

Dualism of Legal Authority in Filing Suspension of Debt Payment Obligations Petitions Against Insurance Companies (Study Case: Decision No. 389/Pdt.Sus-PKPU/2020/PN Niaga.Jkt.Pst)

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Abstract: *This article critically examines the dualism of authority in initiating bankruptcy proceedings against insurance companies in Indonesia. On the one hand, Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations and Law No. 21 of 2011 on the Financial Services Authority strictly confine such authority to the Financial Services Authority. On the other hand, in practice, Financial Services Authority's non-response to Policyholder requests has led to interpretations invoking the doctrine of fictitious positive decisions under Law No. 30 of 2014 on Government Administration. Through normative-juridical analysis and doctrinal interpretation of the case 389/Pdt.Sus-PKPU/2020/PN Niaga.Jkt.Pst, the findings reaffirm that although fictitious decisions aim to protect citizens' procedural rights, they cannot override the *lex specialis* framework of financial regulation. However, administrative silence by Financial Services Authority may still constitute an unlawful act done by the government (*onrechtmatige overheidsdaad*), opening paths for administrative litigation via the State Administrative Court. This paper argues for institutional reform and the reconciliation of legal objectives to effectively address administrative inaction, without compromising financial stability under the Bankruptcy and Suspension of Debt Payment Obligations regime.*

Keywords: *Fictitious Positive Decisions; Insurance; Lex Specialis; Suspension of Debt Payment Obligations; Financial Services Authority*

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INTRODUCTION

Life insurance constitutes a legal instrument with a strategic role in the economic protection system of society. As a branch of

insurance law, life insurance is inherently linked to the general characteristics and fundamental principles that underpin the entire body of insurance law.¹ Within the context of

¹ Agus Prawoto, *Hukum Asuransi dan Kesehatan Perusahaan Asuransi* (Yogyakarta: BPFE, 1995).

Indonesian law, the definition of insurance (verzekering) is explicitly stipulated in Article 246 of the Indonesian Commercial Code, which provides that insurance is an agreement whereby the insurer commits to the insured, upon receipt of a premium, to provide compensation for a loss, damage, or loss of anticipated profit that may be suffered due to an uncertain event.

Based on this provision, an insurance contract contains four essential elements that form the legal relationship between the parties. First, there must be a mutual agreement or contract, which serves as the legal foundation for the civil relationship between the insurer and the insured, creating reciprocal rights and obligations. Second, the involvement of the payment of a premium by the insured to the insurer in a specific amount, as a form of consideration for the risk coverage provided. Third, the obligation of the insurer to provide compensation or indemnity to the insured in the event that the insured risk materializes, which must be preceded by the insured filing a claim. Fourth, the element of a prospective or uncertain event, which encompasses the element of uncertainty, and is referred to as the risk that forms the basis of the insurance protection itself.

From these characteristics, it can be concluded that the agreement gives rise to a legal engagement governing the legal relationship between the parties, each with their respective rights and obligations.² The legal relationship established between the insurer and the insured is reciprocal in nature. In this context, the insurer is obligated to pay the insured sum if the insured risk occurs, while the insured is obligated to pay the premium and provide honest information regarding the risk. Accordingly, each party holds rights and obligations that are directly related to and

dependent upon one another, forming a synallagmatic contract, serving as a contract characterized by mutual and interdependent obligations between the parties.³

Article 247 of the Indonesian Commercial Code further explains the scope of coverage under an insurance agreement, which includes risks threatening unharvested agricultural produce; the life of one or more individuals; maritime hazards and risks of enslavement; as well as risks threatening transportation over land, rivers, and inland waters. Based on that provision, there are two main types of insurance, namely:⁴

1. Loss Insurance, which covers risks such as fire, agricultural produce, maritime hazards and enslavement, as well as transportation risks; and
2. Life Insurance, which pertains to the life of an individual.

The fundamental differences between the two types of insurance are as follows:

1. Insured Object:

In life insurance, the risk covered pertains to death or other life-related events such as critical illness occurring within the period specified in the policy. In contrast, loss insurance covers risks that result in material or financial loss that can be economically assessed, such as fire, theft, or accidents.

2. Nature of Compensation:

In life insurance, the amount payable upon the occurrence of the insured risk is predetermined and agreed upon from the outset, meaning it is not contingent on the actual financial loss suffered. In loss insurance, however, the compensation is based on the actual loss incurred by the insured and shall not exceed that amount.

² Adrian Sutedi, *Asuransi dan Hukum Asuransi* (Jakarta: Sinar Grafika, 2012).

³ Yahya Harahap, *Segi-Segi Hukum Perjanjian* (Bandung: Alumni, 1982).

⁴ Abdulkadir Muhammad, *Pengantar Hukum Pertanggungan* (Bandung: Citra Aditya Bakti, 1994).

This is in line with the principle of indemnity.⁵

In an ideal legal relationship governing life insurance, both the insurer and the Policyholder are expected to discharge their respective rights and obligations in accordance with the terms set forth in the insurance policy. However, this relationship becomes legally and commercially complex when the insurer fails to fulfill its obligation to disburse the agreed-upon benefits. Such failure may stem from a variety of systemic and operational factors, including an imbalance between premium income and claims liabilities, the misallocation of premium reserves into high-risk investment instruments, deficiencies in risk management practices, or adverse macroeconomic conditions impacting the financial services sector as a whole. Under these circumstances, the legal status of Policyholders transforms from that of mere beneficiaries to that of creditors with enforceable claims against the insurer's assets.

When an insurance company is unable to discharge its obligations due to financial incapacity, the Policyholder is legally entitled to demand payment of the insurance benefits. Juridically, this entitlement transforms into a claim of indebtedness enforceable against the insurer's assets. The conventional legal recourse available to the insured in such circumstances is to allege a breach of contract by the insurer. This process typically commences with the issuance of a formal written demand, and, if the insurer fails to respond or remedy the breach, may be followed by the initiation of civil proceedings before the district court having jurisdiction over the insurer's legal domicile or any forum expressly stipulated in the policy agreement.

In contemporary legal practice, pursuing civil remedies through breach of contract claims

against insurance companies is frequently deemed ineffective and inefficient, especially when assessed through the lens of financial consumer protection. This ineffectiveness largely stems from the inherent asymmetry in both legal standing and practical capabilities between the Policyholder, as the insured party, and the insurer, which often enjoys superior financial resources, institutional leverage, and access to sophisticated legal counsel.⁶ While the civil justice system is premised on the principle of equality before the law, its application in insurance disputes often reveals significant procedural asymmetries.

Insurance companies, by virtue of their institutional scale and resources, enjoy privileged access to experienced legal representation, extensive evidentiary means, and administrative capabilities that enable them to protract or strategically manage litigation.⁷ Conversely, Policyholders typically individual consumers are frequently situated in weaker economic positions, possess limited legal literacy, and rely substantially on the insurer's good faith in the realization of their contractual rights. This imbalance undermines the practical accessibility and fairness of civil remedies in disputes arising from insurance relationships.

In addition, suing an insurance company for breach of contract is often seen as slow and ineffective. The legal process usually involves complicated steps and detailed evidence for each individual case, which can take a long time to complete. Because of this, it does not give strong or immediate pressure on the company to pay what it owes. As a result, the formal legal system often fails to give real justice to people who are in a weaker position like individual Policyholders, who may not have the resources or knowledge to go through a long legal battle.⁸

⁵ Harahap, *Segi-Segi Hukum Perjanjian*.

⁶ Muhammad, *Pengantar Hukum Pertanggungan*.

⁷ M. Yahya Harahap, *Hukum Acara Perdata : Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan*

Putusan Pengadilan, 15 ed. (Jakarta: Sinar Grafika, 2015).

⁸ Satjipto Rahardjo, *Ilmu Hukum*, 5 ed. (Bandung: Citra Aditya Bakti, 2000).

In numerous instances, litigation for breach of contract proves ineffective in affording adequate bargaining power to Policyholders, even in circumstances where insurance companies have demonstrably committed contractual violations. This procedural limitation has prompted legal scholars and policymakers to advance alternative dispute resolution frameworks that are collective in nature, procedurally efficient, and aligned with the public interest—most notably the mechanism of Suspension of Debt Payment Obligations.⁹ Unlike conventional litigation, a Suspension of Debt Payment Obligations petition as governed by Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred as “Bankruptcy and Suspension of Debt Payment Obligations Law”) establishes a structured and expedited process for collective debt resolution.¹⁰

It places creditors, including Policyholders, in a position of active negotiation with the debtor, while granting the debtor an opportunity to restructure its financial obligations under the supervision of the commercial court. As such, Suspension of Debt Payment Obligations operates as a pre-insolvency legal remedy intended to facilitate financial rehabilitation rather than liquidation. This mechanism is particularly well-suited to the juridical and sociological characteristics of creditors in insurance insolvency contexts, especially Policyholders, who are often numerous, geographically dispersed, and similarly situated. In practice, the failure of an insurance company to pay a single claim frequently indicates a broader pattern of systemic financial distress,

potentially affecting a wide cohort of insured parties. Accordingly, Suspension of Debt Payment Obligations provides an appropriate and equitable legal forum for the collective, simultaneous, and structured resolution of outstanding claims owed to Policyholders.

Indonesia’s Bankruptcy and Suspension of Debt Payment Obligations Law was designed to address precisely these creditor-debtor relationships. The law aims to ensure equitable debt collection and preserve economic order by allowing creditors to seek judicial intervention when a debtor is unable or unwilling to pay.¹¹ The Suspension of Debt Payment Obligations procedure serves as a restructuring mechanism intended to temporarily halt all collections and give the debtor a chance to reorganize debt obligations.¹² If a compromise cannot be reached, it may lead to bankruptcy proceedings.

Under Article 2 of the Bankruptcy and Suspension of Debt Payment Obligations Law, any creditor may submit a petition for bankruptcy or Suspension of Debt Payment Obligations, provided that the debtor has at least two creditors and at least one debt that is due and payable, along with simple evidence of the existence of such debt. In principle, this legal avenue is open and accessible. However, Article 223 in conjunction with Article 2(5) of the Bankruptcy and Suspension of Debt Payment Obligations Law, in conjunction with Article 8B of Law No. 21 of 2011 as last amended by Law No. 4 of 2023 concerning the Financial Services Authority (hereinafter referred to as the “Financial Services Authority Law”), introduces a critical exception, which in the case of certain regulated financial institutions including banks and insurance companies, only

⁹ Rachmadi Usman, *Dimensi Hukum Kepailitan di Indonesia* (Jakarta: Sinar Grafika, 2019).

¹⁰ Andre Kiemas, Juan Matheus, dan Ariawan Gunadi, “Redefining Bankruptcy Law: Incorporating the Principle of Business Continuity for Fair Debt Resolution,” *Rechtsidee* 11, no. 2 (Desember 6, 2023): 1–18,

<https://rechtsidee.umsida.ac.id/index.php/rechtsidee/article/view/996>.

¹¹ Usman, *Dimensi Hukum Kepailitan di Indonesia*.

¹² Ahmad Yani dan Gunawan Widjaja, *Seri Hukum Bisnis: Kepailitan* (Jakarta: RajaGrafindo Persada, 2000).

the relevant supervisory authority namely the Financial Services Authority may submit the petitions for Suspension of Debt Payment Obligations.¹³ A similar position is reinforced for the petition of bankruptcy by Article 50(1) Law No. 40 of 2014 concerning Insurance (hereinafter referred to as the “Insurance Law”), which restrictively stipulates that the Financial Services Authority is the sole institution authorized to file a bankruptcy petition against an insurance company. Article 51(1) of the Insurance Law states that a creditor who is a Policyholder may submit a request to Financial Services Authority for Financial Services Authority to file a Suspension of Debt Payment Obligations petition against the insurance company.

This provision raises important questions about access to justice and creditor protection.¹⁴ While it aims to preserve the stability of financial institutions and prevent panic-induced liquidations, it also centralizes power in the hands of a single agency. When Financial Services Authority is responsive, this centralization may work as intended. But what happens when Financial Services Authority is silent? What if Policyholders request Financial Services Authority to act, and receive no reply?

The 2020 case involving PT Asuransi Jiwa Kresna brings these concerns to the forefront. Despite facing numerous default claims and protests from thousands of Policyholders, the Financial Services Authority failed to respond to formal requests to either initiate or explicitly reject the initiation of a Suspension of Debt Payment Obligations petition and remained

silent well beyond the statutory 30-day period.¹⁵ This institutional silence raises serious concerns about the absence of effective legal protection for Policyholders, who are not only being ignored by the defaulting insurance company but also by the very regulatory body mandated to oversee and safeguard the financial system. In which Financial Services Authority’s prolonged silence may not be legally neutral. Instead, such inaction could amount to a breach of administrative obligations, justifying a lawsuit for unlawful inaction. Whereas Policyholders whose rights have not been fulfilled should be entitled to full legal protection under the mandate of the 1945 Constitution of the Republic of Indonesia. This is affirmed by Article 27 paragraph (2), which stipulates that every citizen has the right to a livelihood that is decent and consistent with human dignity. Accordingly, the State bears the obligation to ensure protection for its citizens through a healthy, trustworthy, reliable, and competitive insurance industry—one that enhances legal certainty and security for Policyholders.¹⁶

The absence of legal protection led Policyholders to turn to Law No. 30 of 2014 concerning Administrative Governance (hereinafter referred to as the “Administrative Governance Law”), particularly Article 53, which states that silence from a government agency beyond a legally defined period may be deemed a *fictitious positive decision*, as an implicit approval. Based on this reasoning, Policyholders argued they could substitute for Financial Services Authority and submit a

¹³ Suwinto Johan dan Ariawan Gunadi, “Justice Aspects of Financial Service Authorities’s Competence for Bankruptcy and PKPU of Financial Service Institutions Based on Law No. 4 Year 2023,” *JURNAL MERCATORIA* 16, no. 1 (2023): 31–39.

¹⁴ Andika Jinaratana, Yofi Permatasari, dan Meliana Kartika H, “Legal Protection of Policyholders for Claim Issues Insurance coverage based on positive Indonesian law,” *Asian Journal of Social and Humanities* 1, no. 7 (2023): 302–309.

¹⁵ Johan dan Gunadi, “Justice Aspects of Financial Service Authorities’s Competence for Bankruptcy and PKPU of Financial Service Institutions Based on Law No. 4 Year 2023.”

¹⁶ Alif Widhi Pradana, “Policyholder protection for insurance companies with default claims: comparative analysis in Indonesia and the UK,” *Borobudur Law Review* 1, no. 2021 (3M): 1–15.

Suspension of Debt Payment Obligations petition themselves.

This legal conflict illustrates the normative tension between the Bankruptcy and Suspension of Debt Payment Obligations Law in conjunction with the Financial Services Authority Law, which restrict the authority to file Suspension of Debt Payment Obligations petitions exclusively to the Financial Services Authority, and Administrative Governance Law, which grants citizens legal remedies in the event of administrative silence through the doctrine of fictitious positive decisions. The intersection of these regulatory frameworks reveals a potential gap in the protection of citizens' rights, particularly when the inaction of a regulatory authority leaves no effective legal recourse for aggrieved parties.¹⁷

This research seeks to identify a point of reconciliation between the practical application of bankruptcy and Suspension of Debt Payment Obligations mechanisms and the principles of administrative governance by analyzing the legal conflict exemplified in Decision No. 389/Pdt.Sus-PKPU/2020/PN Niaga.Jkt.Pst. It aims to propose a normative and procedural bridge that ensures coherence between sectoral financial regulation and the broader obligations of public administration. The study also seeks to examine whether Decision No. 389/Pdt.Sus-PKPU/2020/PN Niaga.Jkt.Pst. fulfills the fundamental objectives of law, which are legal certainty, utility, and justice within the context of an evolving regulatory environment.

Based on the background above, this research aims to give answers to the following questions: How is the legal dualism of Financial

Services Authority's authority in filing Suspension of Debt Payment Obligations petitions against insurance companies? How can legal objectives be reconciled through a collective mechanism for justice in insurance insolvency amidst regulatory inertia by Financial Services Authority?

METHOD

This research is fundamentally a normative legal study that relies on secondary data, which consists of primary legal materials, secondary legal materials, and tertiary legal materials.¹⁸ The primary legal materials examined include statutory regulations relevant to Bankruptcy & Suspension of Debt Payment Obligations along with Administrative Law. Secondary legal materials comprise journal articles, academic books, and prior research related to the authority to conduct judicial review and rulings. Meanwhile, tertiary legal materials involve legal dictionaries and language dictionaries that support the discussion of the legal issues addressed.¹⁹

The data collection method employed is literature review using content analysis to examine the legal data utilized in the study.²⁰ Furthermore, in the context of data collection and analysis, the researcher adopts multiple approaches to legal research, namely the statutory approach, the conceptual approach, and the case approach. The statutory approach is applied to examine the relevant legislative frameworks, the conceptual approach is used to interpret and justify the analysis based on legal doctrines and principles, and the case approach is utilized to analyze judicial decisions, namely

¹⁷ Saverius Vanny Noviandri Prasetya Manaan, Maria Christina Dimalouw, dan W. Riawan Tjandra, "Legal Uncertainty in Positive Fictitious Applications under Law Number 30 of 2014 on Government Administration after the Enactment of Law Number 11 of 2020 on Job Creation," *International Journal of Social Science and Human Research* 07, no. 01 (2024): 200–206.

¹⁸ Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi*, 19 ed. (Jakarta: Prenada Media Group, 2019).

¹⁹ Ibid.

²⁰ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, 16 ed. (Jakarta: Rajawali Pers, 2014).

Decision No. 389/Pdt.Sus-PKPU/2020/PN Niaga.Jkt.Pst. to assess how courts have addressed the intersection of Administrative Governance Law and creditor rights in the insurance sector according to the Bankruptcy and Suspension of Debt Payment Obligations Law. Together, these approaches provide a comprehensive legal analysis grounded in authoritative sources and jurisprudence.

ANYLISIS AND DISCUSSION

The Legal Dualism of Financial Services Authority's Authority in Filing Suspension of Debt Payment Obligations Petitions Against Insurance Companies

Prior to the enactment of Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector (hereinafter referred as "Development and Strengthening of the Financial Sector Law"), the exclusive authority of the Financial Services Authority to submit a petition for Suspension of Debt Payment Obligations was rooted in a combination of statutory provisions, namely Article 223 in conjunction with Article 2(5) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, in conjunction with Article 55 of the Financial Services Authority Law. These provisions initially vested such authority in the Minister of Finance. However, as of 31 December 2012, with the operationalization of the Financial Services Authority Law, the authority previously held by the Minister of Finance in financial sectors, including insurance was transferred to Financial Services Authority. This regulatory framework was later affirmed and further clarified through Article 8B of the Development and Strengthening of the Financial Sector Law, which came into force on 12 January 2023. The provision expressly confirms Financial Services Authority's exclusive competence in initiating Suspension of Debt Payment Obligations proceedings against financial institutions under

its supervision, including insurance companies. Substantively, the transition from the former Financial Services Authority Law to the Development and Strengthening of the Financial Sector Law did not alter the core legal principle. In both iterations, the authority to file Suspension of Debt Payment Obligations petitions remains exclusively with Financial Services Authority, thereby preserving institutional continuity in financial sector governance.

The justification for vesting such singular authority in Financial Services Authority is grounded in the imperative to preserve economic stability within financial institutions that are highly dependent on public trust and serve as custodians of the assets of thousands of Policyholders. This exclusive competence is intended not merely as a regulatory privilege but as a systemic safeguard to prevent panic withdrawals, speculative litigation, and premature insolvency claims that could destabilize the financial system and compromise the interests of the wider public.

This approach aligns with global regulatory trends. In the United States, the initiation of insolvency proceedings against insurance companies is not conducted through federal bankruptcy courts but rather governed by specialized state insurance commissioners who exercise exclusive authority under state-specific Insurance Insolvency Laws. Similarly, in the European Union, the *Solvency II* Directive imposes a harmonized framework of prudential supervision that grants exclusive competence to national supervisory authorities to oversee and, where necessary, initiate winding-up procedures against insurers. Thus, although the Indonesian model—vested exclusively in the Financial Services Authority—may appear rigid, it remains consistent with prevailing comparative practices in other major jurisdictions. However, this regulatory structure operates under one crucial presumption: that the designated

gatekeeping authority, namely Financial Services Authority, is responsive, accountable, and administratively active in executing its statutory obligations.

The regulatory framework, while structurally sound, becomes problematic when the designated authority Financial Services Authority fails to perform its duties. This regulatory crisis becomes manifest in Decision No. 389/Pdt.Sus-PKPU/2020/PN Niaga.Jkt.Pst., in which a Suspension of Debt Payment Obligations petition was filed by Lukman Wibowo, a Policyholder acting in the capacity of a creditor, against PT Asuransi Jiwa Kresna, the insurer. Prior to filing the petition, numerous Policyholders who had experienced non-payment of their entitlements for several months had submitted formal requests urging Financial Services Authority to exercise its exclusive authority to file a Suspension of Debt Payment Obligations petition against PT Asuransi Jiwa Kresna. However, Financial Services Authority remained unresponsive for an extended period well beyond the statutory 30-day deadline for either granting or rejecting such a request. This prolonged inaction effectively paralyzed legal recourse for affected Policyholders and highlights a critical breakdown in regulatory accountability.

This regulatory vacuum created a condition of legal uncertainty and resulted in a deprivation of rights for the Policyholders. In response, the Policyholders proceeded to file a Suspension of Debt Payment Obligations petition directly against PT Asuransi Jiwa Kresna. Their legal argument was based on Article 53(2) Administrative Governance Law, invoking the concept of fictitious positive decisions, which stipulates that in cases of prolonged administrative silence, a request is deemed legally granted as a form of implicit approval. This provision was relied upon by the petitioners to claim that, due to Financial Services Authority's failure to act within the

statutory timeframe, they were entitled to substitute for the authority and proceed with the petition.

In its legal reasoning, the Panel of Judges considered that the applicant had demonstrated good faith in seeking justice. Consequently, the court concurred with the expert testimonies of Johanes Ibrahim Kosasih, an expert in insurance, bankruptcy, and suspension of debt payment obligations law, and Margarito Kamis, a constitutional law expert, who both acknowledged the existence of a legal vacuum regarding the procedure for filing a Suspension of Debt Payment Obligations petition in the case of PT Asuransi Jiwa Kresna. The court thus referred to Article 51(2) of the Insurance Law, in conjunction with Article 54(1) of Financial Services Authority Regulation No. 28/POJK.05/2015, which stipulates that Financial Services Authority must either approve or reject an application to file a bankruptcy petition within a maximum of 30 days from the date of complete submission. Given the principle of *mutatis mutandis*, the procedural rules governing bankruptcy petitions are equally applicable to Suspension of Debt Payment Obligations petitions.

As a state institution established by statute, the Financial Services Authority is classified under the executive branch within the framework of Indonesian constitutional law and is therefore bound by all applicable legislative and regulatory provisions. Pursuant to Article 53(3) of Administrative Governance Law, when Financial Services Authority exceeds the prescribed time limit for issuing a decision, the request submitted by the Policyholders to allow the filing of a Suspension of Debt Payment Obligations petition is deemed approved under the doctrine of fictitious positive decision. This doctrine is grounded in the principle that if a request is submitted to a public authority and no decision is rendered within the legally mandated period, the request is presumed granted. The

Commercial Court Panel of Judges of the Case further affirmed that such fictitious approval need not be subject to prior validation through a decision of the State Administrative Court to be effective. On this basis, the court acknowledged the legal standing of the Policyholders as the rightful petitioners in the Suspension of Debt Payment Obligations proceeding and consequently granted the petition against PT Asuransi Jiwa Kresna.

The approval of the Suspension of Debt Payment Obligations petition in this case was inconsistent with the applicable statutory framework, particularly within the bankruptcy and Suspension of Debt Payment Obligations regime. The decision rendered in Decision No. 389/Pdt.Sus-PKPU/2020/PN Niaga.Jkt.Pst. has generated legal uncertainty as to which party holds the legal standing and capacity to file a Suspension of Debt Payment Obligations petition against an insurance company. On one hand, under the prevailing Bankruptcy and Suspension of Debt Payment Obligations Law, the Financial Services Authority is the sole entity authorized to submit such a petition. On the other hand, the breakthrough argument invoking the Administrative Governance Law allows Policyholders, in their capacity as creditors, to directly file the petition. This legal contradiction presents an urgent need for resolution to ensure clarity in law enforcement. Mahmud Siregar emphasizes that legal certainty is not only about the essence of the law but also about how the law is implemented and materialized through judicial decisions. Therefore, the concept of legal certainty encompasses both normative content and procedural execution, and this must be reflected coherently in court rulings. The inconsistency presented by this case thus not only affects

doctrinal interpretation but also threatens the integrity and predictability of judicial outcomes.

To resolve this legal conflict, one must examine the hierarchy and interaction between overlapping legal norms. In legal theory, the doctrine of *lex specialis derogat legi generali* serves as a foundational principle in statutory interpretation. This principle is foundational to legal hermeneutics and ensures normative harmony and predictability.²¹ It implies that when two legal norms apply to the same subject matter, the more specific rule overrides the more general one.²² This principle ensures coherence and avoids normative contradiction within the legal system. Applied to the present case, Article 223 in conjunction with Article 2 paragraph (5) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, in conjunction with Article 55 Financial Services Authority Law, regulate bankruptcy procedures for specific entities, including insurance companies. These provisions not only define the competent authority to initiate insolvency proceedings but also reflect a legislative intent to shield the financial sector from systemic disruption caused by unregulated creditor actions. In contrast, Article 53 of Law No. 30 of 2014 on Government Administration creates a general framework that applies broadly to all state administrative bodies and their procedural obligations, including the doctrine of fictitious approval. As such, it is a *lex generalis* norm, designed to ensure responsiveness and protect citizen rights against bureaucratic silence, but not intended to displace specific procedural authorities created under sectoral statutes like the Bankruptcy Law or Financial Services Authority Law. As the Constitutional Court of Indonesia has affirmed, the principle of *lex specialis* is not only a tool of interpretation but a

²¹ Hans Kelsen, *General Theory of Law and State*, ed. Anders Wedberg (New York: Russell & Russell, 1961).

²² Ibid.

constitutional requirement for legal certainty (*rechtszekerheid*) and avoidance of jurisdictional overlap.

Accordingly, the principle of *lex specialis* means that the rules found in the Suspension of Debt Payment Obligations Law, which specifically govern bankruptcy and debt suspension law must be followed in commercial court proceedings. Since the Bankruptcy and Suspension of Debt Payment Obligations Law explicitly provides that only the Financial Services Authority holds the authority to file for bankruptcy or Suspension of Debt Payment Obligations against insurance companies, this special rule takes precedence over the broader provisions of general administrative law. Therefore, when Policyholders attempt to rely on Article 53 of the Administrative Governance Law, which permits a fictitious positive decision when a government agency fails to respond within a legally defined period, thus usurping Financial Services Authority's role, such reliance contravenes the *lex specialis* principle. The Administrative Governance Law itself functions as a general statute applicable to various administrative actions but does not override the specific and narrowly tailored authority granted to Financial Services Authority under the Bankruptcy and Suspension of Debt Payment Obligations Law. In which the misapplication practice of *lex generalis* norms to override *lex specialis* mandates would undermine legal certainty and generate jurisdictional incoherence. Therefore, Policyholders' attempts to invoke fictitious approval as a procedural gateway to substitute Financial Services Authority's exclusive authority in Suspension of Debt Payment Obligations proceedings cannot be justified by law.

This interpretation is reinforced by the Decision of the Chief of the Supreme Court of

the Republic of Indonesia No. 109/KMA/SK/IV/2020, particularly point 1.1.4, which provides technical procedural guidance in bankruptcy and Suspension of Debt Payment Obligations cases. It stipulates that any Suspension of Debt Payment Obligations petition involving an insurance company must be accompanied by an official letter of assignment from the leadership of Financial Services Authority. Thus, even at the procedural level, Policyholders are explicitly barred from independently initiating a Suspension of Debt Payment Obligations petition. This dual-layered restriction, substantive by the Bankruptcy and Suspension of Debt Payment Obligations Law and procedural by the Decision of the Chief of Supreme Court, confirms that the exclusive authority remains with Financial Services Authority, and Policyholders cannot legally substitute that role in bankruptcy court proceedings, even in cases of administrative silence.

The Commercial Court's acceptance of the Suspension of Debt Payment Obligations petition in Decision No. 389/Pdt.Sus-PKPU/2020/PN Niaga.Jkt.Pst reflected a pragmatic, justice-driven orientation. The court arguably sought to fill a vacuum created by Financial Services Authority's inaction. Yet, this judicial intervention raises questions of *ultra vires*, whether courts can disregard statutory mandates based on broader justice concerns. From a strict rule-of-law perspective, the judiciary is bound to uphold statutory boundaries.²³ While the court may interpret silence as negligence, it cannot assign itself or private actors powers expressly granted to Financial Services Authority.²⁴ Doing so undermines legislative intent and creates dangerous precedent for judicial overreach. This places the judiciary in a delicate position: it must uphold legal certainty while also responding to

²³ Ibid.

²⁴ Jimly Asshiddiqie, *Perihal Undang-Undang* (Jakarta: Konstitusi Press, 2006).

legitimate claims for justice. In this light, the more appropriate venue for redress may lie within the State Administrative Court, rather than the Commercial Court, in accordance with the proper separation of procedural jurisdictions.

Bridging Legal Objectives Through a Collective Path to Justice in Insurance Insolvency Amidst Financial Services Authority's Regulatory Inertia

Many legal scholars and practitioners argue that it is fundamentally unjust for the Financial Services Authority to retain exclusive authority to file a petition for Suspension of Debt Payment Obligations against insurance companies, while remaining conspicuously passive in the face of urgent and legitimate claims from Policyholders, as exemplified in the case of PT Asuransi Jiwa Kresna.²⁵ This regulatory inertia has prompted some to suggest that the Commercial Court should accept Suspension of Debt Payment Obligations petitions filed directly by Policyholders as a corrective measure. However, such a judicial maneuver, while perhaps motivated by a sense of justice, is not legally justifiable. Accepting a Suspension of Debt Payment Obligations petition from unauthorized parties would not only violate the express statutory mandate, particularly Article 223 jo. Article 2(5) of the Bankruptcy and Suspension of Debt Payment Obligations Law jo. Article 55 of the Financial Services Authority Law, but also risk undermining the legal coherence of the regulatory framework. Judicial sympathy cannot override legislative intent, especially when the legislature has deliberately concentrated this authority in a

designated supervisory institution, namely Financial Services Authority.²⁶

From the standpoint of substantive justice, as articulated by Aristotle, the state has a moral duty to ensure that legal rules fulfill their underlying purpose.²⁷ Justice demands that victims of a contractual breach—such as Policyholders who have paid premiums—are not left remediless. Financial Services Authority's silence, in this light, amounts to institutional abandonment. John Rawls' theory of procedural justice further highlights the deficiency. When the state builds procedures to protect rights but fails to execute them, the result is injustice.²⁸ Policyholders are denied their right not because the law is unclear, but because the state's agent refuses to act. Gustav Radbruch's formula is equally illuminating: when legal certainty and justice conflict, the latter must prevail, especially when the former leads to unbearable injustice. Yet, this does not suggest that courts or private actors can unilaterally override legal mandates. Instead, it implies that inaction must have legal consequences.

Against this backdrop, the doctrine of fictitious positive decision under Article 53 of Administration Governance Law should be properly understood as a procedural safeguard rather than a Bankruptcy and Suspension of Debt Payment Obligations related substantive override. It was not designed to shift institutional authority or alter substantive jurisdiction, as happened by the Court's Decision No. 389/Pdt.Sus-PKPU/2020/PN Niaga.Jkt.Pst. Rather, its function lies in protecting individuals from administrative silence that may lead to denial of justice, legal uncertainty, or violations of procedural fairness.

²⁵ Achmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*, Cetakan Ke. (Jakarta: Kencana, 2009).

²⁶ Kelsen, *General Theory of Law and State*.

²⁷ Richard Kraut, *Aristotle: Political Philosophy* (Oxford: Oxford University Press, 2002).

²⁸ John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971).

It is an instrument of procedural accountability, ensuring that state authorities cannot indefinitely withhold decisions and thus impair the legal rights of private individuals.

In this light, the invocation of fictitious approval by Policyholders is not a challenge to the Suspension of Debt Payment Obligations Law itself, nor an attempt to override Financial Services Authority's substantive authority. Instead, it constitutes a procedural trigger with consequences in a distinct legal domain namely, the law of administrative liability and governmental responsibility.²⁹ The implication of Financial Services Authority's failure to respond within the statutory period is not that its authority is transferred to another party, but that it becomes exposed to legal challenge under public law mechanisms, particularly through an administrative lawsuit before the State Administrative Court, where justice may still be rightfully pursued and attained.

Here lies the most significant implication: Financial Services Authority's failure to act within 30 days, despite being the sole authority legally mandated to file a Suspension of Debt Payment Obligations petition may constitute an unlawful governmental act (*onrechtmatige overheidsdaad*), the adjudication of which is governed by Supreme Court Regulation No. 2 of 2019 concerning Procedures for Lawsuits against Governmental Actions. According to Article 1365 of the Indonesian Civil Code, any act or omission by a government official that causes harm and is not justified by law may be challenged as a form of administrative tort. More specifically, under Law No. 5 of 1986 on the State Administrative Court, government inaction in response to a lawful and timely request constitutes a valid ground for judicial review.

Thus, the appropriate and legally consistent remedy for aggrieved Policyholders is not to submit a Suspension of Debt Payment Obligations petition on their own, but rather to file a lawsuit against Financial Services Authority in the State Administrative Court, seeking accountability for its failure to exercise its statutory mandate.³⁰ This course of action upholds fundamental constitutional principles of legality, transparency, accountability, and proportionality. In such a lawsuit, claimants may lawfully argue that Financial Services Authority's prolonged silence:

1. Violated its supervisory duties and legal mandate under Article 223 in conjunction with Article 2(5) Bankruptcy and Suspension of Debt Payment Obligations Law, in conjunction with Article 55 Financial Services Authority Law,
2. Contradicted Article 53 paragraph (3) of Law No. 30 of 2014 on Government Administration, which prescribes a duty to respond within 30 days, and
3. Caused significant financial loss, legal uncertainty, and the denial of access to justice for Policyholder, as creditors.

Accordingly, the petitum (prayer for relief) of the claim should to the court something like:

“Order and obligate the Financial Services Authority to submit a formal Suspension of Debt Payment Obligations petition to the Commercial Court against the concerned insurance company within a specified timeframe, in accordance with its exclusive authority as mandated by the Bankruptcy Law and the Financial Services Authority Law.”

This remedy ensures that regulatory exclusivity does not become a tool of institutional impunity, and that the public remains protected against unjustified regulatory inertia and absence. Such

²⁹ Mukti Fajar dan Yulianto Ahmad, *Dualisme Penelitian Hukum Normatif & Empiris* (Yogyakarta: Deepublish, 2017).

³⁰ Maria Farida Indrati S, *Ilmu Perundang-Undangan: Jenis, Fungsi, dan Materi Muatan* (Yogyakarta: Kanisius, 2007).

a framework aligns with the principle that legal authority must be exercised not only within the bounds of legality but also with transparency, accountability, and responsiveness to the public interest.³¹

Furthermore, it is legally unfounded for the Financial Services Authority to delay or obstruct the process of submitting a Suspension of Debt Payment Obligations petition on behalf of insurance creditors. From the perspective of financial consumer protection, such procrastination is inconsistent with the principles of good public service and may constitute a form of maladministration. Given that the business of insurance is fundamentally premised on public trust, the prolonged failure to fulfill claims especially when widespread, can reasonably be construed as a clear and evident indication of insolvency. Based on this, the likelihood that the unpaid claims affect many Policyholders and not only several Policyholders provides not only legal but also moral legitimacy in supporting the Suspension of Debt Payment Obligations petition. This reinforces the broader regulatory imperative to act decisively in safeguarding public confidence in the financial system.

The Financial Services Authority as an institution entrusted with maintaining financial system stability, must not exploit its exclusive authority as a means to delay or obstruct access to justice for creditors. The Suspension of Debt Payment Obligations mechanism does not inherently terminate a debtor's operations; rather, it provides a legal opportunity to reorganize a company's financial structure. This may include debt restructuring, debt-to-equity conversion, or rescheduling of payment obligations. These restructuring tools underscore that Suspension of Debt Payment Obligations serves not to disrupt, but to support

economic stability and safeguard consumer interests.³²

In accordance with the principles of good governance, an administrative authority such as Financial Services Authority is bound to act professionally, proportionally, and accountably, especially when Suspension of Debt Payment Obligations petitions arise from groups of creditors who have been broadly and systemically affected. Financial Services Authority cannot maintain a posture of neutrality or passivity under such circumstances. Instead, it has a constitutional and statutory obligation to uphold financial consumer protection, as aligned with the principle of due process of administration. When a mass of creditors lawfully assert their rights through formal legal channels, there is no justifiable basis for Financial Services Authority to remain inert or to delay the legal process.

Thus, while the *lex specialis* doctrine rightly restricts who may initiate insolvency proceedings against insurance companies, it does not shield the regulator from accountability. On the contrary, the failure of Financial Services Authority to act in a timely manner activates a separate legal responsibility: to justify its inaction or face legal consequences before a competent administrative tribunal, through *State Administrative Court*. This duality underscores the importance of distinguishing between substantive regulatory competence and procedural administrative duties, a nuance often neglected in overly rigid legal interpretations.

CONCLUSION

This study affirms the principle that under Indonesian law, only the Financial Services Authority has the authority to file for Bankruptcy or Suspension of Debt Payment Obligations against an insurance company. This

³¹Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakkan Hukum* (Jakarta: RajaGrafindo Persada, 1983).

³² Ni'matul Huda, *Hukum Tata Negara Indonesia* (Yogyakarta: Nusa Media, 2016).

lex specialis regime, grounded in Article 223 in conjunction with Article 2(5) of the Bankruptcy and Suspension of Debt Payment Obligations Law, in conjunction with Article 55 Financial Services Authority Law, exists to protect the integrity of the financial system and prevent systemic risks. While the doctrine of fictitious positive decision, found in Article 53 Administrative Governance Law aims to protect procedural justice, it cannot override sector-specific rules unless expressly authorized.

The court's grant towards the Policyholders' legal standing in the Kresna Life case is thus unjustified and reveals a regulatory gap. The failure of Financial Services Authority to act, however, is not without consequence. Under Indonesian administrative law, such inaction may constitute unlawful governmental conduct (*onrechtmatige overheidsdaad*). Policyholders may rightfully file a state administrative lawsuit to compel Financial Services Authority to fulfill its public obligations to file a Suspension of Debt Payment Obligations Petition towards the related Insurance Company. This ensures that exclusive authority does not become a shield for regulatory paralysis.

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