

LEGAL PROTECTION POLICYHOLDERS KRESNA LIFE POST CANCELLATION OF BANKRUPTCY VERDICT

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ABSTRACT

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The economy in Indonesia is progressing, one of which is sourced from the insurance industry. In Article 246 of the Code of Business Law (KUHD), insurance is an agreement with which an insurer binds himself to an insured by receiving a premium to provide reimbursement to him for a loss, damage, or loss of expected profit that he may suffer due to an insanity event. In the writing of this thesis there are two problems, namely how the legal protection of PT. Kresna Life against policyholders resulting from violations of Article 12 paragraph (1) of Financial Services Authority Regulation (POJK) No. 71/POJK.05/2016 on Insurance Financial Health and Reinsurance Companies and how the Financial Services Authority as a regulator protects policyholders regarding the decision of bankruptcy cancellation by the Supreme Court. This research method is normative juridical. Due to the violation of Article 12 paragraph (1) of Financial Services Authority Regulation (POJK) No. 71/POJK.05/2016 on Financial Health and Insurance Companies by Kresna Life regarding investment management to the detriment of policyholders because they are not fulfilled claims filed. The Financial Services Authority acted by imposing administrative sanctions against Kresna Life. On the other hand, some policyholders apply for bankruptcy related to the non-fulfilment of claims and the cassation rate verdict overturning the bankruptcy ruling is increasingly unclear regarding the fulfillment of the insured's rights. The Financial Services Authority (OJK) should be able to intervene in the submission of the bankruptcy application from the beginning by responding in writing related to approving or rejecting the application for bankruptcy as referred to in Article 51 paragraph (3) of Law No. 40 of 2014 on Insurance as a form of protection for policyholders. However, the Financial Services Authority did not take any action in this case.

Keywords: Legal Protection, Policyholders, Cancellation of Bankruptcy

1. INTRODUCTION

One of the sources of economy in Indonesia is in the insurance industry, especially in life insurance. In 2021, in the third quarter of the life insurance industry, it grew by 38.7% from the previous year, which was Rp. 171,036,000,000,000,- (one hundred seventy-one trillion thirty-six billion rupiah) for 9 (s embilan) months at the beginning of 2021 compared to 9 (s embilan) months at the beginning of last year. The growth of insurance industry revenue, especially life insurance, is influenced by public demand for insurance products offered by insurance companies. Public demand for insurance products is caused by an awareness of an uncertain insurance event that raises the risk of loss. Factors to the demand for an insurance product are the prevention or unwillingness of risks that are likely to occur to the insured, and the prospective insured's understanding of the distribution of risk, namely insurance events that occur and the impact that will arise from one insurance event that occurs regarding other losses. Of course, the public demand for insurance is the transfer of risk from the insured to the insurer, namely the insurance business included in the insurance policy as a contract between the insured and the insurer for the implementation of the insurance program or product agreed by the parties by paying



insurance premiums to the insurer based on the insurance product or program taken to transfer the type of risk insured by the insured to The Insurer thus becomes the basis of rights and obligations for the parties and brings a sense of security to the parties.

The insurance industry in its implementation is supervised by the Financial Services Authority which is in Article 6 letter c of Law Number 21 of 2011 concerning the Financial Services Authority which reads that the Financial Services Authority has the task of regulating and supervising, one of which is in the insurance sector, Before the enactment of Law Number 21 of 2011 concerning the Financial Services Authority, regulation and supervision of the insurance sector was supervised by the Ministry of Finance. In addition, the Financial Services Authority has one of the objectives is to protect the interests of consumers and the public.

Over time, in practice, there are defaults related to the relationship between the insurer and the insured in carrying out the rights and obligations in the policy. Sometimes the insurance company in handling the claim cannot fulfill the claim so that it causes debt for the insurer and receivables for the insured so that the rights obtained by the insured cannot be fulfilled by the insurer so that the risks faced by the insured become boomerang and cause significant losses. Large GAT because it cannot be fulfilled by the insurer, this certainly causes discomfort and causes negative perspectives related to insurance. In fact, insurance serves as protection in anticipating risks that will arise later.

One example of a case of non-fulfillment of claims from the insured and policyholder is Kresna Life Insurance where there is a failure to fulfill claims submitted by the insured and policyholders starting at the end of 2019 due to the influence of the Jiwasraya case, the insured flocked to withdraw funds from the Protecto Investa Kresna and Kresna Link Investa (K-LITA) insurance products. In February 2020, Kresna Life stopped *withdrawing* funds from the insured and offered an extension. Two months after the termination of the withdrawal, Kresna Management conveyed the postponement of policy payments until 2021 on the grounds of *force majeure* caused by the COVID-19 pandemic and submitted a payment plan to the insured by conducting an installment system to the insured whose premium amount was below Rp. 50,000,000.00 (fifty million rupiah) and the insured rejected the system which in the end the Financial Services Authority implemented activity restriction sanctions Business against Krishna Life is due to investment activities that exceed the limit. In September 2020, Kresna Life returned to offer a payment scheme in installments to customers for 54 (fifty four) months. Then in November 2020 the Financial Services Authority lifted the sanctions limiting business activities on Kresna Life and in the same month one of the insured made a Suspension of Debt Payment Obligations to Kresna Life where the Suspension of Debt Payment Obligations to Kresna Life had been ratified in the form of an Agreement Peace (homologasi) in Decision Number 389/Pdt.Sus-PKPU/2020/PN-Niaga. Jkt.Pst on February 18, 2021. In December 2020, the Financial Services Authority imposed sanctions restricting business activities against Kresna Life. And in this case, on June 8, 2021, 6 (six) policyholders filed a cassation against the homologation ratification decision with Decision Number 647K/Pdt.Sus-Bankruptcy 2021 which canceled the bankruptcy decision against Kresna Life because the PKPU applicant did not have legal *standing* which should be the Financial Services Authority and there was an error in application of law. Of course, this problem is very detrimental to policyholders for the fulfillment of the rights of the insured, does not get clarity about the goodwill of the insurer and has legal consequences for the parties, and the Financial Services Authority does not provide confirmation regarding the decision so that there is a neglect of the proposed legal remedy and certainly detrimental to the insured and policyholders because there is no clarity regarding fulfillment such rights.

Based on the description of the problem above, the author examines and observes the issue of default in the Kresna Life insurance company with Undan g-Law Number 21 of 2011 concerning the Financial Services Authority, Law Number 40 of 2014 concerning Insurance, Law Number 37 of 2004 concerning Bankruptcy and PKPU, and Law Number 8 of 1999 concerning Consumer Protection along with related Financial Services Authority Regulations. The author examines this matter with the title "Legal Protection of PeHolding Kresna Life Policy After the Cancellation of the Bankruptcy Decision."

2. METHODS

Research is a means humans use to strengthen, foster and develop science. According to Prof. Dr. Rianto Adi, S.H., M.A. in his book *Legal Aspects in Research* defines that research is a process or activity of looking for data in order to answer problems that exist in research. While research methods are a way to increase the ability to conduct or conduct better or complete research, there is a greater possibility for researching the unknown and interdisciplinary research and guidelines for organizing and integrating knowledge. Based on the explanation above, it can be concluded that research methods are an important element and must be used in conducting a research. Therefore, how important the research method is in a study, the author will use the research method in conducting this thesis research as follows:

The type of research to be used in this study is juridical normative. Normative juridical is a literature research conducted by examining literature materials or secondary data using various insurance-related laws including implementing regulations and using articles, and books related to Kresna Life default cases and theories related to insurance law and consumer protection which are elaborated relevantly in the matter studied.

Based on the five focuses of the study, this study is a research that examines legal principles, especially in the field of insurance and consumer protection associated with legal protection issues of the insured and policyholders related to the bankruptcy cancellation decision and then associated with the sound of provisions from related laws, namely insurance and other related laws.

Secondary data collection and document collection. Secondary data collection through literature study to blunt reading materials (books, journals, papers, research reports, magazines, articles, and newspapers. In addition, there are legal materials in secondary data, including the following:

- a. Primary legal materials are materials that are in the form of laws and regulations that are currently in force. In this study will use Undnag-Law Number 40 of 2014 concerning Insurance, Undnag-Law Number 8 of 1999 concerning Consumer Protection, Undnag-undnag Number 40 of 2007 concerning Limited Liability Companies, and the rules contained in the Financial Services Authority Regulations related to insurance,
- b. Secondary legal materials are legal materials derived from the draft laws and regulations.
- c. Tertiary legal material is the opinion of legal experts regarding primary, secondary legal materials sourced from books or papers or other scientific report materials.

Qualitative, descriptive, and analytical (interpretation, reasoning, argumentation, and harmonization of law) which is an analysis carried out on data processed using descriptions to descriptive, descriptions that contain the results of interpretation and the results of reason against the images obtained and rational argumentation (analytics) to explain and maintain the picture obtained. The data obtained is not in the form of numbers.

3. RESULTS AND DISCUSSION

Overview of Insurance in General, Life Insurance, Consumer Protection and Financial Services Authority

1. Understanding Life Insurance

The definition of insurance in general refers to Article 246 of the KUHD jo Article 247 of the KUHD. The provisions of the article state that insurance is as follows:

"An agreement, by which an insurer binds himself to an insured by accepting a premium to compensate him for a loss, damage, or loss of expected profits which he may suffer due to an indefinite event. The coverage is about fire hazards; hazards that threaten agricultural products that have not been harvested; soul towards one or several persons; the danger of sowing and enslavement; hazards that threaten transportation on land, in rivers, and in inland waters. " As for the understanding of experts related to the definition of insurance. Abbas Salim defines life insurance as *"insurance that has the purpose of providing coverage for people related to unexpected financial losses due to dying too soon or living too long."*

2. Insurance Principles or Principles

The principles in insurance can be divided into four principles in their application, namely: utmost good faith, insurable interest, indemnity, subrogation,

3. Life Insurance Function

Life insurance certainly has various functions for life insurance policy owners. The function of life insurance according to Sri Redjeki Hartono is to provide prospects and hope in the future. In addition to these functions, there are several other functions in life insurance, namely protecting the family from loss of income and protecting the family from the debt burden.

4. Purpose of Life Insurance

The purpose of life insurance in general is to transfer risk to the insurer by paying a certain amount of premium to a policy containing an insurance event underwritten by the insurer. As for the purpose of life insurance specifically. The purpose of life insurance in particular can be divided into several points, namely:

- a. As a guarantee for the future there is income for the family if the backbone of the family or the insured dies
- b. A means to save for future income.

5. Terms of Validity of Agreement in Insurance

In general, the conditions for the validity of an agreement are contained in Article 1320 of the Civil Code. Valid conditions in the provisions of the Article regarding subjective and objective conditions in an agreement. The contents of the provisions of the Article are as follows:

- 1) "It's their agreement that binds him
- 2) Ability to make an engagement
- 3) A particular subject matter
- 4) A cause that is not forbidden"

Overview of Insurance Business

1. Understanding Insurance Business

Referring to Article 1 number 4 undnag-Law Number 40 of 2014 states that the insurance business is "all businesses related to insurance services or risk management, risk recovery, marketing and distribution of insurance products or Sharia insurance products, insurance consulting and intermediary, sharia insurance, or sharia insurance or insurance loss assessment"

Principles of Good Corporate Governance in Insurance Companies

Good Corporate Governance is a principle in a healthy company in managing a company in order to maintain the interests of the company to achieve the goals and objectives of a company. The principle of a healthy company is a balance between company organs, shareholders and stakeholders; division of duties, authorities and responsibilities between the Company's organs that pay attention to the company's structure, the working mechanism of the GMS based on the Limited Liability Company Law and the Limited Liability Company's Articles of Association and implement the principles of Good Corporate Governance, namely Transparency, Fairness, Accountability and Responsibility continuously.

If it is associated with an insurance company, the insurance company applies the principle of Good Corporate Governance because the insurance company is assisted by a legal entity, namely a Limited Liability Company. In the application of the principles of Good Corporate Governance in insurance companies, there are several regulations related to the implementation of Good Corporate Governance in insurance companies, such as the Financial Services Authority issuing Financial Services Authority Regulation Number 73 / POJK.05 / 2016 jo Financial Services Authority Regulation Number 43 / POJK.05 / 2019 concerning Good Corporate Governance for Insurance Companies. Where in the regulation are listed various provisions related to the principles of good corporate governance.

Referring to Article 1 number 25 of the Financial Services Authority Regulation number 73/POJK.05/2016 concerning Good Corporate Governance for Insurance Companies, defining good corporate governance is



"The structure and processes used and applied by the Insurance Company organs to improve the achievement of business results targets and optimize the value of the Insurance Company for all stakeholders, especially policyholders, insured, participants, and/or parties entitled to benefits, accountably and based on laws and regulations and ethical values."

Related to the principles of implementing Good Corporate Governance in Insurance Companies have similarities to the principles of Good Corporate Governance in general. However, the difference is the principle of independence which describes the management of an insurance company managed independently and professionally without the intervention of interests from other parties that are not in accordance with regulations related to insurance business. The basic provisions for the implementation of Good Corporate Governance are contained in Article 2 paragraph (2) of the Financial Services Authority Regulation Number 73/POJK.05/2016 concerning Good Corporate Governance for Insurance Companies.

In addition, the implementation of Good Corporate Governance in insurance companies aims at good management of insurance companies and the impact on the management of insurance companies can be felt positively for internal insurance companies, positive and external insurance company climates, namely the relationship between insurance companies to policyholders, insureds and beneficiaries to insurance policies and contributions to economic development. Provisions regarding the purpose of implementing Good Corporate Governance in insurance companies are contained in Article 3 of the Financial Services Authority Regulation Number 73/POJK.05/2016 concerning Good Corporate Governance for Insurance Companies.

Of course, related to the implementation of Good Corporate Governance in insurance companies, one of the aspects that is considered is the investment management of an insurance company. Related to investment management is regulated in Article 56 of the Financial Services Authority Regulation Number 73 / POJK.05 / 2016 concerning Good Corporate Governance for Insurance Companies jo Article 5 of the Financial Services Authority Regulation Number 71 / POJK.05 / 2016 concerning Financial Health of AsuraCompanies and Reinsurance Companies. The essence of the provisions of the article is the principle of asset liability management where in the management of assets to be invested must meet the principle or principle of prudence in the placement of assets for investment. The manifestation of the precautionary principle includes the formulation, application, supervision and modification of strategies in Asset Liability Management (ALM) by taking into account several factors, namely risk and tolerance, and restrictions.

The application of ALM in life insurance insurers is very necessary for strategic company operations and policies. In addition, it is very vulnerable to showing interest rates that are a significant risk. If there is an error, there will be a lack of capital in managing assets in investment, resulting in cases of default. Default in life insurance companies there are two possibilities, namely because the return on investment returns to the insured and policyholders is higher than the interest rate on the capital market, the occurrence of large claims, or there is a failure in investment management so that returns do not match the target. Even though the application of ALM in life insurance insurers if done correctly and applying the precautionary principle, the ALM is used to prevent insolvency constraints by balancing between the noinal, yield and tenor of the obligations that must be fulfilled.

Overview of Life Insurance Policy

1. Definition of Life Insurance Policy

Referring to Article 225 of the Criminal Code, the insurance policy must be made in writing containing agreements, special conditions and special promises that are the basis for fulfilling the rights and obligations of the parties. Because the policy is evidence, it must see and review the contents of the policy so that it can be possible that there is no double interpretation.

Referring to the specificity related to the form of life insurance policy, there are several parts of the life insurance policy contained in Article 304 of the KUHD.

An insurance policy is written evidence of the existence of an insurance agreement between the insured and the insurer. Because the policy is written evidence, the contents of the policy must be clear

and specific. In addition, the insurance policy as a basis for fulfilling the rights and obligations between the insurer and the insured in the implementation of insurance in order to achieve insurance objectives.

Types of Life Insurance Policies

Life insurance has various types of life insurance benefits. Of course, the different types of life insurance are useful for providing services to the needs, capabilities and purchasing power of the community. Referring to Article 302 of the KUHD, there are two types of life insurance, namely whole life insurance and stipulated term. Bumyi from the provisions of Article 302 of the Criminal Code namely "the soul of a person may, for the purposes of a person concerned, be insured, good for the duration of his life that soul, good for a time stipulated in the agreement. "

There are views of figures regarding the type of life insurance policy. According to Mehr and Cammack there are three types of life insurance policies, namely p olis masa insurance, p olis dual use insurance and polis complete life insurance. In addition, according to Ali Rido's view, the types of life insurance can be divided into several types, namely Ordinary life insurance, Industrial life insurance and Annuity contract. There are several types of life insurance policies in the habit of practice in the field. The types of policies include the following, p olis Dwi Guna (Endowment Insurance), p olis Ekawarsa (Term Insurance), p olis masa insurance and p olis whole life insurance.

Life insurance based on the number of lives covered there are two forms, namely, Single life and Joint life. There is also a distinction from life insurance in terms of investment components. These distinctions can be distinguished, namely traditional life insurance and unit-linked life insurance.

Insurance Policy as the Basis for Legal Actions Between Parties

Insurance policy has a reciprocal nature, meaning the rights and obligations between parties, namely the insurer is obliged to provide compensation for claims submitted by the insured party and the insurer is obliged to pay premiums for benefits that have been taken based on the agreement of the parties in order to protect financially if the risk of insurance events occurs. In addition, the insurance agreement is also formal in nature that the insurance policy that has been issued from the insurer makes written evidence of the agreement valid for the fulfillment of rights and obligations between the insurer and the insured. Thus, the policy is used as evidence of the existence of pending claim rights that are not exercised by the insurer, so the receivables can be collected to the insurer based on the amount of benefits claimed based on the policy that has been agreed between the parties.

Premiums in Life Insurance Policy

Premiums in life insurance policies depend on the amount of insurance benefits obtained by the insured agreed in the policy and the premium payments are made within a certain period of time, can be monthly, annually and so on which of course must be paid by the insured. The amount of insurance is a sum assured for the beneficiaries and the amount is also determined freely by the parties.

Premiums in life insurance are an important element in the application of an approved life insurance policy because it is a reward for the insurer in terms of receiving risk transfer by the insured. If, the insured does not pay the premium then the insurance can be canceled or the insurance does not run.

The insurer in the event of anticipating the premium not being paid which results in insurance being canceled, then the inclusion of a premium clause must be paid in advance when the policy is in force or commonly referred to as the first premium. If the first premium is not paid then the life insurance policy cannot run and the employer does not pay the insured's claim. So it can be concluded that insurance premiums are an absolute condition for the occurrence of an insurance agreement. Therefore, there are several criteria included as an insurance policy, namely in the form of money, paid first by the insured, the difference in risk transfer and calculated based on the percentage of the value of the risk transferred.

Overview of Policyholder Legal Protection from the Legal Aspects of Consumer Protection

1. Definition of Consumer and Consumer Protection

Referring to Article 1 point 1 of Law Number 8 of 1999 concerning Consumer Protection defines that consumer protection is an effort that ensures legal certainty to provide protection to consumers. Apart from the understanding according to consumer protection law, there are various expert views such as Az Nasution defines consumer protection law as consumer law, which is a law that contains regulations or principles that contain regulate and contain protection of consumer interests.

While the definition of consumer referring to Article 1 point 2 of Law Number 8 of 1999 concerning Consumer Protection is every person who uses goods and / or services available in the community, both for the benefit of themselves, family, others, and other living beings and not for trade (end consumers). According to economics the definition of a consumer is not only the end consumer, but there are intermediate types of consumers. Intermediate consumers are, there are also intermediate consumers who use products as part of the production of a product.

Based on etymological understanding and based on the views of several experts, a conclusion can be drawn that consumers in the assurance that the consumer in question is the final consumer who is a consumer of utilization or user of an object or service. However, in the study of economics there are 2 (two) types of consumers, namely end consumers and intermediate consumers. Where the intermediate consumer itself is the use of a product to be managed again in a production process or the goods purchased are resold for profit.

2. Principles in Consumer Protection

The principles in consumer protection are contained in Article 2 of Law Number 8 of 1999 concerning Consumer Protection.

3. Rights and Obligations of the Insured and Insurer

Rights and obligations certainly apply not only to business actors but also apply to consumers. Related rights and obligations are listed in Articles 4 to Article 7 of Law Number 8 of 1999 concerning Consumer Protection. Where the rights and obligations of each party are as follows:

Rights of the Insured

- a) the right to comfort, security, and safety in consuming goods and/or services;
- b) the right to choose goods and/or services and obtain such goods and/or services in accordance with the exchange rate and conditions and guarantees promised;
- c) the right to true, clear, and honest information regarding the condition and guarantee of goods and/or services;
- d) the right to be heard and complain about the goods and/or services used;
- e) the right to appropriate consumer protection advocacy, protection, and dispute resolution efforts;
- f) the right to consumer coaching and education;
- g) the right to be treated or served properly and honestly and non-discriminatory;
- h) the right to obtain compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or are not as they should be;
- i) rights stipulated in the provisions of other laws and regulations.

Insured's Obligations

- a) read or follow information instructions and procedures for the use or utilization of goods and / or services, for security and safety;
- b) have good faith in making goods and/or services purchase transactions;
- c) pay in accordance with the agreed exchange rate;
- d) Follow efforts to properly resolve consumer protection disputes.

Insurer's Rights

- a) the right to receive payment in accordance with the agreement on the conditions and exchange rate of goods and/or services traded;
- b) the right to legal protection from consumer actions in bad faith;
- c) the right to exercise proper self-defense in the legal settlement of consumer disputes;



- d) the right to reputation rehabilitation if it is legally proven that consumer losses were not caused by the goods and/or services traded;
- e) rights stipulated in the provisions of other laws and regulations.

Insurer's Obligations

- a) have good faith in carrying out its business activities;
- b) provide true, clear and honest information about the condition and warranty of goods and / or services and provide explanations of use, repair and maintenance;
- c) treat or serve consumers correctly and honestly and non-discriminatory;
- d) guarantee the quality of goods and/or services produced and/or traded based on the provisions of applicable quality standards for goods and/or services;
- e) provide opportunities for consumers to test, and/or try certain goods and/or services and provide guarantees and/or warranties for goods made and/or traded;
- f) provide compensation, compensation and/or compensation for losses due to the use, use and utilization of goods and/or services traded;
- g) Provide compensation, compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement.

4. Dispute Resolution between the Insured and the Insurer There is a Conflict in the Implementation of the Insurance Agreement

Dispute resolution between the insured and the insurer in the event of a conflict can be pursued through two channels, namely:

Out-of-Court Dispute Resolution

Settlement of disputes outside the court refers to Article 47 paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection to reach an agreement on the form and amount of compensation and / or actions to ensure that losses suffered by the insured do not recur and do not eliminate criminal responsibility. Regarding settlements related to alternative dispute resolution, it can be submitted to the Consumer Dispute Settlement Agency as referred to in Article 49 paragraph (1) Undang-law Number 8 of 1999 concerning Consumer Protection. These provisions are also accommodated in Law Number 40 of 2014 concerning insurance contained in Article 54 of Law Number 40 of 2014 concerning Insurance. The essence of the provisions of the article is that there is an obligation for insurance and reinsurance companies, both general and Sharia, to be part of the mediation institution. This mediation institution is useful for resolving disputes between insurers and insureds, policyholders and beneficiaries. The mediation institution shall be independent and impartial and its decision shall be final and binding. Based on the mandate of article 54 of Law Number 40 of 2014 concerning Insurance, the Financial Services Authority issued regulations, namely the Financial Services Authority Regulation Number 1 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector and the Financial Services Authority Regulation Number 1 / POJK.07 / 2014 concerning Alternative Dispute Resolution Institutions which became the basis and mandate in the establishment of the Indonesian Insurance Mediation and Arbitration Agency (BMAI).

However, on December 31, 2020, BMAI was officially closed or permanently dissolved by the Financial Services Authority Regulation No. 61 of 2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector. The reason for the dissolution of BMAI is to establish an Alternative Dispute Resolution Institution in the Financial Services Sector in an integrated manner in one door, where the pre-existing Alternative Dispute Resolution Institution in the Financial Services Sector will be transferred to LAPS SJK which began operating on January 1, 2021 with an operational license granted on December 29, 2020.

There are several differences between BMAI and LAPS SJK in handling a case outside the court. These differences include:

A. BMAI:

- a. BMAI is an out-of-court dispute resolution body for insurance issues. The services provided are mediation, conciliation, and arbitration.

- b. Disputes within BMAI regarding the enforcement of the rights of the insured or policyholder or only related to insurance (for example the insured does not agree to the rejection of claims for compensation or policy benefits by the Insurer).
- B. LAPS SJK:
 - a. LAPS SJK is a dispute resolution body outside the special court for financial services sector disputes. The services provided are mediation, binding opinion, and arbitration
 - b. Disputes according to LAPS SJK are disputes between Consumers and PUJKs caused by losses and/or potential material, reasonable and direct losses to Consumers because PUJKs do not fulfill agreed agreements and/or financial transaction documents.

Dispute Resolution in Court

The authority to resolve consumer disputes in the general court refers to the applicable procedural law in accordance with absolute authority based on the consumer case handled. General courts may refer to district courts or commercial courts. This means that it refers to the applicable civil procedural law.

5. Insurer's Liability to the Insured regarding Errors in the Implementation of the Insurance Policy Agreement

If business actors in a dispute resolution process are proven and found guilty in one product, both goods and services, then the business actor is obliged to take responsibility for errors in the production of goods and services. The responsibility of a business actor in Law Number 8 of 1999 concerning Consumer Protection is contained in Article 19 which states that the form of liability is carried out through compensation which can be in the form of money returns or replacing goods and / or services of the same or equivalent value or health care and / or compensation in accordance with the provisions of laws and regulations. If it is associated with liability in the case of an insurance company with the insured, the principle that can be applied is the principle of liability based on default of the applicable contract and becomes an agreement between parties so that between parties bind themselves to the agreement, which adheres to the principle of strict liability or absolute responsibility for the fulfillment of obligations, namely indemnifying even though consumers still experience losses.

Overview of the Financial Services Authority and Sanctions against Insurers in Irregularities in the Implementation of Insurance Business Activities

1. Definition of Financial Services Authority

Establishment of the Financial Services Authority regarding the delegation of duties and functions related to regulation and supervision in the financial services sector in Indonesia from Bapepam-LK and Bank Indonesia to the Financial Services Authority where the functions and duties of Bapepam-LK are regulation and supervision in the insurance sector, pension funds, financing institutions and other financial service institutions and Bank Indonesia carries out regulation and supervision in the banking sector Therefore, With the establishment of the Financial Services Authority, there was a merger of Bapepam-LK and the Financial Services Authority and is no longer under the Ministry of Finance while Bank Indonesia only carries out the function of determining monetary policy.

Referring to Article 1 point 1 of Law Number 21 of 2011 concerning the Financial Services Authority states that the Financial Services Authority is an independent institution and in the absence of intervention from other parties to carry out duties, functions and authorities in terms of regulation, supervision, examination and investigation. The purpose of the establishment of the Financial Services Authority is to maintain activities in the financial services sector in an orderly, fair, transparent, and accountable manner, realizing a financial system in a timely manner. sustainable and stable, and protect consumers and society.

2. Functions, Duties and Authorities of the Financial Services Authority related to Insurance

The Financial Services Authority in the implementation of regulation and supervision in the insurance sector refers to Article 6 letter C of Law Number 12 of 2011 which states that the Financial



Services Authority carries out the regulatory and implementation duties in the field of insurance, pension funds, financing institutions and other financial service institutions. Related to the implementation of regulation and supervision, the Financial Services Authority has the authority contained in Article 9 of Law number 21 of 2011 concerning the Financial Services Authority.

The Financial Services Authority not only maintains the economic system in the insurance industry but also safeguards the interests of consumers in this case providing legal protection and defense.

In order to carry out protection of consumer interests, the Financial Services Authority must serve consumer complaints. Consumer complaints by the Financial Services Authority are contained in Article 29 of Law Number 21 of 2011 concerning the Financial Services Authority where the Financial Services Authority must provide tools for consumer complaints, consumer complaint mechanisms, and as a facilitator in resolving consumer complaints to financial service institutions based on service sector legislation finance. In addition to serving consumer complaints, the Financial Services Authority also has the authority to defend legally.

3. Sanctions against the Insurer in irregularities in the Implementation of Insurance Business Activities

Sanctions against insurers in insurance business activities can be divided into 2 (two) types of sanctions, namely administrative and criminal. Administrative sanctions can be given by the Financial Services Authority because they are given the authority to refer to Article 70 of Law Number 40 of 2014 concerning Insurance. The application in granting administrative sanctions refers to Article 71 paragraph (1) jo paragraph (2) of Law Number 40 of 2014 concerning Insurance. The provisions of Article 71 paragraph (1) of Law number 40 of 2014 are as follows:

"Any person who violates the provisions referred to in Article 2 paragraph (1), paragraph (2), and paragraph (3), Article 3 paragraph (1), paragraph (2), and paragraph (3), Article 4 paragraph (1), paragraph (2), and paragraph (3), Article 7 paragraph (1), Article 10 paragraph (1) and paragraph (2), Article 11 paragraph (1), Article 12 paragraph (1), Article 13 paragraph (1), Article 14 paragraph (1), paragraph (2), and paragraph (3), Article 15, Article 16 paragraph (1), Article 17 paragraph (1) and paragraph (2), Article 18 paragraph (2) and paragraph (3), Article 19 paragraph (1), paragraph (2), and paragraph (3), Article 20 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), Article 21 paragraph (1), paragraph (2), and paragraph (3), Article 22 paragraph (1), paragraph (3), paragraph (4), and paragraph (5), Article 26 paragraph (1), Article 27 paragraph (1) and paragraph (2), Article 28 paragraph (2), paragraph (4), paragraph (6), paragraph (7), and paragraph (8), Article 29 paragraph (3), paragraph (5), and paragraph (6), Article 30 paragraph (1) and paragraph (2), Article 31 paragraph (1), paragraph (3), and paragraph (a), Article 32 paragraph (1) and paragraph (2), Article 35 paragraph (1) and paragraph (2), Article 36, Article 39 paragraph (5), Article 40 paragraph (1) and paragraph (3), Article 41 paragraph (1), Article 42 paragraph (1) and paragraph (2), Article 46 paragraph (1) and paragraph (3), Article 53 paragraph (1), Article 54 paragraph (1), Article 55 paragraph (1), Article 68 paragraph (1), and Article 86 are subject to administrative sanctions."

From the provisions above, it can be concluded that the application of administrative sanctions is only in violation of the provisions in certain articles and the Financial Services Authority legally has the authority to supervise the operation of insurance business. The types of administrative sanctions imposed on insurance companies if there is an irregularity in the operation of the insurance business and harms the interests of the insured or policyholder.

4. Financial Services Authority Mechanism in Imposing Sanctions on Insurance Business

The mechanism for imposing sanctions applied by the Financial Services Authority is regulated in the Financial Services Authority Regulation Number 17 / POJK.05 / 2017 concerning Procedures and Procedures for Imposing Administrative Sanctions in the Insurance Sector. Refer to the provisions of Article 3-7 of the Financial Services Authority Regulation Number 17/POJK.05/2017 concerning Procedures and Procedures for Imposing Administrative Sanctions in the Insurance Sector.

Brief Knowledge of Krishna Life

PT. Kresna Life Insurance is a member of Kresna Group established in 1991. The company is committed to being the best insurance company in Indonesia. The company offers comprehensive life insurance products for individual and group businesses, and is registered and supervised by the Financial Services Authority (OJK).

Krishna life has a vision and mission. Kresna Life's vision is to become a credible national insurance company that provides the best financial solutions for business partners and clients. While the mission carried by Kresna Life is to provide insurance solutions for companies, groups and individuals in managing risk and providing insurance protection benefits by prioritizing good underwriting, simple, good faith with good corporate governance. The problematic products in this case consist of two products, namely Protecto Investa Kresna (PIK) and Kresna Link Investa (K-LITA). Kresna Link Investa (K-LITA) is an investment supporting life insurance product (PAYDI) in the form of units (unit link) that provides world health insurance and investment returns (returns). While Protecto Investa Kresna (PIK) is a dual purpose conventional life insurance product with two advantages at once, namely death risk protection due to accidents and optimal return on investment.

1. Legal Protection against Kresna Life Bankruptcy Annulment Decision to Guarantee the Rights and Interests of the Insured

Legal Protection of PT. Kresna Life Against Violations of Article 12 Paragraph (1) of the Financial Services Authority Regulation Number 71 / POJK.05 / 2016 Policyholders as a result of violations of Article 12 paragraph (1) of the Financial Services Authority Regulation Number 71 / POJK.05 / 2016 concerning Financial Health of Insurance and Reinsurance Companies

The insurer, in this case, the insurance company must provide protection to consumers, in this case the policyholders. The policy in this case as evidence of the parties binding themselves in the use of insurance benefit products where in the policy, the parties agree that there is a right and obligation that must be carried out for the implementation of the insurance policy. The basis for the insurance policy as evidence refers to Article 225 of the KUHD which states that an insurance agreement must be made in writing in the form of a deed called a policy to achieve the purpose of insurance and the policy as written evidence that an insurance agreement has occurred between the insured and the insurer. Thus, the policy is used as evidence of a pending claim right that is not exercised by the insurer then the receivable can be collected to the insurer by Based on the amount of benefits claimed based on the policy that has been agreed between parties.

If it is related to the responsibility of the insurer, it is related to Article 7 of Law number 8 of 1999 concerning Consumer Protection where the insurer must have good faith in carrying out its business activities, provide true, clear and honest information about the guarantee of goods and / or services and an explanation of the use of repair and maintenance. These provisions are in line with the provisions of Article 53 jo Article 54 of the Financial Services Authority Regulation Number 23/POJK.05/2015 concerning Insurance Products and Marketing of Insurance Products. The provisions in these two articles have the obligation to convey an insurance product clearly, honestly, accurately, and not misleadingly to prospective policyholders, insured or participants. Especially for Investment Linked Insurance Products (PAYDI) must apply policies and procedures related to insurance products with the needs and profiles of prospective policyholders, insured, or participants and insurers are required to resolve complaints or complaints regarding insurance products. As well as participating in the policy guarantee program for insurance companies as stated in Article 53 paragraph (1) of Law Number 40 of 2014 concerning Insurance.

In addition, in carrying out their responsibilities, the parties of Kresna Life apply the principle of responsibility based on default to the applicable contract and become an agreement between parties so that between parties bind themselves to the agreement, which adheres to the principle of *strict liability* or absolute responsibility for the fulfillment of obligations, namely replacing loss. The compensation is also contained in Article 19 of Law Number 8 of 1999 concerning Consumer Protection which states that the form of liability is carried out through compensation which can be in the form of money returns

or replacing goods and / or services of the same value or equivalent value or treatment Health and/or provision of compensation in accordance with the provisions of laws and regulations.

After the decision to cancel the bankruptcy decision at the cassation level, the fulfillment of the rights of the insured and policyholders in Kresna Life insurance is unclear. Kresna life has been making the payment of the pending claim in stages and has received endorsements or attachment changes since March and as scheduled. The provisions of the schedule are contained in the homologation (peace) agreement. However, this implementation has become invalid because the decision to grant the PKPU has been canceled by June 8, 2021 with Decision Number 647K / Pdt.Sus-Bankruptcy 2021.

The cancellation of the bankruptcy decision by the Supreme Court was due to several things that disagreed with the commercial court regarding the requirements to be declared bankrupt were not met, the requirements for It was declared bankrupt in simple terms not fulfilled and there was a dispute regarding the rights and obligations of debtors and creditors of the bankruptcy applicant. The bankruptcy declaration is annulled by the Supreme Court, so the debtor never becomes bankrupt and returns in its original state. The bankruptcy cancellation decision does not invalidate claims for fulfillment of achievements against creditors and opens legal remedies for creditors in demanding fulfillment of these achievements either by litigation through ordinary lawsuits to the District Court as well as non-litigation. Therefore, the legal consequences of the decision to annul bankruptcy by the Supreme Court are as follows:

- a. general confiscation of assets of fallen debtors
- b. confiscation and other executions that are declared void and unenforceable since the debtor of bankruptcy are back in force and execution
- c. Debtors can be sued for forced money (dwangsom)
- d. If there is a peace between the debtor and creditor after the bankruptcy determination is ratified by the Commercial Court, the peace becomes void
- e. Claims against debtor achievements can be made in litigation or non-litigation.

Based on this case, the bankruptcy cancellation decision was granted because there was an error in the application and interpretation of the law and the applicant did not have legal standing in filing PKPU and Bankruptcy caused The legal consequences arising are a peace agreement (homologation) that has been ratified by the commercial court in the decision of Decision Number 389 / Pdt.Sus-PKPU / 2020 / PN. Niaga.JKT.Pst related to the ratification of the peace agreement (homologation) becomes null and void in its enactment. However, this creates uncertainty regarding the payment of pending claims to the insured and policyholders. The ambiguity related to the payment scheme for unfulfilled claims raises the question of whether the payment of these claims is in accordance with the nominal on pending claims that have been submitted by policyholders to Kresna Life or not and whether there is a new payment scheme after the bankruptcy cancellation decision. In addition, the insured party and policyholder can take litigation or non-litigation routes in order to collect unfulfilled claims. For example, the client handled by Mr. Saddam Sitorus, S.H., CLA as a lawyer, he said that in this case his client took the route outside the court by holding peace starting with giving a summons to Krisna Life regarding the losses of the insured and policyholder but was not retaliated and there was no The reason for not making payment is related to the overdue claim.

Kresna Life's action clearly does not make responsibility for claim payments as referring to the provisions in Article 53 of the Financial Services Authority Regulation Number 23 / POJK.05 / 2015 concerning Insurance Products and Marketing of Insurance Products where insurance companies must resolve complaints or complaints related to problematic and offered insurance products so that Kresna Life companies neglect to serve complaints or complaints of the products they offer to policyholder and insured. As well as the non-fulfillment of the principle of good faith in Article 7 of Law Number 8 of 1999 concerning consumer protection where the company must have good faith in carrying out its business, it is evident from not replying to summons and not providing complete information related to the insurance products in question, namely Protecto Investa, Kresna and Kresna Link Investa by offering fixed profits on investment instruments placed beyond the limit of 75% (seventy-five percent) which should only be a maximum of 25% (twenty-five percent) as stated in violation of Article 12

paragraph (1) of the Financial Services Authority Regulation Number 71 / POJK.05 / 2016 concerning Financial Health and Insurance Companies.

However, referring to Article 12 paragraph (3) of the Financial Services Authority Regulation Number 71 / POJK.05 / 2016 concerning Financial Health and Insurance Companies which states that it is permissible for insurance companies if you want to invest more than the limit as stated in Article 12 paragraph (1) of the Financial Services Authority Regulation Number 71 / POJK.05 / 2016 concerning Financial Health and Insurance Companies, you must have approval from the Financial Services Authority. Kresna Life in this case also violated Article 12 paragraph (3) because in allocating to exceed the percentage of investment in affiliated companies from the threshold on Article 12 paragraph (1) POJK No. 71/POJK.05/2016 must have approval from the Financial Services Authority because in this case Kresna Life only withdraws premium funds from policyholders to allocate investments to affiliated companies without the approval of the Financial Services Authority and do not take into account risks and details related to financial capacity Kresna Life because it refers to Article 21 of Law Number 40 of 2014 concerning Insurance states that wealth and obligations related to the rights of policyholders, the insured must be separated from other assets and obligations of the insurance company.

Therefore, the management of insurance allocation must have a clear and careful calculation in the investment allocation as stated in Article 21 paragraph (3) of Law Number 40 of 2014 concerning Insurance jo Article 5 paragraph (1) POJK Number 71 / POJK.05 / 2016 concerning the principle of prudence and not preparing a payment plan for unfulfilled claims as mandated in Article 40 paragraph (3) of the Financial Services Authority Regulation Number 69 / POJK.05 / 2016 concerning the Operation of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies where Krishna Life is required to settle Payment of claims based on benefits on the insurance policy is a maximum of 30 (thirty) days after a court decision.

According to the researcher, this is very detrimental to the insured and policyholders because the insured party and policyholders cannot submit these claims with PIK and K-LITA policies even though the claim submission is very important for policyholders. In addition, Kresna Life in order to improve product quality against problematic insurance programs, namely PIK and K-LITA by evaluating the percentage or share of investment in these insurance products in accordance with the provisions of Article 12 paragraph (1) of the Financial Services Authority Regulation Number 71 / POJK.05 / 2016 concerning Financial Health and Insurance Companies. Given that Kresna Life life insurance products are service products that are protective of human life, investment benefits are an instrument to keep the insured's policy and policyholders from lapse and are allocated for insurance benefits agreed between the insured or policyholder and the insurer, namely Kresna Life.

From an internal point of view of Kresna Life, Kresna Life must apply *asset liability* management carefully regarding investment management. The application of asset liability management is to manage invested assets by placing assets in an appropriate investment instrument so that claims cannot be fulfilled does not happen, returns are in accordance with the target and have adequate capital in managing investments in PIK and K-LITA.

The Financial Services Authority provides Protection to Policyholders related to the Bankruptcy Cancellation Decision against Kresna Life which was granted by the Supreme Court

Referring to Article 4 jo Article 6 letter c of Law Number 21 of 2011 concerning the Financial Services Authority states that the financial services authority protects the interests of consumers and the public and regulates and supervises the activities of the insurance sector, pension funds, financing institutions, and other financial service institutions. Based on the law related to consumer protection, the Financial Services Authority must serve consumer complaints. Consumer complaints by the Financial Services Authority are contained in Article 29 of Law Number 21 of 2011 concerning the Financial Services Authority where the Financial Services Authority must provide tools for consumer complaints, consumer complaint mechanisms, and as a facilitator in resolving consumer complaints to financial service institutions based on the laws of the financial services sector. In addition to serving consumer complaints, the Financial Services Authority also has the authority to defend legally. This

authority is contained in Article 30 of Law Number 21 of 2011 concerning the Financial Services Authority which consists of, Related to this, the authority of the Financial Services Authority in Law Number 40 of 2014 concerning insurance, namely regulations related to insurance business licensing, regulations related to good corporate governance, regulations related to financial health in insurance businesses, consumer protection, bankruptcy to administrative sanctions.

In this Kresna Life case, the Financial Services Authority imposed administrative sanctions on Kresna Life, namely 2 (two) times of Business Activity Restrictions, namely OJK letter Number S-342 / NB.2 / 2020 is the status of the first Business Activity Restriction. The contents of the letter are that Kresna Life is obliged to pay claims submitted by policyholders, prepare financial restructuring plans, and stop marketing K-LITA insurance products and the second Business Activity Restriction in December 2020, with letter number Peng-29 / NB.2 / 2020 which contains:

- a. Reducing the concentration of investment concentration on affiliated parties of the Kresna group because the placement of investments in affiliated parties is 75% which should only be 25% (Article 12 paragraph (1) of the Financial Authority Regulation Number 71 / POJK.05 / 2016 concerning Financial Health of Insurance and Reinsurance Companies) it is clear that the investment placement policy does not meet the principle of prudential principles contained in Article 5 paragraph (1) POJK Number 71 / POJK.05 / 2016.
- b. Settlement of obligations to all policyholders which based on the chronology is for 54 months certainly violates Article 40 POJK No. 69 / POJK.05 / 2016 where the settlement of claim payment obligations no later than 30 days after the agreement of the policyholder, insured or participant or based on the policy.
- c. Meet the requirements of the solvency achievement ratio of 100%. Where the Kresna Life insurance company has not achieved a minimum solvency achievement ratio of 100% from MMBR as stated in Article 3 paragraph (1) POJK No. 71 / POJK.05 / 2016.

Based on the policies or decisions issued based on the two sanction letters, it is clear that the Financial Services Authority only exercises part of its authority, namely to supervise the operation of the insurance business. although this action has a legal basis contained in Article 55 paragraph (1) of the Financial Services Authority Regulation Number 71 / POJK.05 / 2016 concerning the Financial Health of Insurance Companies and Companies Reinsurance which states that if a company violates one of the Article 12 paragraph (3) then administrative sanctions are subject to administrative sanctions in the form of written warnings, restrictions business activities, and revocation of business licenses. However, because its authority is limited in Law Number 21 of 2011 concerning the Financial Services Authority jo Law Number 40 of 2014 concerning Insurance, there is no guarantee related to the full implementation of the payment scheme offered by Kresna Life with the Policyholder.

Kresna Life's non-serious actions prompted policyholders to file legal remedies for filing bankruptcy applications by several insured and policyholders because of the non-fulfillment of claims submitted by the insured and were dissatisfied because Krisna Life did not have a good faith in implementing the payment scheme offered to policyholders, the Financial Services Authority seemed to "neglect". This neglect is evident from the submission of PKPU applications by several insured and policyholders where the submission is not justified in Article 223 of Law Number 37 of 2004 concerning Suspension of Debt Payment Obligations and Bankruptcy jo Article 50 paragraph (1) and Article 90 letter b of Undang-law Number 40 of 2014 concerning Insurance, namely the Financial Services Authority however, the Financial Services Authority does not do what should be done by refusing in writing by mail and the reasons within a maximum period of 30 (thirty) days.

Based on the researcher's understanding that in the case of kresna life, the Financial Services Authority is weak in supervision so that there is a statement from the chairman of the Financial Services Authority regarding ignorance of these legal remedies and the function of protection for consumers and the public is still weak. Both of these things are evident from the statement of the chairman of the Financial Services Authority Wimboh Santoso in a meeting with Commission XI of the House of Representatives of the Republic of Indonesia which stated that the Financial Services Authority was not aware of any legal remedies against Kresna Life and could run. In addition, according to researchers, after the bankruptcy cancellation decision handed down by the Supreme Court, the Financial Services

Authority must conduct a legal defense by instructing to Kresna Life and took an action to resolve consumer complaints and filed a lawsuit to get compensation by Kresna Life so that there was a firm effort made to Kresna Life considering that the legal consequences of the bankruptcy annulment decision are homologation that is legalized to be void in its implementation so that the basis for the implementation of the payment is unclear due to homologation which is the basis of the void payment scheme.

4. CONCLUSION

Kresna Life's legal protection for policyholders regarding the payment of unfulfilled claims is not optimal because it does not immediately take responsive action so that the payment mechanism after the bankruptcy cancellation decision at the cassation level does not get clarity related to the payment mechanism for the fulfillment of the pending claim rights. Even though the policyholder only wants the fulfillment of his rights to the pending claim, considering the legal consequences of the bankruptcy cancellation decision is that the PKPU process is null and void so that the basis of the payment scheme becomes void, they must take actions and decisions in accordance with the provisions for the fulfillment of the pending claim submission with the new payment scheme, of course, by euthanizing the rights of the policyholder. In addition, Kresna Life only stated that there was no need to worry about the fulfillment of the pending claim but did not get any guarantee or commitment related to the fulfillment of the claim. Of course, Kresna Life does not have good faith in carrying out these responsibilities because Kresna Life does not listen to complaints and complaints from policyholders.

The Financial Services Authority is still weak in supervision and protection of the insured and policyholders and the limited authority of the Financial Services Authority based on the provisions of laws and regulations related to this matter, as evidenced by the absence of strict sanctions against Kresna Life only in the form of administrative sanctions and the absence of reaction from the Financial Services Authority regarding the initial process of submitting legal remedies for PKPU and bankruptcy applications by policyholders to approved or rejected in writing considering that the Financial Services Authority has legal standing in filing for bankruptcy in the insurance sector so that the Financial Services Authority made a mistake in reaction regarding the initial process of filing the legal remedy which seemed silent by not giving a written response accepting or rejecting related to the PKPU and Bankruptcy submission. After the Bankruptcy Cancellation Decision granted by the Supreme Court, the Financial Services Authority based on its legal authority must take preventive and repressive actions related to the fulfillment of policyholders' rights to claims that have not been fulfilled by Kresna Life. Because policyholders only want the fulfillment of the claims they submit to be paid.

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