

## LEGAL CONSEQUENCES OF THE SUPREME COURT'S DECISION IN THE CASE OF A REQUEST FOR POSTPONEMENT OF DEBT PAYMENT OBLIGATIONS AGAINST INSURANCE LEGAL CERTAINTY IN INDONESIA

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They apply the Principle of Legal Certainty in Supreme Court Decision Number 647 K/Pdt.Sus-Bankruptcy/2021 is not applied properly, when the status of PT Asuransi Jiwa Kresna life is declared bankrupt, the most disadvantaged are the customers, the judge should reject the application of PKPU Kresna Life, because the applicant is not a party who has legal standing make a PKPU Application or Bankruptcy Statement, Judge's Consideration in Supreme Court Decision Number 647 K/Pdt.Sus-Bankruptcy/2021 granted the cassation application filed by the Cassation Applicants and canceled the Commercial Court Decision at the Central Jakarta District Court Number 389/Pdt.Sus-PKPU/2020/PN Niaga Jkt. Pst juncto Temporary PKPU Number 389/Pdt.Sus- PKPU/2020/PN Niaga Jkt. PSt poses problems in the implementation of the insurance business considering that insurance or protection is an activity that aims to avoid and delegate risks from one party to another. The judge rejected Kresna Life's PKPU application, because the applicant was not the competent party to apply for PKPU, but granted the PKPU application. The Financial Services Authority should have recommended the Insurance PKPU application, but in this case the Commercial Court Judge granted the PKPU application which should not be accepted, by granting the PKPU application has subsequent legal implications. In the request of Cassation, the Supreme Court Justice accepted the petitioner's application so that PT Asuransi Jiwa Kresna was declared bankrupt. Because the contradiction between the Supreme Court decision and the Insurance Law creates legal uncertainty for insurance customers. In the judge's consideration, the judge needs to be more careful in deciding cases so that the judge does not comply with professional obligations. As the judge needs to be more careful, it has long consequences for the next legal process.

Keywords: Legal Standing, Insurance, Bankruptcy

### 1. Introduction

The state of Indonesia is a state of law. In the constitutional history of the Republic of Indonesia, the term rule of law began to be used officially in the Indonesian Constitution of 1949 (RIS Constitution) and in the Indonesian Constitution of 1950 (UUDS) both in its preamble and in one of its articles. Furthermore, in the framework of amending the Constitution of the Republic of Indonesia in 1945, in the Fourth Amendment in 2002, the conception of the State of Law or "Rechtsstaat" which was previously only listed in the Explanation of the 1945 Constitution, was formulated expressly in Article 1 paragraph (3) which stated, "The State of Indonesia is a State of Law".

In the rule of law, the state rests on the belief that state power must be exercised based on just and good laws. According to Sudargo Guatama, a country can be categorized as a state of law if it meets the following elements:

- a. There are restrictions on the power of the state against individuals This means that the state cannot act arbitrarily, state actions are limited by law, individuals have rights to the state or the people have rights to the ruler;
- b. Principle of Legality Every state action must be based on a law that has been held in advance which must also be obeyed by the government or its apparatus; and



- c. Separation of Powers In order for these human rights to be truly protected, the bodies that make laws and regulations, implement, and adjudicate must be separate from each other, not in one hand.

In accordance with the development of the times where the state not only functions or serves as a watchman of night and order, but also to achieve and create prosperity of its people, the state must intervene more broadly, especially in the economic field. However, as a state of law, such interference must first be regulated in laws and regulations so that the government does not act arbitrarily or exceed the limits of its power. This concept of the rule of law is known as the "welfare state" or "*welvaarstaat*". The concept or term "welfare state" or "*welvaarstaat*" was put forward by F.J. Stahl, where in a *welvaarstaat*, the task of government is very broad, namely prioritizing the interests of all its people.

Indonesia also embraces the concept of the welfare state. This is explicitly affirmed in Article 33 paragraph (3) of the Constitution of the Republic of Indonesia Year 1945, which reads "Earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people". From the provisions of this article we can conclude that the state holds control over the earth, water and natural resources. State interference in these matters is carried out with the aim of the greatest prosperity of the people. Thus, it is clear that Indonesia adheres to the concept of the welfare state.

Furthermore, the concept of the welfare state can also be seen from the purpose of national legal development, namely to realize a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The development of national law to realize a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia was then directed at the realization of laws and regulations in a legal system that aligns with national economic development. Establishing laws and regulations that ensure certainty, order, enforcement, and fair legal protection will likely encourage economic growth and development through access to *ease of doing business* by prioritizing security for the results of national development.

One legal means needed to support national economic development is regulations on bankruptcy and postponement of debt payment obligations. Along with the government's efforts to encourage the economy and investment climate in Indonesia to be able to compete globally, the Government needs to realize laws and regulations that can provide fair legal protection and certainty for both Creditors and Debtors in the process of resolving bankruptcy debt relations and postponing debt payment obligations. Regulations related to bankruptcy and postponement of debt payment obligations in Indonesia are contained in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law and PKPU). Based on the provisions of Article 1 point 1 of the Bankruptcy Law and PKPU, Bankruptcy is defined as a general confiscation of all assets of the Insolvent Debtor whose management and settlement is carried out by the Curator under the supervision of the Supervisory Judge. Meanwhile, the definition of PKPU should be mentioned in the Law.

Making arrangements regarding Bankruptcy and PKPU at that time was for the benefit of the business world in solving debt problems fairly, quickly, openly, and effectively. This is motivated by the development of economy and trade and the influence of globalization that has hit the business world and considering that the capital owned by entrepreneurs in general is mostly loans originating from various sources, both from banks, investment, bond issuance and other permissible means, has caused many problems in settling accounts receivable in society.

Furthermore, in the general explanation of the Bankruptcy Law and PKPU, it can also be seen that several factors require regulation regarding bankruptcy and PKPU, namely:

- a. To avoid fighting over the Debtor's property if at the same time several Creditors collect their receivables from the Debtor.

- b. To avoid the existence of Creditors holding property security rights who claim their rights by selling the Debtor's property without regard to the interests of the Debtor or other Creditors.
- c. to avoid fraud committed by one of the Creditors or the Debtor himself. For example, the Debtor seeks to benefit one or several certain Creditors so that other Creditors are harmed, or there is fraudulent conduct from the Debtor to flee all his assets to abdicate his responsibility to the Creditors.

Insurance is a *legal term* used in laws and regulations. The term insurance comes from the word "insurance" which means coverage or protection of an object from the threat of danger that causes losses. Insurance is a contract that is stated in the form of a policy. As a contract, the provisions stipulated in it must not harm the interests of policyholders. Insurance is a form of agreement between the two parties, namely the Insured and the Insurer, where the Insured pays a contribution to the Insurer to get compensation for financial risks that can occur unexpectedly. In the context of a modern world, Insurer means an existing insurance company, while Insured is its customer. According to Law of the Republic of Indonesia No. 40 of 2014 concerning Insurance: "Insurance is an agreement between two parties, namely the insurance company and the policyholder, which becomes the basis for the receipt of premiums by the insurance company in return for:

1. provide reimbursement to the insured or policyholder due to loss, damage, costs incurred, loss of profit, or legal liability to third parties that may be suffered by the insured or policyholder due to the occurrence of an uncertain event; or
2. Provide payments based on the insured's death or payments based on the insured's life with benefits that have been determined and based on the results of fund management."

That the provisions of Article 50 of Law Number 40 of 2014 concerning Insurance are written, applications for bankruptcy statements against insurance companies, sharia insurance companies, reinsurance companies, or sharia reinsurance companies based on this law can only be submitted by Financial Services Authorization.

In addition, judges as law enforcers in deciding cases must pay attention to legal values comprehensively after the provisions of article 5 of Law number 48 of 2009 concerning judicial power which reads: *Judges and constitutional judges are obliged to explore, follow and understand legal values and a sense of justice that lives in society.*

However, the fact is that in the enforcement of insurance law, there are still many judges who need to decide in accordance with the law. In this case, the judge should have rejected Kresna Life's PKPU application, because the applicant was not the competent party to apply for PKPU, but turned out to have rejected the PKPU application. Because of the contradiction between the insurance law and the judicial power law.

## 2. Methods

The writing method can be compiled using an appropriate method. Method is a whole series of activities that will be carried out to answer the main problems that become the study of writing and procedures to understand the objects that are the target of the science concerned. The type of research used is normative legal research, which is an approach that emphasizes applicable legal regulations and in this case the research is carried out starting from research on secondary data, the approach to writing this journal is a case approach considering that the object of research is the Supreme Court Decision Number 647 K/Pdt.Sus-Bankruptcy/2021, Case approach (*case approach*), this approach is carried out by reviewing cases related to the issue at hand which has become a court decision that has permanent legal force.

## 3. Results And Discussion

Legal certainty in the Supreme Court decision which is the object of this study is from the consistency of the Supreme Court judge in applying insurance law in his Decision, According to



Sudikno Mertokusumo, legal certainty is a guarantee that the law must be implemented in a good way. Legal certainty requires legal regulation efforts in legislation made by authorized and authoritative parties, so that these rules have a juridical aspect that can guarantee certainty that the law functions as a regulation that must be obeyed.

The Supreme Court judged that *Judex Facti's decision* was wrong in applying the law with the following considerations:

1. That the *Judex Facti Decision* requested for cassation in this case contains a peace ratification so that based on the provisions of Article 285 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and PKPU, cassation legal remedies can be filed;
2. That regarding the subject matter, the *Judex Fa cti Decision in this case, namely Number 389/Pdt.Sus-PKPU/2020/PN Niaga Jkt. Pst., dated February 18, 2021 cannot be separated from the Temporary PKPU Decision Number 389/Pdt.Sus-PKPU/PN Niaga Jkt. Pst., dated December 10, 2020 juncto Permanent PKPU Decision Number 389/Pdt.Sus-PKPU/PN Niaga Jkt. Pst., dated January 22, 2021*, because these two decisions are the basis for the foothold (*causa prima*) of the homologation decision in this case so that there can be no homologation decision in this case without the PKPU decision;
3. the homologation application in this case is based on the Provisional PKPU Decision Number 389/Pdt.Sus-PKPU/PN Niaga. Jkt. Pst., dated December 10, 2020 juncto *Permanent PKPU Decision Number 389/Pdt.Sus-PKPU/PN Niaga. Jkt. Pst., dated January 22, 2021, the examination of homologation applications in this case must be seen as a series of examination processes with the examination of the PKPU application;*
4. That as such, to assess the absence of *Judex Facti errors* in this case, it is necessary to consider that there are no errors in the decision of the Provisional *PKPU juncto* of the Permanent PKPU;
5. That after carefully studying and examining the considerations and Provisional PKPU Decision dated December 10, 2020 *juncto* the Fixed PKPU Decision dated January 22, 2021, the Supreme Court thinks that *Judex Facti* in the PKPU case misapplied the law on the following grounds:
  - a. That based on the provisions of Article 223 Juncto Article 2 paragraph (5) of Law Number 37 of 2004 concerning Bankruptcy and PKPU juncto Law Number 21 of 2011 concerning the Financial Services Authority juncto Article 50 paragraph (1) of Law Number 40 of 2014 concerning Insurance, parties who have legal standing (*legal standing*) to apply for PKPU against insurance companies is not given to creditors or debtors but is given only to one institution, namely the Minister of Finance who then turns to the Financial Services Authority (OJK);
  - b. First, that the PKPU Applicant in this case is an individual creditor while the PKPU Respondent is an insurance company, namely PT Asuransi Jiwa Kresna, so that the Provisional PKPU Decision juncto PKPU Decision remains contrary to the provisions of Article 223 juncto Article 2 paragraph (5) of Law Number 37 of 2004 concerning Bankruptcy and PKPU;
  - c. That thus the PKPU application in this case should not be accepted because it was submitted by an Applicant who does not have authority (*legal standing*);
  - d. Second, that although judges are authorized to interpret a provision of a statute but that interpretation can only be justified if the norm of the provision is not clear so that it needs to be interpreted;
  - e. That *Judex Facti in the Provisional PKPU Decision* of the Permanent PKPU *juncto in this case interprets the provisions governing the authority to apply for PKPU against insurance companies, which provisions contain clear norms, namely the Financial Services Authority so that it is not appropriate for Judex Facti to interpret these provisions;*
  - f. Third, that the procedure for filing PKPU and Bankruptcy applications is regulated through a special law, namely Law Number 37 of 2004 concerning Bankruptcy and PKPU so that in accordance with the principle of *lex specialis derogat legi generalis* bankruptcy and PKPU

applications must be examined and decided based on the corridors of Law Number 37 of 2004;

- g. That in its consideration *Judex Facti* in the Provisional PKPU Decision *juncto* Permanent PKPU Decision, examining and deciding applications based on Law Number 30 of 2014 concerning Government Administration, which is a very basic mistake because examining and adjudicating PKPU applications based on general legal provisions outside the corridors of special laws, namely Law Number 37 of 2004 concerning Bankruptcy and PKPU;
6. That because the two decisions on which the homologation application was based in this case in *casu* Provisional PKPU Decision Number 389/Pdt.Sus-PKPU/2020/PN Niaga Jkt. Pst., dated December 10, 2020 *juncto* Permanent PKPU Decision Number 389/Pdt.Sus- PKPU/2020/PN Niaga Jkt. PSt., dated January 22, 2021 is a wrong decision, all decisions in the *case a quo* become flawed and must be declared void by the Supreme Court;
7. That because all *Judex Facti Decisions* in this case are void, the consequence is that the Respondent, namely PT Asuransi Jiwa Kresna, returned to its original state before the PKPU and Homologation decisions;

The Supreme Justice's consideration is in accordance with Article 50 of Law Number 40 of 2014 concerning Insurance so that there is hope related to the development of insurance because the insurance business is one of the business entities engaged in non-bank finance, which provides protection services to overcome financial risks and will later replace losses suffered by providing a sum of money that has become a mutual agreement. Supreme Court Decision Number 647 K/Pdt.Sus-Bankruptcy/2021, contrary to the legal aspects of insurance Because the Supreme Court thinks that there are sufficient grounds to grant the cassation application filed by the Cassation Applicants: 1.Nelly and friends and cancel the Commercial Court Decision at the Central Jakarta District Court Number 389/Pdt.Sus-PKPU/2020/PN Niaga Jkt. Pst., dated February 18, 2021 *juncto* Permanent PKPU Decision Number 389/Pdt.Sus-PKPU/2020/PN Niaga Jkt. Pst., dated January 22, 2021 *juncto* Provisional PKPU Decision Number 389/Pdt.Sus- PKPU/2020/PN Niaga Jkt. PSt., dated December 10, 2020, canceling the previous Decision is appropriate but declaring bankruptcy a violation of the Insurance Law.

The Supreme Court decision does not meet the element of legal certainty so that it does not provide legal protection for insurance policyholders, according to Fitzgerald explaining Salmond's theory of legal protection that the law aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can only be done by limiting various interests on the other hand. Legal interests are concerned with human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected. Legal protection must see stages, namely legal protection born from a legal provision and all legal regulations provided by the community which is an agreement of the community to regulate behavioral relations between community members and between individuals and the government who are considered to represent the interests of the community. Therefore, the Supreme Court must provide legal certainty so the public can access legal protection.

Opinion on understanding to understand the meaning of law stated by Dr. O. Notohamidjojo, SH Law is all written and unwritten regulations that are usually coercive for human behavior in state society and between states oriented to two principles, namely justice and usefulness, for the sake of order and peace in society. Therefore, legal certainty is needed, insurance legal certainty is contained in Article 50 of Law of the Republic of Indonesia Number 40 of 2014 concerning Insurance which reads:

- (1) An application for bankruptcy declaration against an Insurance Company, Sharia Insurance Company, reinsurance company, or sharia reinsurance company under this Law can only be filed by the Financial Services Authority.
- (2) The procedures and requirements for applying for bankruptcy declaration against an Insurance Company, Sharia Insurance Company, reinsurance company, or sharia

reinsurance company as referred to in paragraph (1) are carried out in accordance with the provisions of laws and regulations.

- (3) An application for bankruptcy declaration against an Insurance Company, Sharia Insurance Company, reinsurance company, or sharia reinsurance company as referred to in paragraph (1) cannot be filed to execute a court decision.

Then it is regulated in the provisions of Article 51 of the Law of the Republic of Indonesia Number 40 of 2014 concerning Insurance which reads:

- (1) Creditors apply to the Financial Services Authority to submit a bankruptcy statement application to the commercial court.
- (2) The Financial Services Authority approves or rejects the application submitted by the creditor as referred to in paragraph (1) by 30 (thirty) days after the application is received in full.
- (3) If the Financial Services Authority rejects the application submitted by the creditor as referred to in paragraph (2), the rejection must be made in writing with the reasons.
- (4) Further provisions regarding procedures and requirements for applications from creditors as referred to in paragraph (1), paragraph (2), and paragraph (3) are regulated in the Financial Services Authority Regulation.

The provision already meets the criteria of positive law as a reference Legal certainty which according to Jan Michiel Otto defines as the possibility that in certain situations:

- a. Some rules are clear, consistent and easy to obtain, published by and recognized because of the *nagara*.
- b. The ruling agencies (government) apply these rules of law consistently and submit and obey them.
- c. Citizens adjust their behavior to these rules in principle.
- d. Independent judges who do not think apply these rules of law consistently when they resolve legal disputes.
- e. Judicial decisions are concretely implemented.

The rule of law, both written and unwritten, contains general rules that guide individuals to behave in society and become a limitation for society in burdening or taking action against individuals. The existence of such rules and the implementation of such rules creates legal certainty. So it can be concluded that normative legal certainty is when a regulation is made and promulgated with certainty because it regulates clearly and logically, so as not to cause doubts (multi-interpretation), logical and has predictability. Legal certainty is a condition where human behavior, individuals, groups, and organizations, are bound and within the corridors outlined by the rule of law.

Supreme Court Decision Number 647 K/Pdt.Sus-Bankruptcy/2021, contrary to the legal aspects of insurance Because the Supreme Court thinks that there are sufficient grounds to grant the cassation application filed by the Cassation Applicants: 1.Nelly and friends and cancel the Commercial Court Decision at the Central Jakarta District Court Number 389/Pdt.Sus-PKPU/2020/PN Niaga Jkt. Pst., dated February 18, 2021 *juncto* Permanent PKPU Decision Number 389/Pdt.Sus-PKPU/2020/PN Niaga Jkt. Pst., dated January 22, 2021 *juncto* Temporary PKPU Decision Number 389/Pdt.Sus-PKPU/2020/PN Niaga Jkt. PSt., dated December 10, 2020, canceling the previous Decision is appropriate but declaring bankruptcy a violation of the Insurance Law.

The principles described above, interesting to study are the principle of *insurable interest*. Insurable interests contain the understanding that the insured party has involvement with the consequences arising from an uncertain event, so that the person concerned becomes disadvantaged. The subject of law can be considered an interest in the insurance agreement if the person suffers economic loss, so the insurer must compensate for the damages. This can be interpreted as the involvement of financial losses due to an uncertain event. The insurance legal system in Indonesia the principle of insurable interests is regulated in Articles 250 and 268 of the KUHD. In essence, every

interest can be insured, either material or interest. Article 268 provides limitations on interest i.e. it can be assessed with money, can be threatened with cost and is not excluded in the Act.

Article 250 of the Criminal Code stipulates that an element of insurable interest must be present at the time of the closing of the insurance agreement. Without an element of interest, the insurer is not obliged to provide compensation. The obligation of the element of interest in question needs to be explained in detail in the KUHD. This is interesting to study, especially regarding the form and limits of the required element of interest.

Improvements to laws and regulations regarding insurance must be made to create a healthier, more reliable, trustworthy, and competitive insurance industry and increase its role in encouraging national development. Efforts to create a healthier, more reliable, trustful, and competitive insurance industry in general are carried out by establishing new and improving existing provisions. These efforts are manifested, among others, in the form of:

1. Determination of legal entity status for Insurance Companies in the form of joint ventures that existed at the time this Law was promulgated;
2. Improvement of regulations regarding ownership of insurance companies that support the national interest;
3. Improvement of provisions regarding obligations to maintain good corporate governance, financial health, and sound business behavior.

The increasing role of the insurance industry in encouraging national development occurs if it can better support the community in facing the daily risks and when they start and run business activities. For this reason, this Law stipulates that Insurance Objects in Indonesia can only be insured at Insurance Companies or Sharia Insurance Companies in Indonesia and the closure of such Insurance Objects must pay attention to optimizing the capacity of Insurance Companies, Sharia Insurance Companies, reinsurance companies, and domestic sharia reinsurance companies. To balance this policy, the Government and the Financial Services Authority made efforts to encourage the increase of domestic insurance and reinsurance capacity, so the Supreme Court Ruling contradicted the insurance law.

The provisions of Article 50 of Law Number 40 of 2014 concerning Insurance provide guidelines for applications for bankruptcy statements against insurance companies, sharia insurance companies, reinsurance companies, or sharia reinsurance companies based on this law can only be submitted by Financial Services Authorization. This provision is a form of legal certainty that must be obeyed in the implementation of Insurance in Indonesia, as *Das Sollen* or guidelines related to what must be done so that insurance provides legal expediency value so that it functions as a defense of legal subjects in controlling risks or possible risks that occur.

According to Kelsen, law is a system of norms. A norm is a statement emphasizing the "should" or *das sollen* aspect, by including rules about what to do. Norms are deliberative products and actions of human beings. Laws that contain general rules become guidelines for individuals to behave in society, both in relations with fellow individuals and about society. These rules become restrictions for society in burdening or taking action against individuals. The existence of the rule and the implementation of the rule creates legal certainty. With various legal certainty criteria that judges should carry out as one of the law enforcers in deciding cases, they must pay attention to legal values comprehensively after the provisions of article 5 of Law Number 48 of 2009 concerning Judicial Power which reads: Judges and *constitutional judges are obliged to explore, follow and understand legal values and a sense of justice that lives in society.*

Legal certainty and expediency are the goal of law that is close to realistic. Positivists place more emphasis on legal certainty, while Functionalists prioritize the expediency of law, and if it can be argued that "*summum ius, summa injuria, summa lex, summa crux*" which means that harsh laws can hurt, except justice can help them, thus. However, justice is not the sole goal of law but the most substantive goal of law is justice.

Supreme Court Decision Number 647 K/Pdt.Sus-Bankruptcy/2021, contrary to the legal aspects of insurance Because the Supreme Court thinks that there are sufficient grounds to grant the cassation application filed by the Cassation Applicants: 1.Nelly and friends and cancel the Commercial Court Decision at the Central Jakarta District Court Number 389/Pdt.Sus-PKPU/2020/PN Niaga Jkt. Pst., dated February 18, 2021 *juncto* Permanent PKPU Decision Number 389/Pdt.Sus-PKPU/2020/PN Niaga Jkt. Pst., dated January 22, 2021 *juncto* Provisional PKPU Decision Number 389/Pdt.Sus-PKPU/2020/PN Niaga Jkt. PSt., dated December 10, 2020 violates the principle of legal certainty.

Even so, there are still many judges who decide cases not in accordance with applicable legal rules so that they do not provide legal certainty that causes losses to parties seeking justice, the fact that in the enforcement of insurance law there are still many judges who decide not in accordance with the law. According to Utrecht, legal certainty contains two meanings, namely first, the existence of general rules that make individuals know what actions can or cannot be done, and second, in the form of legal security for individuals from government arbitrariness because with the general rules individuals can know what the State may impose or do on individuals.

This teaching of legal certainty comes from Juridical-Dogmatic teachings based on the positivistic school of thought in the legal world, which tends to see law as something autonomous, independent, because for adherents of this thought, law is nothing but a collection of rules. For adherents of this sect, the purpose of law is nothing more than to ensure the realization of legal certainty. Legal certainty is realized by law, which only makes a general rule of law. The general nature of legal rules proves that law does not aim to bring about justice or expediency, but solely for legal certainty.

In Supreme Court Decision Number 657 K/Pdt.Sus-Bankruptcy/2021 when the status of PT Asuransi Jiwa Kresna life was declared bankrupt, the most disadvantaged were the customers, the judge should have rejected Kresna Life's PKPU application, because the applicant was not the competent party to apply for PKPU, but granted the PKPU application. The Financial Services Authority should have recommended the Insurance PKPU application. Still, in this case the Commercial Court Judge granted the PKPU application which should not be accepted, with the PKPU application granted having subsequent legal implications. In the Cassation Petition, the Supreme Court accepted the petitioner's application so that PT Asuransi Jiwa Kresna was declared bankrupt.

Because the contradiction between the Supreme Court decision and the Insurance Law creates legal uncertainty for insurance customers. In the judge's consideration, the judge needs to be more careful in deciding cases so that the judge does not comply with professional obligations. As a result of the judge not being careful, it has long consequences for the next legal process, which causes injustice to other insurance insured.

#### 4. Conclusion

They apply the Principle of Legal Certainty in Supreme Court Decision Number 647 K/Pdt.Sus-Bankruptcy/2021 is not applied properly, when the status of PT Asuransi Jiwa Kresna life is declared bankrupt, the most disadvantaged are the customers, the judge should reject the application of PKPU Kresna Life, because the applicant is not a party who has *legal standing* Judge's Consideration in Supreme Court Decision Number 647 K/Pdt.Sus-Bankruptcy/2021 granted the cassation application filed by the Cassation Applicants and canceled the Commercial Court Decision at the Central Jakarta District Court Number 389/Pdt.Sus-PKPU/2020/PN Niaga Jkt. Pst *juncto* Temporary PKPU Number 389/Pdt.Sus- PKPU/2020/PN Niaga Jkt. PSt poses problems in the implementation of the insurance business considering that insurance or protection is an activity that aims to avoid and delegate risks from one party to another.



### Reference

- [1]. Abdulkadir Muhammad, Hukum Asuransi Indonesia, Bandung : PT. Citra Aditya Bakti, 1998.
- [2]. Achmad Ali, Menguak Tabir Hukum (Suatu Kajian Filosofis Dan Sosiologis), Jakarta : Penerbit Toko Gunung Agung, 2002.
- [3]. Asikin zainal, Pengantar Tata Hukum Indonesia, Jakarta : Rajawali Press, 2012.
- [4]. Dominikus Rato, Filsafat Hukum Mencari: memahami dan memahami hukum, Yogyakarta : Laksbang Pressindo, 2010.
- [5]. Jimly Asshiddiqie, Gagasan Negara Hukum, hlm. 1,  
[https://pngunungsitoli.go.id/assets/image/files/Konsep\\_Negara\\_Hukum\\_Indonesia.pdf](https://pngunungsitoli.go.id/assets/image/files/Konsep_Negara_Hukum_Indonesia.pdf), diakses pada 20 Agustus 2021.
- [6]. Johnny Ibrahim, Teori dan Motodologi Penelitian Hukum Normatif, Malang : Bayu Media Publishing, 2008.
- [7]. Manan Sailan, Istilah Negara Hukum Dalam Sistem Ketatanegaraan Republik Indonesia, Masalah-Masalah Hukum Vol. 40 Nomor 2 Tahun 2011, hlm. 229,  
<https://ejournal.undip.ac.id/index.php/mmh/article/view/10474/8350>, diakses pada 20 Agustus 2021.
- [8]. Manan Sailan, Istilah Negara Hukum Dalam Sistem Ketatanegaraan Republik Indonesia, Masalah-Masalah Hukum Vol. 40 Nomor 2 Tahun 2011.
- [9]. Tim Penyusun Naskah Akademik Rancangan Undang-Undang tentang Perubahan atas Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang, Naskah Akademik Rancangan Undang-Undang tentang Perubahan atas Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang, Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia, Jakarta, 2018.
- [10]. Penjelasan Umum Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang.
- [11]. Syamsul Arifin, Pengantar Hukum Indonesia, Medan: Medan area University Press, 2012.
- [12]. Soeroso, Pengantar Ilmu Hukum, Jakarta : PT. Sinar Grafika, 2011.
- [13]. Samudra Putra Indratanto, Nurainun, And Kristoforus Laga Kleden, "Asas Kepastian Hukum Dalam Implementasi Putusan Mahkamah Konstitusi Berbentuk Peraturan Lembaga Negara Dan Peraturan Pemerintah Pengganti Undang-Undang," Jurnal Imu Hukum 16, No. 1 (2020): 88–100.
- [14]. Wulansari, Retno. "Pemaknaan Prinsip Kepentingan Dalam Hukum Asuransi di Indonesia." Jurnal Panorama Hukum 2.1 (2017): 103-116.
- [15]. Peter Mahmud Marzuki, Pengantar Ilmu Hukum, Jakarta : Kencana, 2008.
- [16]. Riduan Syahrani, Rangkuman Intisari Ilmu Hukum, (Bandung : Citra Aditya Bakti, 1999.
- [17]. Undang-Undang Nomor 40 Tahun 2014 tentang Perasuransian.