

# CHAPTER I

## INTRODUCTION

### 1.1 Background

Overtime the development of technology and education has brought major impact in every aspects of human lives. One of the changes is the addition to basic needs– clothing, food and shelter. Individuals and businesses face innumerable risks every day in doing life or businesses, many people are now starting to manage risks to prepare for uncertainty in the future which the importance of risk management become a necessity along with basic needs. Nowadays, the current trend in society is to set up financial planning such as retirement fund, or young families who prepare tuition for their children who are still in elementary school to go to college. Business too, needs some protection towards its business from damages and other uncertain risks that might happen in the future, such as property damages due to fire or storm or a catastrophic event where a business's operations will likely be interrupted. Therefore, in order to ensure protection against losses, damages, injuries, costs and all those risks associated with unforeseen events, it is very important to get protection through insurance.

Uncertain risks may happen which drives people to act in order to avoid uncertainty by assigning these risks to a third party called the Insurance Company. Insurance is one way of managing risk, which has basic function as an attempt to overcome uncertainty toward specific losses for pure losses and not a speculative loss, where the understanding of risk can be given as uncertainty about the

occurrence or non-occurrence of events.<sup>1</sup> There are two parties involved in insurance agreement, namely the party who is able to bear or guarantee that the other party will receive compensation for a loss, which he or she may suffer as a result of an event that was not necessarily going to happen or at first it could not be determined when it would occur.<sup>2</sup> Thus, individuals and businesses buy insurance to protect themselves against the uncertainties and reduce risks that cause financial and personal loss.

In Indonesia, the current number of insurance policyholder is still small in comparison to the overall population, but the growth rate is considerably high due to the increasing awareness concerning the importance of insurance.<sup>3</sup> Insurance companies can be classified into Non-Bank Financial Institutions, namely business entities that carry out business activities in financial sector which directly or indirectly collect funds from public by issuing securities and channeling them into the community to finance company investment.<sup>4</sup> Besides from its risk management benefit, the insurance industry also plays an important role to steer the economy's growth. According to Indonesia's Minister of Finance, Sri Mulyani Indrawati, the insurance industry has been continuously contributed making Indonesia economy outlook from a low income to a low middle-income country and now developing

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<sup>1</sup> Sri Redjeki Hartono, *Hukum Asuransi dan Perusahaan Asuransi*, Sinar Grafika, Semarang, 1995. p. 15.

<sup>2</sup> Dessy Danarti, *Jurus Pintar Asuransi Agar Anda Tenang, Aman Dan Nyaman*, G-Media, Jakarta, 2011. p. 6.

<sup>3</sup> "Indonesia's Large and Growing Middle Class Boosts Insurance Sector." *Oxford Business Group*, 6 Aug. 2020, [oxfordbusinessgroup.com/overview/capture-market-large-and-growing-middle-class-could-unlock-profits](https://oxfordbusinessgroup.com/overview/capture-market-large-and-growing-middle-class-could-unlock-profits).

<sup>4</sup> Sunaryo, 2008, *Hukum Lembaga Pembiayaan*, Jakarta, Sinar Grafika, p. 11.

into a middle-income country.<sup>5</sup> Thus, the development of insurance industry is very important to create a much stronger foundation to develop the economy.

The growth needs of insurance become increasing as it is considered very important for individuals, businesses and the economy. Hence, a continuous guidance and supervision from government are vital, in the framework of safeguarding the interests of the community. According to Article 246 of Wetboek van Koophandel or Indonesia Commercial Law Code or Kitab Undang-Undang Hukum Dagang (“**KUHD**”), insurance is defined as an agreement in which the guarantor promises to the secured party to receive a certain amount of premium in lieu of damages, which may be suffered by the insured as a result of an event that is not yet clear will happen. Specifically, the regulation of insurance are sets under Law No. 40 year 2014 about Insurance (“**UU Perasuransian**”), which replaced Law No. 2 year 1992 about Insurance. According to Article 1 of UU Perasuransian, insurance is an agreement between two parties, namely the insurance company and the policy holder, which becomes the ground for the receipt of premium by the insurance company as an exchange for:<sup>6</sup>

1. Providing compensations to the insured or policy holder due to loss, damage, incurring cost, profit loss, or legal liability towards third parties which may be suffered by the insured or policy holder due to an uncertain event; or

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<sup>5</sup>Agustinus, Michael. “Sri Mulyani Jelaskan Pentingnya Masyarakat RI Punya Asuransi.” *Kumparan*, Kumparan, 14 Mar. 2019, [kumparan.com/kumparanbisnis/sri-mulyani-jelaskan-pentingnya-masyarakat-ri-punya-asuransi](http://kumparan.com/kumparanbisnis/sri-mulyani-jelaskan-pentingnya-masyarakat-ri-punya-asuransi).

<sup>6</sup> Article 1 of UU Perasuransian.

2. Providing payments on the basis of the death of the insured or a payment on the basis of the life of the insured with a benefit of which value has been determined and/or based on the result of fund management.

From the provision above, it can be stated that the legal relationship between the insurance company and the policyholder occur as the policyholder, as the insured are obliged to pay a sum of money in the form of premium which is the rights of the insurance company as the insurer, in exchange for the insurer promises to fulfill its obligation to take over the risk suffered by the insured if an adverse event happened when the conditions promised in the insurance agreement have been met. While the conditions agreed upon in the insurance agreement have been fulfilled, the insured can file a claim for insurance benefits in which the insured is entitled in the form of payment of an amount of money as compensation for the risk suffered by the insured.<sup>7</sup>

In running the business, the insurance sector is supervised and regulated by Financial Services Authority (“**OJK**”) under Law No. 21 of 2011 concerning the Financial Services Authority (“**UU OJK**”). As of 31<sup>st</sup> December 2012, the functions, duties, as well as regulatory and supervisory authorities of financial services activities in the sectors of Capital Market, Insurance, Pension Fund, Financing Institutions, and Other Financial Services Institutions are transferred from the Minister of Finance and the Capital Market and Financial Institution Supervisory Agency to OJK.<sup>8</sup> Hence, after the transitional provisions, the authority

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<sup>7</sup> Man Suparman Sastrawidjaja, *Aspek-Aspek Hukum Asuransi dan Surat Berharga*, (Bandung: Alumni, 2012), p.30.

<sup>8</sup> Article 55 Paragraph (1) of UU OJK.

to supervise and regulate the insurance industry has been transferred from Minister of Finance to OJK, also applicable for banking industry which transfer all authority and duties of Bank Indonesia to OJK.

The OJK institution was formed to fulfill the mandate of Article 34 of Law No. 34 of 2004 concerning amendments to Law No. 23 of 1999 about Bank Indonesia which mandated the establishment of an independent financial services sector supervisory agency. Moreover, the OJK is established with the objectives so that the overall activities in the financial services sector are:

1. Implemented in an organized, fair, transparent and accountable manner;
2. Capable of realizing the financial system that grows in a sustainable and stable manner; and
3. Capable of protecting the Consumers and public interests.<sup>9</sup>

As stipulated on Article 5 of UU OJK, the institution has a function to organize an integrated regulatory and supervisory system for all activities in the financial services sector. The main task of OJK is to regulate, supervise, examine and investigate banks and other companies in the financial services sector, which include insurance industry.

Considering the scope of tasks and authority of OJK as ‘Super Body’, while carrying out its business, OJK is an independent institution with no interference from other parties including government.<sup>10</sup> The independency of OJK is intended to create an objective regulation and supervision by the OJK, without being

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<sup>9</sup> Article 4 of UU OJK.

<sup>10</sup> Article 2 Paragraph (2) of UU OJK.

influenced by intervention from any party and to prevent conflicts of authority and interest between various factors that interact in exercising such authority. This must be considered as the main concern and objective of establishing OJK as a regulatory and supervisory institution which related to public trust in the financial sector.<sup>11</sup>

The OJK, in determining the strategy and focusing on supervision of insurance company is through assessing the financial health of insurance company since it reflects the condition and performance of insurance industry.<sup>12</sup> The financial health assessment carried out by OJK periodically, at the end of the year. The industry also obliged to comply at all times financial soundness level requirements, including solvency level, technical reserves, investment adequacy, equity, guarantee Fund and other provisions relating to financial health.<sup>13</sup> Moreover, insurance companies must also have a target level of internal solvency as set at a minimum of 120% of Risk Based Minimum Fund, considering the risk profile of each company and considering the simulation results of change scenarios.<sup>14</sup> Please note that OJK instructs insurance companies to publish financial reports every year on their official website with the purpose that prospective customers or policyholders can see the Risk Based Capital.

Consumers are including parties who put their funds and/or utilize the services available at the Financial Services Institutions, including insurance industry.<sup>15</sup> It implies that the consumers of insurance company are those who pay

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<sup>11</sup> Ibid.

<sup>12</sup> General section of OJK Regulation No. 28 / POJK.05/2020.

<sup>13</sup> Article 2 Paragraph (2) of OJK Regulation No. 71 /POJK.05/2016.

<sup>14</sup> Article 3 Paragraph (3) of OJK Regulation No. 71 /POJK.05/2016.

<sup>15</sup> Article 1 Paragraph (15) of UU OJK.

for sum amount of money in the form a premium to become a policyholder to the insurer, in exchange for the service protection given by the insurance company. For the Consumers and public protection, OJK is authorized to take necessary actions to prevent Consumers and public from losses, including:

- a. Providing information and education in the characteristic of financial services sector, services and products to the public;
- b. Ordering the Financial Services Institutions to stop their activities if such activities are potential to cause losses to public; and
- c. Other actions deemed necessary in accordance with the provisions of laws and regulations in the financial services sectors.<sup>16</sup>

Furthermore, in exercising its duties to protect the consumer, OJK conducts direct and indirect supervision towards the implementation of consumer protection which is done by the business actors regularly.<sup>17</sup> If needed, administrative sanctions may be imposed by OJK towards insurance company who violates UU Perasuransian. Administrative sanctions in order to protect the interest of insurance company.<sup>18</sup>

Moreover, one of the forms of consumer protection by OJK towards insurance company, the institution provides complaints services from insurance policyholder which is related to the rejection of insurance claims made by the insurance company to protect the insurance policyholder.<sup>19</sup> According to Article 26 Paragraph (1) of UU Perasuransian stated that the insurance company has the obligation to meet the standards of business conduct which include the provisions

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<sup>16</sup> Article 28 of UU OJK.

<sup>17</sup> Article 51 of POJK No. 1 of 2013 about Financial Services Sector Consumer Protection.

<sup>18</sup> Article 2 Paragraph (2) of OJK Regulation No. 17 /poj.05/2017.

<sup>19</sup> Article 29 of UU OJK.

concerning: claim settlement. For the purpose of Consumers and public protection, OJK is authorized to perform legal defense including ordering or performing certain actions against the insurance company to resolve any complaint from the customer and filing a lawsuit.<sup>20</sup>

The insurance company coverage risks are all the risks selected and accepted within the insurance agreement with the insured. Additionally, while carrying out its business to divert the risks, like any other businesses, insurance companies may not always have favorable economic condition and always able to fulfill all of their commitments to other parties.<sup>21</sup> This unfavorable economic condition often makes the insurance company unable to pay off debts or unable to fulfill all its obligations, even lead to bankruptcy. In the event, where the insurance company fails to pay off the claims from policyholders which have been due. There are several attempts which can be made in order to protect the rights of the insured affected by the Debtor's default, one way is through the Indonesian Insurance Mediation Agency ("**BAMI**") and other way is through alternative dispute resolution ("**ADR**"). On special cases, as the insurance company may no longer be able to fulfilled its obligation to settle its debt to pay the claim settlement of their customers, the customer may request for the bankruptcy petition of the insurance company which can be apply only by OJK.<sup>22</sup>

The customer of insurance company may seek debt settlement through another legal effort, which is called bankruptcy. The bankruptcy in this situation is

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<sup>20</sup> Article 30 Paragraph (1) of UU OJK.

<sup>21</sup> Ibid, p. 167.

<sup>22</sup> Article 50 Paragraph (1) of UU Perasuransian.

an effort that can be implemented to find a way out or to settle a situation where the debtor is unable or unwilling to pay off its debts, while protecting the rights of the policyholders under Law No. 37 of 2004 concerning Bankruptcy or Undang-Undang Kepailitan dan Penundaan Kewajiban Pembayaran Utang (“UU KPKPU”). The existence of UU KPKPU aim to improve the protection of the creditor's interest to settle its debts with fair, quick and effective principle.<sup>23</sup> The monetary crisis in 1998 had a huge impact towards Indonesian Bankruptcy Law. The crisis had destroyed the economy of Indonesia which resulting to a number of national and multinational companies went bankrupt. In response to this condition, the Indonesian Government had the urgency to changed and improved existing legal system and legislation which were directly related to rescue efforts and economic recovery. One of which was legal reformed in the field of bankruptcy by improving existing laws and regulations.<sup>24</sup> The existing bankruptcy law at the time was another colonial legacy in Indonesia from The Dutch, *Faillissements Verordening Stb. 1905-217* jo *Stb. 1906-348* which finally revised through Law No. 4 of 1998 which was ratified by the Parliament on 19<sup>th</sup> September 1998 and promulgated in Republic of Indonesia State Gazette of 1998 No. 135.<sup>25</sup> The replacement of *Faillissements Verordening* with Law Number 4 of 1998 had not yet fulfilled the development and legal needs of the public. The old bankruptcy law was then revised through the new bankruptcy law.

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<sup>23</sup> General overview of UU KPKPU.

<sup>24</sup> *Ibid*, p. 33.

<sup>25</sup> Rahayu Hartini, *Hukum Kepailitan*, UMM Press Malang, 2008, pp. 9-12.

According to Article 1 Paragraph (1) of UU KPKPU, Bankruptcy is defined as general confiscation of all assets of a Bankrupt Debtor that will be managed by Curator under the supervision of Supervisory Judge. The bankruptcy institution is basically an institution that provides a solution to the parties when the debtor is in a state of non-payment or unable to pay its debt.<sup>26</sup> Through bankruptcy, it is expected to be able to guarantee security and guarantee the interests of the parties concerned, in which the main objectives of bankruptcy are to share debtor's assets among creditors by the curator.<sup>27</sup>

The court may impose a declaration of bankrupt against a debtor that meet the bankruptcy requirement according to Article 2 Paragraph (1) of UU KPKPU which stated that A debtor having two or more creditors and failing to pay at least one debt which has matured and became payable, shall be declared bankrupt through a Court decision, either at his own petition or at the request of one or more of his creditors.

According to Article 2 Paragraph (5) of UU KPKPU also requires in the event that the Debtor is in the form of Insurance Company, Reassurance Company, Pension Funds, or State-Owned Enterprise engaged in the sectors of public interest, the petition for a declaration of bankruptcy may only be filed by the Minister of Finance in accordance with Article 2 Paragraph (5) of UU KPKPU. Hence, the authority to apply for bankruptcy petition against insurance company may be only be done by the OJK, after the transitional provision to transfer all duties and

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<sup>26</sup> Martiman Prodjohamidjojo, *Proses Kepailitan*, MandarMaju, 1999, bandung, p. 16.

<sup>27</sup> Ibid, p. 10.

responsibilities of Minister of Finance to OJK. In other words, other parties outside of OJK may not apply for insurance bankruptcy statement.<sup>28</sup>

Similar to banking industry, the insurance industry also plays a vital role in a modern society which have high sensitivity to the economy stabilization and growth, as the sector being disturbed it may create a big impact which closely related to the political stability of a country.<sup>29</sup> In the sense that, as the insurance business get funded from the collections of funds from millions of people through premiums paid to provide protection to the public who uses insurance services against possible losses due to uncertain events, the Bankruptcy of an insurance company will certainly have a major impact on the fate of millions of other policyholder customers, which will further have an impact on the level of public trust in insurance institutions, and will disrupt the country's economy.<sup>30</sup> For this reason, UU KPKPU only granting a special designated authority to file bankruptcy petition of insurance company to OJK which may not be implemented by its own creditor. This transfer of authority also integrated in Article 50 Paragraph (1) of UU Perasuransian stated that the request on declaration of insolvency towards the Insurance Company, Sharia Insurance Company, reinsurance company, or sharia reinsurance company based on this Law can only be submitted by OJK.<sup>31</sup> Centralization the application of bankruptcy towards insurance companies as stipulated in Article 2 Paragraph (5) of UU KPKPU jo. Article 55 of UU OJK is a

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<sup>28</sup> Article 55 Paragraph (1) of UU OJK.

<sup>29</sup> Ricardo Simanjuntak, *Tinjauan Kritis Penyelesaian Perkara Kepailitan dan Likuidasi Bank*, Jurnal Hukum Bisnis, Volume 23 No. 3 Tahun 2004, p. 89.

<sup>30</sup> *Ibid*, p. 99.

<sup>31</sup> Article 50 of UU Perasuransian.

step towards a more reasonable and equitable manner, by inviting the involvement of OJK as the supervisory agency of insurance businesses in Indonesia. The role of OJK creates the opportunity and legal certainty to bankrupt an insurance company which considered as a strategic position in the life of economic development. Moreover, it is considered appropriate to give OJK as ‘Super Power’ body to apply for bankruptcy statement against insurance company considering its duty to regulate and oversees activities in Insurance sector by regular monitoring and supervise the economic condition of the insurance company – whether the company is insolvent or not.<sup>32</sup> Ultimately, the role of OJK as the only authorized institution to apply for bankruptcy petitioner in protecting the insurance policyholder plays a very crucial role, as the insurance policyholder has to solely rely on the good faith of OJK to cooperate in responding to demands of the insurance policyholder, while considering the stabilization of economy, maintain the public trust and to protect the civil rights of insurance policyholder.

In practice, OJK often fail to implemented its supervisor agency towards troubled insurance company. OJK as an independent institution in carrying out its duties and roles has no institution with legal power in monitoring the performance of OJK. Hence, OJK may act arbitrary which could subside its supervisor and regulator duties while also provide legal protection towards insurance policyholder from troubled insurance company. As in reality, OJK often fail to implemented its supervisor agency towards troubled insurance company, since there are many cases

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<sup>32</sup> Sylvia Janisriwati, *Kepailitan Bank (Aspek Hukum Kewenangan Bank Indonesia dalam Kepailitan Suatu Bank)*, Logoz Publishing, Bandung, 2011, p. 166.

of insurance company that failed to pay claims to its customer, which causes losses and harm the public interests. One of the most controversial cases is the life insurance scandal of PT. Asuransi Jiwasraya that occurred in 2018, with the total of material losses is approximately IDR 16.8 trillion. In the investigation findings by financial audit agency (“BPK”), there are irregularities that indicate fraud in managing saving plans and investments. The perpetrators of violations were not only from internal party of Jiwasraya but also from external parties such as public accountants and OJK. This is very shocking facts considering that this deviation has occurred for a long time, which implies that the supervision conduct by OJK is considered very weak towards insurance company.<sup>33</sup> This case is very disturbing to the public which impact on the loss of public confidence in OJK.

In relation to the role of OJK as bankruptcy petitioner of insurance company as outlined in Article 2 Paragraph (5) of UU KPKPU jo. Article 55 of UU OJK raises a lot of issues in settling debts and receivables between insurance company and insurance policyholder. Before undergoing the procedural procedures in UU KPKPU, there are other provisions governing the procedure for applying for an insurance company bankruptcy statement as contained in Article 51 of UU Perasuransian:

- (1) The creditor requests the Financial Services Authority to submit the request of declaration of insolvency to the trade court.

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<sup>33</sup> Jatmiko, Bambang Priyo. “Simak, Ini Kronologi Lengkap Kasus Jiwasraya Versi BPK Halaman All.” KOMPAS.com, Kompas.com, 8 Jan. 2020, money.kompas.com/read/2020/01/09/063000926/simak-ini-kronologi-lengkap-kasus-jiwasraya-versi-bpk?page=all.

(2) The Financial Services Authority approves or declines the request submitted by the creditor as referred to in Paragraph (1) at the latest 30 (thirty) days since the request is received in complete.

Based on the provision above, it may create the possibilities of power abuse by OJK, as the OJK may using its power subjectively to reject all steps of the request bankruptcy statement filed by insurance policyholder. If this happens, the role of OJK as stipulated in the provision may create legal uncertainty towards insurance policyholder to settle its debt through bankruptcy.

Moreover, the absence of authority in submitting a request for a bankruptcy statement against the insurance company also added more insecurity towards the customer when investing capital in insurance company. Since, bankruptcy as one of ways of debt settlement by the public who uses insurance services, which only allow one institution who can apply for a bankruptcy statement for insurance companies, it will create more complex problem regarding legal protection for insurance policyholder.

In 2008, Bakrie Life as one of insurance company in Indonesia were identified unable to meet its debt which coupled from the Global Financial Crises. The total of their debt is amounted IDR 500 billion. To resolve this problem, an agreement was reached by Bakrie Life to repay their debts. However, the installments payment made by Bakrie Life were troubled, as not all policyholders had their funds returned, and thus create legal uncertainty towards the remaining unpaid customers. Until finally in 2016, the OJK revoked Bakrie Life's business license. With the revocation of the insurance business license, insurance is obliged

to stop all business activities.<sup>34</sup> According to Article 44 Paragraph (1) of UU Perasuransian, at the latest within 30 (thirty) days since its business license is revoked, the Insurance Company shall arrange a general meeting of the shareholders to resolve the dissolution of company legal entity related and to form a liquidation team. By means, The OJK had the authority which mandated the insurance company to settle their rights and obligations to its customer and other creditors immediately. Moreover, to protect the interest of the suffered insurance policyholder, in the event that the insurance company is hesitant to fulfilled their obligation, the insurance policyholder may seek debt settlement through bankruptcy, which filed by the OJK. However, until present day, the fate of remaining insurance policyholder of Bakrie Life has no clarity.<sup>35</sup> As, the fate of Bakrie life's customer has been neglected for more than 11 years, the public once again loss its confidence towards the role of OJK as bankruptcy petitioner to protect the consumer and public interests. It can be stated that the role of OJK as the only authorize bankruptcy petitioner may increase concerns for insurance policyholder and creditors, as the insurance company with bad faith may take this opportunity from the provision to hide behind the authority of the supervisory agency. The insurance company too may act arbitrary in paying the rights and claims from the insurance policyholder and the investors, which able to harm the interest of insurance policyholder and another creditor. If this happen, legal certainty will be

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<sup>34</sup> Article 43 Paragraph (1) of UU Perasuransian.

<sup>35</sup> Redaksi. "Asuransi RI Kacau! Dari Bakrie Life Ke Skandal Jiwasraya - Halaman 2." Market, 21 Dec. 2019, [www.cnbcindonesia.com/market/20191221082323-17-124899/asuransi-ri-kacau-dari-bakrie-life-ke-skandal-jiwasraya/2](http://www.cnbcindonesia.com/market/20191221082323-17-124899/asuransi-ri-kacau-dari-bakrie-life-ke-skandal-jiwasraya/2).

created and it will be difficult to increase the confidence of investors and the public towards insurance company.

The provision of Article 2 Paragraph (5) of UU KPKPU created with the purpose to provide legal certainty towards insurance policyholder. However, the provision prevents the insurance policyholder as the substantial creditor from filing an application of bankruptcy towards insurance company. In other words, the insurance policyholder is unable to apply for bankruptcy statement directly, as it collides with existing procedural rule that requires only the OJK as the only authorized institution to apply for a bankruptcy statement. In general, the process of bankruptcy petition towards troubled companies who have failed to settle its obligation to the creditor can be apply by any creditors of the company. As the provision only authorize OJK as the bankruptcy petitioner for insurance company, the insurance policyholder is prevented to apply for insurance company bankruptcy petitioner. As a consequence, the insurance policyholder does not have legal standing to apply for a bankruptcy statement towards insurance company.<sup>36</sup> Hence, the role of OJK as the only bankruptcy petitioner towards insurance company as stipulated in the law is certainly weakens the protection of the rights of insurance policyholder and its creditors. Moreover, as full authority to apply for bankruptcy statement rests with OJK, this also may not in line with the stages and process of the bankruptcy itself, which generally provides "sovereignty" to creditors on the basis of debtor and creditor relationship which exists in the debtor's bankruptcy.<sup>37</sup>

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<sup>36</sup> Ibid, p. 117.

<sup>37</sup> Ibid, p.2

In fact, the main purpose of a bankruptcy institution is to provide creditors with access to debtors' assets to get their debts paid off.<sup>38</sup> It may raise questions about the relevancy of OJK as an applicant for insurance bankruptcy statement considering its legal position which is not a creditor of insurance company.

Moreover, under UU KPKPU, all debtors have to meet all the requirements set by the law according to Article 2 Paragraph (1) jo. Article 8 Paragraph (4) of UU KPKPU, in order to be able to apply for bankruptcy statement. The law states that the petition for declaration of bankruptcy shall be granted if there are facts or circumstances summarily proving that the conditions for a declaration of bankruptcy as referred to in Article 2 Paragraph (1) have been met. The condition for bankruptcy as referred to in Article 2 Paragraph (1) requires that a debtor must have two or more creditors and failing to pay at least one debt which has matured and become payable. Although, the one who applies for bankruptcy statement is OJK, which has the authority to regulate and supervise the insurance industry in Indonesia, when it comes to bankruptcy petition, OJK has to fulfill all the requirements stated by the provisions. As a consequence, the legal standing of OJK as the bankruptcy applicant of insurance company is also required to prove the requirements of bankruptcy as outlined in Article 2 Paragraph (1) of UU KPKPU and Article 8 Paragraph (4).

In the bankruptcy case of PT. Asuransi Jiwa Bumi Asih Jaya (“**AJBAJ**”) in 2015, Jakarta Commercial Court Decision No. 04/PDT-SUS-PAILIT judges decided to reject all bankruptcy applications against AJBAJ by OJK. On the

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<sup>38</sup> Kartono, *Kepailitan dan Pengunduran Pembayaran*, Pradnya Paramita, Jakarta, 1982, p.42.

grounds that the requirements of bankruptcy petition as stated on Article 2 Paragraph (1) of UU KPKPU related to minimum of creditors, and Article 8 Paragraph (4) related to simple proof were not satisfy. The judges believed that the policyholder is not a creditor as insurance claims are not debt.<sup>39</sup> Prior to the bankruptcy application, it was identified that AJBAJ has been unable to maintain its financial condition since 2009, which led The Minister of Finance to imposed sanctions by restricting its business activities. The insurance company also failed to meet its obligation to increase capital of Rp 1.06 trillion. As a result, OJK revoked AJBAJ's business license in 2013 and mandated AJBAJ to settle its obligation to all policyholders. Since AJBAJ had not implemented the decision, in order to protect the rights ABAJ's customers, OJK then filed a bankruptcy petition against AJBAJ to the Central Jakarta Commercial Court which then rejected by the court.

Based on AJBAJ case, it was identified that prior to the bankruptcy petition, OJK has given several administrative sanctions against AJBAJ as effort to protect AJBAJ's insurance policyholder. With this blocking, it is expected that the assets of troubled insurance company can be protected from actions that has the potential to cause problems and ultimately harm customers. In the sense, that the insurance company is in trouble and may not be able to fulfill its obligations to policyholders.<sup>40</sup> In carrying out its supervision function, OJK also very aware of the financial health condition of AJBAJ, which no longer able to fulfill their

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<sup>39</sup> Jakarta Commercial Court Decision NO. 04/PDT-SUS-PAILIT.

<sup>40</sup> POJK No. 28 /POJK.05/2015 about Discontinuation, liquidation, and capital insurance companies, sharia insurance companies, reinsurance companies, and sharia reinsurance companies.

obligation to pay for the customer insurance claims. Thus, with the revocation of AJBAJ business license and the statement from OJK to AJBAJ to settle its debts towards its customer, UU KPKPU should no longer to be rigidly enforced against creditors of the insurance company and must immediately granted the bankruptcy petition against the insurance company. Otherwise, it will create legal uncertainty on the fate of insurance policyholder during bankruptcy process which are not in line with the purpose of UU KPKPU to create a fair, quick and effective debt settlement. Thus, there should be an exception rule, a special mechanism in the process of bankruptcy petition towards insurance company by special institution like OJK, which able to protect the insurance policyholder rights in a fair and reliable manner.

In practice, the fate of insurance policyholder has not received fair and proportional treatment in relation to debt settlement of insurance company. The position of the insurance policyholder has been always considered weak due to the domination of insurance company in determining specific terms and promises in the insurance agreement with the standard contract.<sup>41</sup> From the explanation previously, it can be stated that the role of OJK as the sole agent of an insurance company bankruptcy applicant, according to the mandate of UU KPKPU in Article 2 Paragraph (1), is deemed inadequate in terms of providing legal protection for insurance policyholder. Not to mention, the requirement of bankruptcy petition that also applicable for superpower institution like OJK may create its own complexities and problems in the process of bankruptcy of insurance company, which resulting

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<sup>41</sup> Ibid, p. 5.

in a lot of legal uncertainty on the fate of insurance policyholder. It is very important, for Government to pay more attention in protecting the legal rights of the insurance policyholder, considering their big roles in reviving the insurance industry and the economy through the collection of premiums.<sup>42</sup> Thus, it is considered appropriate to give special attention to protect insurance policyholder rights and to be treated by the law in a fair and equitable manner.

Based on the background above, the author is interested to write thesis concerning the role of OJK as the bankruptcy petitioner for insurance company who has the authority to regulate and supervise the insurance industry in relation to the protection of insurance policyholder.

## **1.2 Formulation of Issue**

In regard to the topic of this paper, the writer would discuss on the following formulation of issue:

1. Whether OJK is the relevant bankrupt applicant towards insurance company according to UU KPKPU?
2. Whether the requirements for bankruptcy petition in UU KPKPU is relevant to OJK as the bankrupt applicant for Insurance companies?

## **1.3 Research Objectives**

The objectives of the author in conducting this research are describes as follows:

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<sup>42</sup> Hermansyah, Hukum Perbankan Nasional Indonesia, Kencana, Jakarta, 2005, p. 9.

1. To identify and analyze the relevancy of OJK as the bankruptcy application of insurance company according to UU KPKPU; and
2. To identify and analyze the relevancy of the requirements for bankruptcy statement in the event OJK as the bankruptcy applicant for insurance company.

#### **1.4 Benefits of The Research**

##### 1.4.1 Theoretical benefit

This research is expected to be able to add insight and repertoire of knowledge in the field of bankruptcy law about the role and authority of Financial Services authority in bankruptcy of insurance company while providing legal protection towards insurance policyholder in bankruptcy which already existed and currently in effect. The writer also believes that this thesis may be used as a reference for those who is interested in same field of study.

##### 1.4.2 Practical Benefit

The practical benefit is related to the benefits of a legal research to the problem solving in the field of law or the implementation of certain efforts. In regard to this benefit, the writer believes that this paper will provide a better understanding of how bankruptcy law works in Indonesia.

## 1.5 Systematics of Writing

In this thesis, the author divided the chapter systematically describe as follows:

### **CHAPTER 1 : INTRODUCTION**

In this chapter, the writer will discuss an introduction that includes the background of the issue, the formulation of issues, research objectives, benefits of the research, and lastly the systematics of writing.

### **CHAPTER 2 : LITERATURE REVIEW**

In this chapter, the writer will discuss theories and descriptions of the theoretical foundation used by the author in writing this research that is related to the formulation of issues contained in the first chapter, and the conceptual basis underlying this research to help answer the problems of this research. In writing the theoretical basis, the author used a method of deductive logic to link the frames of the raised issue and the theory. It is a method of thought starting with something that is common which is drawn to a conclusion of something specific. In writing the conceptual basis, definitions of the terminology used in this study were obtained from the understanding contained in the books,

experts' opinion and the prevailing laws regarding the choice of law clause.

### **CHAPTER 3 : RESEARCH METHODS**

In this chapter, the writer will discuss the research approaches, the research methods, types of research, procedures for obtaining materials research, legal materials and research techniques used in this study, using a method of normative research which seeks the truth through legal formulations comprising of expert opinions, theories and statutory requirements.

### **CHAPTER 4 : RESEARCH RESULTS AND ANALYSIS**

In this chapter, the writer will discuss research issues and provide answers to the formulation of issues in depth as a result of the writer's research by using the theories described in Chapter 2, research methods described in Chapter 3 as well as laws and regulations.

### **CHAPTER 5 : CONCLUSION AND RECOMMENDATION**

In this chapter, the writer will present the conclusion of this research and recommendation or suggestion based on the writer's opinion that will be used in the future, and from the issues that have been formulated and analysis.