

ABSTRAK

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KEDUDUKAN HUKUM DAN PERLINDUNGAN HUKUM PEMEGANG POLIS DALAM PERUSAHAAN ASURANSI YANG DINYATAKAN PAILIT

Asuransi merupakan wadah untuk masyarakat mengalihkan resikonya kepada pihak asuransi dengan mengikatkan diri pada perjanjian yang disebut Polis. Terdapat beberapa keraguan di dalam masyarakat terhadap perlindungan haknya yang diserahkan kepada pihak asuransi, khususnya terhadap perusahaan asuransi yang dinyatakan pailit atau bangkrut. Ada beberapa contoh kasus yang mana penerapan hukumnya dirasa masih banyak kekeliruan, contohnya pada kasus PT Asuransi Jiwa Bumi Asih, yang mana penegak hukumnya bingung di dalam meletakkan kedudukan hukum pemegang polis. Hal inilah yang mengakibatkan banyaknya terjadi ketidakadilan terhadap pemegang polis karena pendapat dari hakim pengadilan, hakim pengawas, dan kurator berbeda-beda. Undang-Undang Perasuransian, Undang-Undang Kepailitan dan KUHPerduta memiliki penjelasan yang berbeda terhadap bagaimana posisi dari pemegang polis tersebut. Terdapat 2 (dua) rumusan masalah yang diangkat dalam penelitian ini, yaitu: (1) Bagaimana Kedudukan Hukum Pemegang Polis di dalam Perusahaan Asuransi yang dinyatakan Pailit? (2) Bagaimana Perlindungan Hukum Pemegang Polis di dalam Perusahaan Asuransi yang dinyatakan Pailit? Metodologi penelitian yang digunakan dalam penelitian ini ialah penelitian hukum normatif, dengan pendekatan peraturan perundang-undangan, pendekatan kasus, dan pendekatan konseptual. Berdasarkan hasil pembahasan penelitian dapat disimpulkan bahwa: (1) Kedudukan Hukum Pemegang Polis disetiap Peraturan Perundang-Undangan berbeda-beda, maka dari itu diterapkan asas *Lex specialis derogate lex generalis*, dan asas *Lex posteriori derogate legi priori* untuk menentukan kedudukannya, dan digunakanlah Undang-Undang Nomor 40 Tahun 2014 Tentang Perasuransian untuk menetapkan kedudukannya. (2) Tidak adanya peraturan yang mengatur secara jelas dan rinci terkait bagaimana perlindungan hukum pemegang polis ini, permohonan pailit tersebutlah merupakan perlindungan hukum bagi pemegang polis, dan di dalam proses kepailitan tersebut terdapat beberapa langkah penting untuk melindungi hak-hak pemegang polis, seperti Tindakan Actio Paulina, Pencocokan Piutang, dan Perdamaian. Padahal hal ini sudah menjadi tugas Negara untuk melindungi setiap hak-hak Warga Negaranya, akan tetapi pada prakteknya masih banyak penegak hukum dalam kasus ini yang bingung dalam mengambil keputusan serta merugikan kepentingan kreditor/pemegang polis/tertanggung.

Kata kunci: Kedudukan Hukum, Perlindungan Hukum, Pemegang Polis, Pailit.

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ABSTRACT

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LEGAL STATUS AND LEGAL PROTECTION OF POLICY HOLDERS IN INSURANCE COMPANIES DECLARE BANKRUPT

Insurance is a place for people to transfer their risk to the insurer by binding themselves to an agreement called policy. There are some doubts in the community regarding the protection of their rights submitted to insurance parties, especially for insurance companies that are declared bankrupt. For example in the Namura tetalife Insurance case in 2001 where the judge decided that the insurance company was bankrupt, and the judge was of the opinion that the policyholder was the ultimate creditor, and the judge was of the opinion that the position of the policyholder was not determined by statutory regulations. Furthermore, Bumi Asih Jaya Life Insurance, which was declared bankrupt from 2015 and until now the settlement of its assets has not been completed resulting in delayed payments to policyholders, which in the trial process the Insurance Party said that the insurance claim was not debt, he assumed that the debt had to be in the form of money. This has resulted in many injustices occurring to policyholders because the opinions of court judges, supervisory judges and curators differ. The Insurance Law, the Bankruptcy Law and the Civil Code have different explanations for the position of the policyholder. There are 2 (two) problem formulations raised in this study, namely: (1) What is the Legal Position of the Policyholder in an Insurance Company that is declared Bankrupt?

(2) What is the legal protection for policyholders in an insurance company declared bankrupt? The research methodology used in this study is normative legal research, with statutory, case and conceptual approaches. Based on the results of the research discussion, it can be concluded that: (1) The legal position of policyholders in each statutory regulation is different, therefore the principle of *Lex specialis derogate lex generalis* and the principle of *Lex posteriori derogate legi priori* are applied to determine their legal position, and the law is used. -Law Number 40 of 2014 concerning Insurance to determine their position. (2) There are no regulations that regulate clearly and in detail regarding how the legal protection of this policyholder is, the bankruptcy application is a legal protection for the policyholder, and in the bankruptcy process there are several important steps to protect the rights of the policyholder, such as: *Actio Paulina*, *Accounts Receivable Matching*, and *Settlement*. Even though this has become the duty of the State to protect every citizen's rights, in practice there are still many law enforcers in this case who are confused in making decisions and harming the interests of creditors/policyholders/insureds.

Keyword : Legal Position, Legal Protection, Policyholder, Bankruptcy

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