

Judicial Decision Analysis on the Debt Restructuring of Inc. Insurance Jiwasraya (Case Study of Verdict No. 170/Pdt.Sus-Pkpu/2021/Pn Jkt.Pst)



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ABSTRACT: Insurance is one way of anticipating risk. Insurance function is ensures risks. However, sometimes insurance companies fail to pay so they cannot fulfill their ability to pay their debts to the policy owner, as experienced by Inc. Insurance Jiwasraya. This legal research aims to determine the arrangements for payment of insurance companies debts to insurance policy holders in Delaying Debt Payment Obligations. The Method used in this legal research is a normative juridical approach. The technique of data collection is done by library research. From the results of the research conducted, it was found that debt restructuring arrangements are regulated in Article 222-294 of Law No.37 of 2004 concerning Bankruptcy and Suspension of Payment but are not regulated in detail. The settlement through this Suspension of Payment is discussing the peace plan with a debt restructuring pattern, one of which can be done by rescheduling or reconditioning.

KEYWORDS: Debt Restructuring; Suspension of Payment; Insurance

INTRODUCTION

In carrying out an activity, we cannot avoid aspects that are eternal. Essentially, the eternal nature encompasses various aspects of life itself. The eternal nature referred to here is a transient nature that is always present in our lives in general. The transient nature, which is a natural characteristic of life, results in situations that cannot be accurately anticipated, thus providing no sense of certainty. The lack of certainty sometimes leads humans to have high hopes, and sometimes reality does not always align with expectations. In a person's life, many things can happen unexpectedly. These unforeseen events can be detrimental, and they can be referred to as risks. Risk is a burden of loss suffered by someone due to an event that occurs without any fault on their part, such as an accident that befalls someone during a journey on land, sea, or air. If the loss suffered is small and can be covered with savings, then it does not burden the individual significantly. Risks can be measured in terms of money and come in various types, such as homogeneous risk (risks that are similar and are insured by insurance companies to a considerable extent), pure risk (this risk does not bring profits), particular risk (risk from individual sources), sudden occurrence (accidental), insurable interest (the insured has an interest in the object of insurance), and risks that are not contrary to the law. However, it's a different story if the savings one possesses are insufficient to cover such losses; then one will truly suffer in dealing with the unexpected events that befall them. That's why personal protection guarantees are highly necessary to anticipate unforeseen circumstances, and one way to do so is by using insurance.

The basic function of insurance is to transfer existing risks, collect funds or premiums, and is an effort to mitigate uncertainty regarding pure losses and not speculative ones. Efforts to mitigate, avoid, reduce, or minimize risks involve transferring them to others based on insurance agreements or insurance contracts. As for secondary functions, insurance serves to stimulate business growth, prevent loss risks, and serve as savings. Meanwhile, an additional function is that it can be used as an investment. The increasing need for protection guarantees makes insurance companies easily accessible. It is undeniable that insurance can be a profitable business field. Insurance companies actually have a very broad role. Insurance companies have a reach that involves social and economic interests. Additionally, they can reach both the interests of the wider community or individual interests. Insurance companies openly offer protection and hope for the future, both to groups and individuals or other companies, against the possibility of further losses due to risk. Insurance companies have a significant obligation to grant insurance policyholders their rights when requested. It is not uncommon for insurance companies to fail to grant their policyholders' rights. The obligation of insurance companies is not only to fulfill the rights of policyholders. One of them is to meet the minimum solvency level. The solvency level is a company's ability to settle debts and can indicate the financial health of an insurance company. The higher the ratio, the healthier a company is financially. In reality, there are insurance companies that fail to meet the minimum solvency level.

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Sometimes, when an insurance company cannot fulfill its function as it should, it may incur significant losses, or it may default on its policyholders, thereby indirectly causing significant harm to its policyholders. Policyholders, as insured parties with receivables, demand their rights against the debtor, namely the insurance company, which has debts or as the party responsible for not settling loans or obligations to the insured. In this case, the law provides various ways to resolve this issue, one of which is regulated by law, namely the option to settle debt claims by filing for a Suspension of Debt Payment Obligation declaration to the Commercial Court. Through this method, it is hoped that the security and interests of both parties, namely the debtor and the creditor in question, can be guaranteed, while also avoiding arbitrary Debt Settlements by the Creditor. The regulation of the Suspension Of Debt Payment Obligation is generally found in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. In addition to the Suspension Of Debt Payment Obligation, there are other ways to resolve default issues in insurance companies, namely through Debt Restructuring of Policies, which is an effort to revitalize the company, where the insurer offers renewal terms for policies previously held by policyholders, which will first be informed by the insurer to the policyholders. Basically, the purpose of implementing debt restructuring is to provide an opportunity for debtors who are deemed to meet the requirements to carry out the restructuring program, so that debtors can repay their debts to creditors by providing a grace period for debt repayment or by imposing new terms and conditions on debtors.

Formulation of the Problem

1. What legal considerations were used by the Central Jakarta Commercial Court in rejecting the request for Suspension of Debt Payment Obligation in the debt restructuring of the company?
2. How does the debt restructuring process conducted by Inc. Insurance Jiwasraya influence the judge's decision in rejecting the request for Suspension of Debt Payment Obligation?

Research Methods

The research method used in this study is normative legal research, supported by secondary data with a statutory approach, an analytical approach, and a case approach.¹ The statute approach is carried out by examining all laws and regulations related to the legal issue at hand. The specification of the research used by the author is descriptive-analytical research. This type of research is normative legal research, also known as doctrinal research. Doctrinal research focuses on the analysis of law, both the law written in books and the law decided by judges through court rulings.

This research is descriptive, aiming to accurately describe the characteristics of an individual phenomenon, condition, or certain group. Descriptive-analytical means that this research describes a legal regulation in the context of legal theories and its implementation, and carefully analyzes the facts. This scientific paper employs a qualitative analysis method. The author develops this scientific paper based on existing regulations as positive legal norms and analyzes the data regarding the issues being studied, emphasizing the effort to discover principles and information from the problems that arise.² The technique of analyzing qualitative data involves summarizing, categorizing, and interpreting research that is descriptive in nature, and it emphasizes the process of meaning-making. This method is carried out by qualitatively detailing the data in an orderly, coherent, logical, non-overlapping, and selective manner, thus facilitating the interpretation of data and understanding the analysis results.

This research uses secondary data. Secondary data are those that support the information or complement the primary data. Secondary data consist of: Primary Legal Materials and Secondary Legal Materials. Primary legal materials include:

1. The Civil Code,
2. Law Number 21 of 2011 on the Financial Services Authority,
3. Law Number 40 of 2014 on Insurance,
4. The Commercial Code,
5. Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations,
6. Decision of the Central Jakarta Commercial Court Number 170/PDT.SUS-PKPU/2021/PN JKT.PST.

Secondary legal materials, which include various information or facts obtained indirectly through literature research, encompass: journals, literature, books, research reports, and other materials related to the issues being studied.

DISCUSSION

A. The legal considerations used by the Central Jakarta Commercial Court in rejecting the application for Suspension of Debt Payment Obligations in the restructuring of corporate debt.

Case Position and Parties

In case No. 170/PDT.SUS-PKPU/2021/PN JKT.PST, the parties involved are Ruth Theresia (Applicant for Suspension of Debt Payment Obligations I) and Tomy Yoesman, S.H. (Applicant for Suspension of Debt Payment Obligations II) who filed an

¹ Jhonny Ibrahim, *Teori Dan Metode Penelitian Hukum Normatif*, Cetakan Pertama, (Malang: Bayu Media, 2005), halaman. 248

² Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif*, (Jakarta: Rajawali Pers, 2001), hlm. 251-252

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application for Suspension of Debt Payment Obligations against Inc. Insurance Jiwasraya (Respondent for Suspension of Debt Payment Obligations). The Applicants have authorized Nikolas Damment T, S.H., and the legal consultant team from the "M&P Advocates & Legal Consultants" Law Firm.

Inc. Insurance Jiwasraya, as the respondent, is represented by Yustina Engelin K, S.H., M.H., along with the State Attorney Advocates (JPN) from the Central Jakarta State Attorney's Office based on the Substitution Power of Attorney.

Case Chronology

This case originated from an insurance agreement between the Applicants for Suspension of Debt Payment Obligations as policyholders and Inc. Insurance Jiwasraya as the insurer. At the end of the investment period, Inc. Insurance Jiwasraya failed to fulfill the insurance benefits due to serious financial problems. As a solution, Jiwasraya proposed debt restructuring to all its policyholders, conducted between December 11, 2020, and May 31, 2021. In this process, Jiwasraya offered new policies and transferred old policies to IFG Life.

However, before the restructuring program was completed, two policyholders, Ruth Theresia and Tomy Yoesman, filed an application for Suspension of Debt Payment Obligations on April 13, 2021. They claimed that Jiwasraya's debt had matured and could be demanded, and they estimated that Jiwasraya would not be able to continue its debt payments.

Essence of the Application and Reasons for Rejection

The Applicants submitted the application for Suspension of Debt Payment Obligations based on several reasons:

1. The respondent's debt has matured and can be demanded.
2. The respondent has more than one creditor.
3. The respondent is estimated to be unable to continue its debt payments.

The Central Jakarta Commercial Court, in its verdict, rejected this application for Suspension of Debt Payment Obligations with several main legal considerations.

Legal Considerations of the Panel of Judges

1. Debt Restructuring Program in Progress: The Court assesses that Inc. Insurance Jiwasraya is currently implementing a debt restructuring program that has been approved by the majority of policyholders (96% bancassurance policyholders, 94% retail policyholders, and 98% corporate policyholders). This program is acknowledged and supported by various parties including the Minister of State-Owned Enterprises, the Minister of Finance, OJK (Financial Services Authority), and the DPR Commission VI.
2. Ongoing Negotiation Process: The Court states that at the time the application for Suspension of Debt Payment Obligations was filed, the debt restructuring negotiation process was still ongoing. The panel of judges sees that this restructuring step is a genuine effort to safeguard the rights of policyholders and cannot be disrupted by the application for Suspension of Debt Payment Obligations filed midway.
3. Principle of Pacta Sunt Servanda: The panel of judges refers to the principle of pacta sunt servanda found in Article 1338 of the Civil Code, stating that agreements made lawfully bind the parties as if they were laws. With the majority approval of policyholders for debt restructuring, this agreement must be respected and implemented in accordance with the agreed provisions.
4. Government and Relevant Institutions' Involvement: The Jiwasraya debt restructuring involves not only approval from policyholders but also coordination with various government agencies and financial regulators. This process includes the provision of State Capital Participation (PMN) amounting to Rp20 trillion through the 2021 State Budget, which is then injected into Inc Bahana Pembinaan Usaha Indonesia (BPUI) to support IFG Life as the new insurer entity.

Technical and Legal Reasons for Rejecting the Suspension of Debt Payment Obligations

1. Failure to Meet Formal Requirements: According to Article 223 of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, the authority to file for Suspension of Debt Payment Obligations against an insurance company lies with the Financial Services Authority (OJK). The application for Suspension of Debt Payment Obligations by the applicants is deemed not to meet the formal requirements because it was not filed by the authorized party.
2. Implementation of Financial Recovery Plan: Inc. Insurance Jiwasraya has implemented a Financial Recovery Plan approved by the government and OJK, which serves as a guideline for debt restructuring. The steps taken have received approval from the relevant authorities and aim to safeguard the rights of policyholders.

B. The Influence of Debt Restructuring Process by Inc. Insurance Jiwasraya on the Judge's Decision to Reject the Application for Suspension of Debt Payment Obligations

Debt restructuring is a process of changing the structure of a company with the aim of revitalizing the financial condition of a debtor company that is unable to repay its debts but still has a good business prospect for development.³ Debt restructuring is

³ Suad Husnan, Manajemen Keuangan: Teori Dan Penerapan (Keputusan. Jangka Pendek), Buku 2, Edisi Ketiga, (Yogyakarta: BPFE, 1994), hal 181

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the result of a settlement in Debt Payment Obligation Postponement agreed upon by the creditors. The agreement between the debtor and its creditors regarding the content of the settlement plan consists of various forms of restructuring.⁴ Debt payment postponement is a period provided by the law through the decision of a commercial court judge to give an opportunity for creditors and debtors to negotiate their debt repayment methods by providing a payment plan for all or part of their debt, and if necessary, to restructure their debt.⁵ The debt restructuring process undertaken by Inc. Insurance Jiwasraya has significant implications on the judge's decision to reject the application for Suspension of Debt Payment Obligations (PENUNDAAN KEWAJIBAN PEMBAYARAN UTANG) filed by the applicants. The verdict of the Central Jakarta Commercial Court No. 170/PDT.SUS-PKPU/2021/PN JKT.PST presents relevant analysis and discussions regarding this matter. Inc. Insurance Jiwasraya commenced the debt restructuring process from December 11, 2020, to May 31, 2021. This process involved various steps, including offering new policies with predetermined benefits and interest rates, as well as transferring policies to a new company, IFG Life. The majority of policyholders, from bancassurance, retail, and corporate segments, approved this restructuring program.

On June 3, 2021, the panel of judges at the Central Jakarta Commercial Court rejected the application for Suspension of Debt Payment Obligations filed by Ruth Theresia and Tomy Yoesman. The judges considered several key aspects. First, the ongoing restructuring process was deemed a legitimate step, especially since it had been approved by the majority of policyholders. This aimed to protect the policyholders' rights through agreed-upon mechanisms. Additionally, the judges referred to the principle of *pacta sunt servanda*, stating that valid agreements bind the parties who make them. In this context, the agreed-upon debt restructuring agreement must be respected. The support from the government, which was involved in the restructuring process through a State Capital Participation (PMN) of Rp20 trillion, also played a significant role in rejecting the application for Suspension of Debt Payment Obligations.

The applicants argued that Inc. Insurance Jiwasraya was unable to continue its debt payments and had more than one creditor. However, the judges dismissed these arguments considering that the restructuring process, approved by the majority of policyholders, was deemed a legitimate step. This judicial decision provides legal certainty regarding the implementation of Inc. Insurance Jiwasraya's debt restructuring. It also affirms that the restructuring process involving government support and majority policyholder approval is a legally recognized solution to address the company's default issues. It also underscores the importance of compliance with agreements made and the government's involvement in supporting the restructuring process to address the company's financial problems.

CONCLUSION

Referring to the core issues outlined in the Introduction Chapter, the following conclusions can be drawn:

1. The decision of the Central Jakarta Commercial Court to reject the application for Suspension of Debt Payment Obligations from the applicants is based on considerations that Inc. Insurance Jiwasraya has already implemented a legitimate debt restructuring program that has been approved by the majority of policyholders and relevant authorities. The Court also assessed that this restructuring process is an ongoing genuine effort that should not be disrupted by the application for Suspension of Debt Payment Obligations. Additionally, the application for Suspension of Debt Payment Obligations is deemed not to meet the formal requirements according to the applicable laws. This decision reflects the principle of legal certainty in agreements and respect for the agreements made by the majority of policyholders together with Inc. Insurance Jiwasraya and the government.
2. The debt restructuring process of Inc. Insurance Jiwasraya has a significant influence on the judge's decision to reject the application for Suspension of Debt Payment Obligations. The legality of the restructuring process, government involvement, majority policyholder approval, and the principle of *pacta sunt servanda* are the main factors underlying this decision. This decision provides legal certainty and supports efforts to resolve Inc. Insurance Jiwasraya's debt issues through legitimate and legally recognized mechanisms.

REFERENCES

- 1) Jhonny Ibrahim. 2005. *Teori Dan Metode Penelitian Hukum Normatif*. Malang: Bayu Media
- 2) Soerjono Soekanto dan Sri Mamudji. 2001. *Penelitian Hukum Normatif*, Jakarta: Rajawali Pers
- 3) Remy, Sutan Sjahdeini, *Sejarah, Asas, dan Teori Hukum Kepailitan*, Jakarta : Prenadamedia Group, 2016
- 4) Munir Fuady, 2002. *Hukum Pailit*. Citra Aditya Bakti. :Bandung.
- 5) Husnan, Suad. *Manajemen Keuangan: Teori Dan Penerapan (Keputusan. Jangka Pendek)*. Buku 2. Edisi Ketiga. Yogyakarta: BPFE, 1994. Halaman 181.

⁴ Sutan Remy Sjahdeini, *Sejarah, Asas, dan Teori Hukum Kepailitan*, Jakarta : Prenadamedia Group, 2016, Hlm. 425.

⁵ Munir Fuady, *Hukum Pailit*, (Bandung: Citra Aditya Bakti, , 2002), hal. 177.