Legal Theory Approach to Expediency in Filing Bankruptcy Requests and Postponement of Debt Payment Obligations in Indonesia

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Abstract: ***This article aims to explore the position of an insurance company that is subject to specific conditions when applying for bankruptcy and requesting a postponement of debt payment obligations. Consequently, their business activities are closely tied to public interest. The focus of the issue lies in understanding the authority of the Financial Services Authority in overseeing bankruptcy filings and debt payment obligation postponements for insurance companies. To address this concern, Jeremy Bentham's theoretical framework is employed, leveraging his utilitarian perspective, which posits that the objective of the law is to achieve the greatest happiness for the greatest number of people. The research methodology adopts a normative legal approach, employing descriptive analytical techniques. Data sources encompass primary legal materials and secondary sources. The data collection process involves library research, with qualitative analysis being applied. This study concludes that the harmonization of diverse regulations pertaining to bankruptcy filings and the suspension of debt payment obligations for insurance companies is of utmost importance. Such harmonization aligns with a benefit-oriented approach aimed at safeguarding public interests.***

Keywords*: Bankruptcy, insurance companies, benefits*

I. INTRODUCTION

The entitlement to receive debt payments held by creditors constitutes an inherent and absolute right. Legal provisions mandate a debtor's obligation to settle their debts to creditors, a right that requires explicit protection under applicable law. Article 1131 of the Civil Code explicitly dictates that all properties, both movable and immovable, presently owned or to be acquired in the future by the debtor, shall serve as collateral for the fulfillment of all obligations. This legal article reflects the fundamental principle that individuals are accountable for their debts, necessitating the commitment of their entire wealth—both movable and immovable, which, if required, may be sold to satisfy their debts. This principle is commonly referred to as "Schuld and Haftung" [1].

In instances where a debtor holds multiple debts, Article 1132 of the Civil Code further specifies that the property will jointly secure all receivables of the debtors. The sale of the debtor's assets will be distributed based on the proportion of each receivable, unless there are valid reasons for precedence among the receivables. This provision upholds the principle of "paritas creditorum," asserting that if a debtor has multiple creditors, each

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creditor holds an equal position. In cases where the debtor's assets are insufficient to cover all debts, creditors are to be repaid on the principle of balance, ensuring that each receives a proportionate amount aligned with the other creditors' receivables. However, deviations from this principle of equilibrium are permitted if specified by a treaty or law [2].

Furthermore, Article 1132 of the Civil Code embodies the principle of "pari passu pro rata parte," signifying that all creditors possess equal rights to the debtor's assets unless valid reasons for precedence exist. To regulate the distribution of assets, as outlined in Article 1132, the legal framework gave rise to a debt collection method known as bankruptcy. Article 2, paragraph (5) of Law Number 37 of 2004 stipulates that only the Minister of Finance is authorized to petition for the bankruptcy of a debtor if the debtor falls into categories such as an insurance company, a reinsurance company, a pension fund, or a state-owned enterprise in the field of public interest.

The pivotal phrase in Article 2, paragraph (5) of Law Number 37 of 2004 is "public interest." This term confers the authority to initiate bankruptcy proceedings and deferment of debt payment obligations to the Financial Services Authority. One of the instruments crucial to public interest is associated with expediency. In this context, a heightened emphasis is placed on the term "public interest" itself, with expediency serving as a focal point. The interpretation of public interest must encompass the broader community's interests, both qualitatively and quantitatively. This implies that qualitative and quantitative approaches to public interest assume greater importance within such contexts.

II. FINDINGS AND DISCUSSION

1. Authority of PKPU Submission in Expediency Perspective

1.1 The authority to file bankruptcy and debt payment obligations postponement of against insurance companies in Law Number 37 of 2004

In delving into the discussion of the authority to initiate bankruptcy proceedings and postpone debt payment obligations against insurance companies, the term "authority" assumes a significant role. Authority, in this context, signifies the right to undertake specific actions or command others to perform or refrain from certain actions to attain specific objectives. It is inherently linked with power, and astute authority is imperative for organizational effectiveness, serving as a means to accomplish the goals set by those in authoritative positions [3].

Authority, as a formal power, is derived from legal foundations. It often results from the delegation of authority from superior positions to subordinates within the organizational structure. When wielded, authority ensures compliance with established rules and norms across all sectors of society. Consequently, authority is intimately connected to the leader's possession of power, which can be conveyed through oral or written means, grounded in applicable laws, and sanctioned by all relevant parties [4].

Formalized power, whether over a specific group of individuals or within a particular realm of government, stems from legislative and governmental powers. It is distinct from authority, which typically pertains to a specific field. Stout defines authority as the entirety of rules governing the acquisition and utilization of governmental authority by subjects of public law [4]. Bagir Manan further clarifies that, in legal terms, authority differs from power (macht). Power simply denotes the right to act or abstain from acting. In the legal realm, authority encompasses both rights and obligations (rechten en plichten) [5].

In referencing the diverse perspectives on authority mentioned earlier, it is crucial, particularly in terms of legality, to scrutinize the sources from which authority emanates. Based on the origin of authority, it can be acquired through various methods, which can be categorized into three distinct sources of authority:

Attribution:
Attribution denotes the original authority obtained directly from laws and regulations, conferred to state bodies or organs. This authority is granted by the framers of the Constitution and the framers of the Law. An illustrative example includes the attribution of power to the President and the House of Representatives to formulate laws.
Delegation:

Delegation involves the transfer of authority by a government body that holds attributive authority to another government body. For instance, the DPRD's approval of candidates for Deputy Regional Head exemplifies the implementation of delegation.

Mandate:

Mandate refers to authority acquired through the delegation of authority from state organs to other state organs. In this scenario, the mandate giver retains both the delegation of authority and responsibility, and the mandate recipient solely exercises the authority on behalf of the mandate giver. The recipient cannot act autonomously. An example is the responsibility of decision-making delegated by the Minister to their subordinates [6].

Examining the source of authority to file bankruptcy and postpone debt payment obligations against insurance companies, the authority vested in the Financial Services Authority stems from attribution. Specifically, it is derived from legal instruments such as Law Number 37 of 2004, Law Number 21 of 2011, and Law Number 40 of 2014.

This analysis underscores the importance of understanding the legal foundations and sources of authority, providing clarity on the legitimacy and basis for the Financial Services Authority's power in matters related to bankruptcy and debt payment obligations for insurance companies.

1.2. Public interest and the theory of expediency

Public interest represents a heightened concern encompassing both qualitative and quantitative dimensions. In gauging public interest, expediency emerges as a pertinent reference point. This concept, integral to legal theories seeking efficiency and societal benefit, finds significant influence from the works of Jeremy Bentham. Bentham's legal philosophy drew inspiration from the insights of David Hume (1711-1776), a profound thinker with exceptional analytical acumen, particularly in challenging the theoretical underpinnings of natural law. Hume's core tenet posited that utility, or usefulness, is inherently linked to happiness.

Building upon Hume's foundation, Bentham developed a comprehensive legal theory grounded in the principle of utility. Bentham, known for his radical stance, fervently advocated for codified laws and the reform of what he perceived as chaotic legal systems. He stands as the progenitor and champion of the utilitarian doctrine. Central to his perspective is the belief that the essence of happiness lies in the experience of pleasure and the absence of suffering. Bentham succinctly articulates this notion by stating that "the aim of law is the greatest happiness for the greatest number."

In Bentham's own articulation, the crux of his philosophy centers on the notion that nature has positioned humanity under the influences of power, pleasure, and distress. It is through these experiences of pleasure and distress that ideas are formed, shaping all opinions and regulations in our lives. According to Bentham, anyone attempting to liberate themselves from these forces may find themselves in a perplexing endeavor, as the pursuit of pleasure and avoidance of distress are inherent and foundational aspects of human nature. Bentham contends that these ubiquitous and compelling feelings should be the focal point of study for both moralists and lawmakers. The principle of utility, as posited by Bentham, subordinates all aspects of human experience to the dominion of pleasure and distress.

The fundamental tenets of Jeremy Bentham's teachings can be outlined as follows [7]:

Purpose of Law: The primary objective of law is to ensure the happiness of individuals within the community. Bentham's principle of utility encapsulates this objective as "the greatest happiness of the greatest number."

Intuitive Application: The principle must be applied intuitively, asserting that the quality of pleasure remains constant.

Objectives of Legislation for Realizing Happiness: To achieve the happiness of individuals and society, legislation must address four key objectives:

a. Provide subsistence
b. Provide abundance
c. Provide security
d. Attain equity

Bentham's teachings are characterized by their individualist nature, with a pronounced focus on individual interests. According to him, the law primarily contributes to the happiness of individuals, subsequently benefiting society indirectly. Despite this emphasis on individual interests, Bentham was not oblivious to the concerns of the community. He asserted that to prevent conflicts between the interests of one individual and another, there must be limitations in place to ensure that one individual does not become a threat to another, capturing the sentiment expressed by the Latin phrase "homo homini lupus" (man is a wolf to man).

Moreover, Bentham argued that fostering an attitude of sympathy among individuals is essential for the creation of individual happiness. In his view, when each individual cultivates a sense of empathy towards others, it naturally contributes to the realization of societal happiness. This nuanced approach, balancing individual interests with a consideration for communal well-being, encapsulates Bentham's perspective on the harmonious coexistence of individual and societal happiness [8].

Bentham defined utility as encompassing any form of pleasure, happiness, benevolent gain, benefit, or means to prevent pain, evil, and unhappiness. Several key concepts associated with his thoughts include:

Quantitative Hedonism:
Bentham embraced the idea of quantitative hedonism, positing that pleasure is a singular entity that varies only quantitatively based on factors such as quantity, duration, and intensity. According to this view, pleasure is physical and rooted in sensory experiences.
Summum Bonum:
Bentham's perspective on pleasure categorized it as physical, dismissing spiritual pleasures as false and not recognizing them within the realm of true pleasures.

Hedonistic Calculus:

Bentham introduced the concept of hedonistic calculus, asserting that pleasure can be measured to facilitate decision-making when faced with competing pleasures. Individuals can employ this calculus as a basis for their choices. The criteria for the calculus encompass factors such as the intensity and degree of pleasure, the duration of the pleasure, the certainty or uncertainty of pleasure, the proximity of pleasure in time, the potential for additional pleasure resulting from the initial choice, the purity of pleasure without painful elements, and the ability to share pleasure with others. Additionally, Bentham identified sanctions to prevent individuals from exceeding limits in the pursuit of pleasure. These include physical sanctions, political sanctions, moral or general sanctions, and religious or spiritual sanctions [9].

While Bentham's teachings centered on individual benefit, he also acknowledged the necessity of restricting individual pleasure for the attainment of greater benefit and happiness. In essence, the freedom of an individual to pursue pleasure and happiness is not an absolute legal principle. It is within this framework that the significance of respecting the public interest, representing society at large, becomes paramount. This assertion does not present an antinomy but reflects a linear thought process. By safeguarding the public conscience, it becomes feasible to generate more substantial benefits or happiness (quality) for a larger number of individuals (quantity).

In this nuanced perspective, the recognition of limits on individual pursuits is seen not as a contradiction but as a harmonious alignment of individual and societal well-being. It underscores the interconnectedness of individual actions and the broader consequences for the collective, emphasizing the role of law and governance in ensuring a balance that ultimately leads to the greater good for society as a whole.

2. The Position of Legal Theory of Expediency in Filing Bankruptcy Requests and Suspension of Debt Payment Obligations to Insurance Companies

The provisions outlined in Article 2, paragraph (5) of Law Number 37 of 2004, Law Number 21 of 2011, and Law Number 40 of 2014 explicitly designate the Financial Services Authority as the sole entity authorized to initiate bankruptcy proceedings or deferment of debt payment obligations against insurance companies. Implicit in this provision is the notion that conferring such authority is grounded in the public interest.

In alignment with Bentham's teachings, the assessment of the merit or demerit of an action is contingent upon its contribution to happiness. Similarly, within the legislative domain, the evaluation of the goodness or badness of laws is measured by their impact. Laws that significantly contribute to the happiness of the majority of society are deemed good laws. Consequently, legislators are tasked with formulating just laws that benefit all citizens [10]

The elucidation of Law Number 40 of 2014 regarding Insurance underscores the increasing role of the insurance industry in fostering national development. This role is manifested through the infusion of substantial long-term funds, which subsequently serve as a developmental funding source. The law mandates specific regulations to the Financial Services Authority, particularly concerning the oversight of business lines and products of both sharia insurance and conventional insurance. Additionally, it regulates the management of assets and liabilities of various entities, including insurance companies, sharia insurance companies, reinsurance companies, and sharia reinsurance companies. These regulations play a pivotal role in determining the magnitude and significance of the insurance industry's role.

Analyzing the elucidation, it becomes evident that the position of insurance companies is integral to the national development's funding sources, aligning with the concept of 'the greatest good for the greatest number' advocated by Bentham. The recognition of insurance companies as contributors to national development underscores the inherent connection between private enterprises, public interest, and societal well-being, reflecting the principles laid out by Bentham.

Furthermore, insurance companies also accumulate substantial sums from the general public in the form of insured funds, which, in terms of quantity, can be classified as a matter of public interest. Bankruptcy and the postponement of debt payment obligations are essentially situations where debtors find themselves unable to meet their financial obligations, a scenario regulated by Law Number 37 of 2004.

In this context, insurance companies, as key players in the business landscape, are not immune to the possibility of facing bankruptcy. The state of bankruptcy or the postponement of debt payment obligations

introduces an element of uncertainty and erodes trust in insurance companies. This situation, which can persist for a considerable duration, particularly for financial institutions like insurance companies (270 days), has the potential to disrupt trust, thereby impacting not only the insurance company itself but also the broader national economy due to the pivotal role insurance companies play as a source of national development.

Moreover, the interests of a substantial number of policyholders must be carefully balanced in such circumstances. Effectively managing the bankruptcy situation of insurance companies becomes imperative to preserve public trust and uphold the interests of policyholders. In navigating the complexities of filing for bankruptcy and delaying debt payment obligations, it is essential to prioritize and safeguard the public interest. This underscores the rationale behind granting the Financial Services Authority the authority outlined in Law Number 37 of 2004, enabling it to oversee and address situations involving bankruptcy and the postponement of debt payment obligations in the insurance sector.

III. CONCLUSION

The application for bankruptcy filing and the postponement of debt payment obligations for insurance companies is crucial, necessitating an expediency approach to protect the public interest. This significance arises from the strategic role of insurance companies as substantial sources of long-term funds for national development. As public institutions, prioritizing the larger interests of the community, specifically policyholders, is essential for legal protection.

The Financial Services Authority, in essence, lacks a direct civil relationship with insurance companies. Typically, civil relations and the establishment of debt receivables form the foundation for creditors' rights and the authority to file bankruptcy and debt payment postponement applications against debtors. However, this civil relationship is superseded by a broader interest—namely, the public interest. The legal basis for public interest provides the authority to file bankruptcy and debt payment postponement against insurance companies. From the perspective of Bentham's expediency theory, this approach is deemed acceptable to avert chaos, acknowledging the potential for "homo homini lupus" if rights and authority are exclusively vested in creditors. Creditors might perceive bankruptcy institutions and PKPU (Debt Payment Postponement) as legitimate debt collection systems sanctioned by law.

It is advisable that any proposed amendments to bankruptcy and debt payment postponement laws maintain the authority of the Financial Services Authority as the sole entity capable of filing a bankruptcy application against an insurance company. This recommendation aligns with the intricate balance between safeguarding public interest, maintaining legal order, and acknowledging the unique position of insurance companies in contributing to national development.

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IV. REFERENCES

[1] Purwahid Patrik and Kashadi, *Law Guarantee Revised Edition with UUHT*, Semarang: Faculty of Law, Diponegoro University, 1998, p. 5.
[2] Ibid., p. 6
[3] Evi Fitriyani Aulia "Power and Authority", (http://www. kompasiana.com /epoooy19/power-and-authority,accessed December 17, 2017).
[4] Ridwan HR, *State Administration Law,* Jakarta: PT Raja Grafindo Persada, 2013, p. 71
[5] Nurmayani, *Regional Administration Law,* Bandar Lampung: University of Lampung, 2009, p. 26
[6] Sony Pungus "Theory of Authority", (*Online), (http://sonny tobelo.blogspot.com/2011/* 01/theory-authority.html, accessed 17 December 2017).
[7] Friedman, *Theory and Philosophy of Law; Philosophical Idealism and Justice Problems*, translated from the original book *Legal Theory* by Muhamad Arifin, Edited by Achmad Nasir Budiman and Suleman Saqib, Jakarta: Rajawali, 1990, p. 112
[8] Darji Darmodiharjo and Shidarta, *Fundamentals of Legal Philosophy; What and How of Philosophy Indonesian Law,* Jakarta: Gramedia Pustaka Utama, 2008, p. 118.
[9] Soedjono Dirdjosisworo, *Philosophy of Law in Conception and Analysis*, Bandung: Alumni, 1984, p. 118-120.
[10] Lilik Rasyidi and Ira Thania Rasyidi, *Fundamentals of Philosophy and Legal Theory,* Bandung : PT. Citra Aditya Bhakti, 2004, p. 64