that bankruptcy and PKPU applications must be examined and determined in compliance with the legal procedures outlined in Law Number 37 of 2004, is in keeping with this.

3. The two decisions that form the basis of the homoglotion application filing are the temporary PKPU Decision Number 389/Pdt.Sus-PKPU/2020/PN Niaga and the permanent PKPU Decision Number 389/Pdt.Sus-PKPU/2020/PN Niaga Jkt.Pst dated January 22, 2021.Jkt.Pst of December 10, 2020, have rendered inaccurate and erroneous verdicts; the Supreme Court must declare all previous rulings in the case to be invalid. As a result, the case's respondent, PT Asuransi Jiwa Kresna, will return to the conditions that existed before the PKPU and homoglasi pronouncements.

The homoglotion agreement Number 389/Pdt.Sus-PKPU/2020 PN Niaga Jkt Pst, dated February 18, 2021, was upheld by the panel of judges, who also decided to grant the cassation request. PKPU Decision Number 389/Pdt.Sus-PKPU/PN Niaga Jkt Pst, Permanent; Dated January 22, 2021; Temporary PKPU Decision Number 289/Pdt.Sus-PKPU/2020 PN Niaga Jkt Pst. Obtained December 10, 2020. Article 291 Paragraph (2) of the Bankruptcy Law says that "In a Court Decision that annuls peace, the debtor is also declared bankrupt." Thus, as a result of Supreme Court Decision Number 647 K/Pdt.Sus-Bankruptcy/2021, PT Asuransi Jiwa Kresna<sup>12</sup> entered bankruptcy Nelly (2021).

The insurance contract between the company and policyholders terminates upon PT AJK's filing for bankruptcy, and policyholder receivables become due, Erlina (2017). The bankruptcy ruling affects the debtor's assets in its entirety, and everything they acquire during the process will be made public. Furthermore, the debtor will lose control and management of the assets subject to bankruptcy. As a result, customers will find it difficult to collect past-due policy payments. In addition, the curator will have to put in a lot of time to dispose off assets throughout the liquidation process. After deducting additional costs like taxes and curator fees, this process will reduce the percentage of insurance claims that customers accept. In order to hold PT Asuransi Jiwa Kresna accountable for the losses suffered by clients due to regulatory infractions, the OJK, in its capacity as a supervisory institution, may bring legal action against the company. The company invests client funds in its affiliated companies far beyond the maximum amount allowed by the OJK.

### **3.2 Liability of PT Asuransi Jiwa Kresna Against of Customers Due to Bankruptcy**

Filing a PKPU is one step policyholders can take to recover their rights. By using PKPU, policyholders may be able to have certainty regarding the payment schedule for their policies. In the event that homogeneity cannot be achieved or the PKPU endeavor fails, the insurance company will be deemed insolvent. In the case of PT AJK, which a Supreme Court decision finally declared bankrupt.

The difficulties between PT AJK and the policyholders provide a venue for discussion and raise concerns regarding the policyholders' legal protection following the bankruptcy order. Legal protection is a universal idea that the state must provide to the community in order to preserve the rights of individuals who have been hurt by others and to allow the harmed community to exercise its lawfully granted rights. This is something that is crucial to understand in this regard. Legal protection can be broadly classified into two categories: preventive legal protection and repressive legal protection.

Preventive legal protection can be viewed as an attempt to prevent since law has typically included preventive measures. Legal protection that is intended to prevent something from



happening also acts as a restraint on the performance of responsibilities. The Civil Code, Bankruptcy and PKPU Law, and Insurance Law already provide preventive protection. The following are stated in Article 52 of the Insurance Law and Article 2 paragraph (5) of the Bankruptcy and PKPU Law: "If the debtor is an insurance business, reinsurance firm, pension fund, or State-Owned Enterprise (BUMN) working in the public interest, the Minister of Finance may file the application for bankruptcy declaration." Furthermore, Article 20 paragraph (1) of the Insurance Law regulates it as follows: "Companies that provide insurance, sharia insurance, reinsurance, and sharia reinsurance are required to set up a Guarantee Fund in the manner and quantity specified by the Financial Services Authority. Article 1134 of the Civil Code defines a privilege as a legal right that places a creditor in a superior position to other creditors. Therefore, in this case, PT Asuransi Jiwa Kresna's preferred creditors are obligated to take precedence over other creditors and have a legal certainty of payment.

The assured protection of insurance policyholders is governed by Article 53, which stipulates that "Insurance companies and Sharia insurance companies must become participants in the policy guarantee program". To put it briefly, the main objective of this policy guarantee program is to guarantee that, in the event that the insurance company is liquidated or has its business license revoked, policyholders' rights will be recovered in full or in part. Repressive protection focuses mostly on problem solving and conflict resolution, which can be accomplished through litigation or, in the case of the Indonesian Arbitration Mediation Agency (BMIA) and the Consumer Dispute Resolution Agency (BPSK), non-litigation. Policyholders may be able to use this process in the wake of the Supreme Court's cassation decision to guarantee that their debt payments are made on time.

Insurance companies try to settle default claims under the Financial Restructuring Plan (RPK). Additionally, when it comes to communicating with customers and attending gatherings between OJK and associated parties, the ownership and management still have the greatest of intentions. Furthermore, PT AJK still pays its clients in installments, especially the elderly, retired, and sick. This attempt at restructuring is being led by the company's owners in an effort to keep their promises to policyholders. The RPK must be submitted in order to overturn the operation suspension sanctioned by OJK.

This restructuring phase must be able to convince OJK of the owner's commitment to resolving the issue in its entirety. This financial restructuring action needs to at least comprise the following plans: reorganizing the assets and/or liabilities in the portfolio; adding paid-up capital; introducing a subordinated loan provision; raising the premium rate; transferring part or all of the coverage portfolio; merging business entities; and conducting additional activities. An OJK statement of no objection is required for this RPK before it can be approved at the GMS. A subordinated debt restructuring plan is part of PT Asuransi Jiwa Kresna's RPK. Policyholders face a significant risk in doing this:

1. The policyholder's status as the SOL giver automatically forfeits its right to receive payments from PT Asuransi Jiwa Kresna's guarantee fund
2. If PT Asuransi Jiwa Kresna has not met the health level ratio, the SOL giver cannot release its funds
3. The interest rate is only one-fifth of Bank Indonesia's interest rate
4. The policyholder's status as the SOL giver is essentially a waiver of its right to receive payments from PT Asuransi Jiwa Kresna's guarantee fund;
5. The policyholder's position as the SOL giver automatically forfeits its right to receive payments from PT Asuransi Jiwa Kresna's guarantee fund.

#### **IV. CONCLUSION**

Because of PT Asuransi Jiwa Kresna's insolvency, its customers have had trouble getting their premiums paid. This is due to the fact that the assets of the company are now under the curator's control rather than PT Asuransi Jiwa Kresna, and it will require time for the curator to sell those assets and reimburse clients for premiums. Customers will definitely have to wait a while to get their premium payments in this case. PT Asuransi Jiwa Kresna pays clients in installments as part of its commitment. In addition, the restructuring plan ensures the clients'

safety by acting as a preventative step. Proposing a strategy to convert claims payable into subordinated loans, PT Asuransi Jiwa Kresna's RPK needs the client's signed consent.

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