



The existence of law number 4 of 2023 on the development and strengthening of the financial sector for bankruptcy law in Indonesia

Raden Besse Kartoningrat, Isetyowati Andayani, Edi Krisharyanto

Department of Law, Wijaya Kusuma University Surabaya, Indonesia

Abstract

Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector (P2SK Law) as a replacement for the rules in the financial sector that have been using with the formation and improvement of new rules through the omnibus law system brings significant changes related to bankruptcy law for financial institutions in Indonesia. The method used in this paper is the normative method by examining the materials considered to draw conclusions. Analysis of the research results shows that the philosophy behind the formation of the P2SK Law is to create sustainable rules, avoid overlapping authority, and improve coordination between related institutions in the financial sector. This law provides strengthened authority to the OJK, especially in terms of requesting bankruptcy statements against financial institutions under its supervision. This strengthening emphasizes OJK's role in supervising and regulating the stability and health of the financial sector.

Keywords: Bankruptcy, financial services authority, financial institutions

Introduction

A. Background

The 2008-2010 financial crisis and the COVID-19 pandemic have highlighted the importance of an orderly insolvency resolution mechanism^[1]. The crisis begins in the United States, as the country with the number one economy in the world this crisis also impacts more sectors in the world including the banking sector. In Indonesia, bankruptcy law was established due to pressure from world bodies such as the ETO, IMF, and World Bank. When the monetary crisis occurred in 1998, there were many bankruptcy cases so that a Government Regulation in Lieu of Law Number 1 of 1998 concerning Bankruptcy was formed which was later refined in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

Banks as financial institutions that collect and at the same time channel public funds in the form of deposits, credit, or other forms in helping many people in improving living standards. Banks as financial intermediaries have a strategic place in supporting economic acceleration^[2]. As a financial institution that has a vital role in the circulation of money, banks need to maintain a level of trust in order to stabilize financial conditions in the community. This is a characteristic of the banking business from other businesses where banks are highly dependent on public trust.

Similar to banks, insurance as a financial institution in the field of risk transfer and sharing also raises funds through premium collection through insurance policy agreements. The policy is not only used as a risk transfer contract agreed by the parties which contains the rights and obligations that must be fulfilled. However, the policy also has a function as a basis of evidence in the event of a claim or dispute between the parties^[3].

The presence of insurance is due to human needs that want a sense of security and calm in living life. The rapid development of the times humans are more aware of the protection of health, property, welfare for themselves in old age and for families who will be left behind. Moreover, inflation about health is increasingly real and expensive so that in the face of uncertainty in life insurance institutions

are present to answer the needs of the community. Insurance is one of the products chosen by many people in minimizing risks that can cause losses to property and life by transferring these losses to insurance companies. However, if within a certain period of time no adverse events occur, the insurance company as the insurer has the opportunity to collect premiums paid by the insured parties^[4].

Not always the business activities of insurance, banking, and other financial business entities run well even though as a financial institution must always fulfill obligations and be responsible for customers whose funds have been collected. Banking difficulties are not infrequently experienced by banks so that banks are problematic. Likewise with insurance companies that cannot carry out agreements as they should such as defaults. The unstable business situation can often lead to bankruptcy and revocation of business licenses. Although this is not desired by all parties, both the community as customers and stakeholders. However, if there is a problematic financial institution, it must be handled in accordance with the provisions of the mechanism and applicable laws to protect the interests of all parties. Given the negative consequences of excessive risk-taking in the banking sector, it is important for policy-makers to understand which particular choices made by banks, as reflected in their business model, increase bank risk and raise the probability of failure^[5].

Bankruptcy is an alternative business that is carried out as a settlement effort for debtors who are unable to pay their debts and all obligations. Basically, bankruptcy itself aims to provide protection and legal certainty to creditors in an effort to obtain debt payments from the administration and management of the debtor's property that has been bankrupted. Every debtor who has debts cannot necessarily be bankrupted. As stated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as UUK-PKPU), the requirements for bankruptcy applications must have two or more creditors and do not pay in full at least one debt that has matured. In relation to banks or insurance companies with problems, bankruptcy can be filed with the Commercial Court.

Arrangements regarding bankruptcy of financial institutions are regulated in UUK-PKPU where the applicant for a bankruptcy petition against the debtor, in this case a bank, can only be made by Bank Indonesia as stipulated in Article 2 paragraph (3) UUK-PKPU. Similarly, insurance companies or other financial institutions as debtors can only apply for a bankruptcy petition by the Minister of Finance based on Article 2 paragraph (5) of UUK-PKPU. However, after the enactment of Law Number 21 of 2011 concerning the Financial Services Authority (hereinafter referred to as the OJK Law) there is a transfer of duties, functions and authority of the minister of finance to the OJK as referred to in Article 55 paragraph (1) of the OJK Law for financial services activities in financial institutions including the insurance sector. Similarly, the banking sector whose duties, functions, and authority were previously with Bank Indonesia were also transferred to the OJK. The transfer of authority has resulted in OJK's authority in bankrupting insurance companies and banks having a central role. Furthermore, in 2023 the government passed Law Number 4 of 2023 concerning Financial Sector Development and Strengthening (hereinafter referred to as the P2SK Law) which was formed to be able to adjust all regulations regarding the financial sector so that there is no overlap and harmonize regulations including regulations regarding bankruptcy of financial institutions so that there is no legal vacuum. From the background description above, the author needs to study and conduct research with the title "The Existence of Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector for Bankruptcy Law in Indonesia."

B. Problem formulation

1. What impact does the existence of Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector have on Bankruptcy Law in Indonesia?
2. What is the condition of bankruptcy law in Indonesia after the existence of Law No. 4 Year 2023 on the Development and Strengthening of the Financial Sector for Bankruptcy Law in Indonesia?

Conceptual clarifications

This research is normative legal research, namely research conducted by examining library materials which are secondary legal materials or also called library legal research. Research is basically a scientific activity related to analysis and construction, which is carried out methodologically, systematically, and consistently.

In normative legal research, there are several approaches. The approach serves to obtain information from various aspects regarding the issues that are being tried to find answers to^[6].

Discussion

A. Philosophy of law No. 4 of 2023 on financial sector development and strengthening

Rechtsvorming or the formation of laws and regulations is the process of formulating regulations that apply generally to everyone. Before the regulation is formed, it must be preceded by the planning stage and the preparation of an academic paper as stipulated in Article 1 number 1 of Law Number 12 of 2011 concerning the Formation of Legislation. The purpose of the formation of academic

papers in the formation of good laws and regulations is so that the regulations made can cover all aspects of law in society through the participation of academics who are experts in their fields and legal values that exist in society. Community involvement in law formation is needed in order to accommodate the aspirations of the community. This is necessary because the law is influenced by the values that grow in a society that is always dynamic and continues to experience the times.

The vital role of law as a legitimate means of regulating society in a state of law to ensure order, justice and certainty in society. So that law is known as law is a tool of social engineering as a regulator and driver of society. Jimly Asshiddiqie, stated that to realize an effective legal system, it is necessary to reorganize legal institutions supported by the quality and legal awareness of the community^[7].

In the formation of the Law, it is preceded by the preparation of an academic paper as a comprehensive approach carried out through scientific research methods to find out the reality of the interests of various parties both from the government and society. The academic paper contains ideas that contain legal material on certain fields that are reviewed holistically futuristic and from various aspects of science, references that contain urgency, conception, foundation, legal basis, principles used and thoughts about the norms contained in the form of Articles and can be accounted for legally outlined.

Developing an academic paper in the drafting of good legislation needs to pay attention to the following requirements, among others^[8]:

1. Use language that can be understood;
2. There is a general summary;
3. As a hint to the reader;
4. Written in clear sentences;
5. Include the source of the information; and
6. Include a conclusion.

As a real medium for public participation, academic papers contain explanations that contain the background of problems, reasons, and facts that encourage the process of formulating laws and regulations. In forming academic papers, it is necessary to pay attention to several aspects such as ideological, political, economic, social, security, and defense aspects. Pancasila as a legal ideal as well as a fundamental norm in Indonesia is certainly an aspect that needs to be considered in making laws and regulations. The draft law must contain the values contained in Pancasila and sourced from the 1945 Constitution.

The establishment of this Law intends to encourage the contribution of the financial sector to inclusive, sustainable and equitable economic growth in order to improve people's lives, reduce economic inequality, and realize a prosperous, advanced and dignified Indonesia. The objectives of this Law are to optimize the intermediation function of the financial sector to productive sector businesses; increase the funding portfolio to productive business sectors; increase ease of access and literacy to and about financial services; improve and expand financial sector inclusion; expand sources of long-term financing; increase the competitiveness and efficiency of the financial sector; develop instruments and strengthen risk mitigation; improve guidance, supervision, and strengthen protection of personal data of financial sector customers; strengthen the authority, responsibilities, duties, and functions of financial sector

regulators; and increase the competitiveness of the community so that it can do business effectively and efficiently.

Bankruptcy generally begins with financial problems, especially chronic illiquidity. Illiquidity can hinder the firm from carrying out its daily operational activities. This situation is also known as financial distress. The final stage of financial distress is bankruptcy. Bankruptcy occurs because management fails to overcome the firm's financial difficulties. It is a condition where a firm can no longer run its operations^[9].

In the banking industry, efficiency is not only used to view operational performance and management, but also plays a crucial role in seeing the probability of a company experiencing bankruptcy. Banks that have bankruptcy generally begin with low levels of efficiency^[10]. In the context of developing and strengthening the financial sector, the P2SK Law Bill is directed to organize and strengthen the objectives, functions, inter-institutional duties of each authority that have been regulated in the previous law with the establishment and improvement of new rules. This is necessary because many regulations regarding the financial industry have been outdated and used for 30 years. Therefore, complete regulations are needed related to the financial industry which continues to grow rapidly with the development of technology in the financial sector. This bill is a refinement of regulations regarding banking, capital markets, money markets and foreign exchange, insurance, policy guarantee programs, guarantee companies, pension funds, finance companies, and other non-bank financial industries.

Banking regulation is carried out in a comprehensive and planned manner from the aspects of macroprudential and microprudential regulation, to the exit policy (follow-up of bank supervision and guidance) for national banks. The changes made include ownership, banking consolidation, bank business activities, customer protection, bank secrecy and exceptions, bank regulation and supervision, and follow-up supervision, so that the framework can create a banking system and individual banks that are resilient, stable, competitive, grow sustainably and contribute to supporting national development^[11].

Regulations on the capital market have been promulgated since 1995, where all transactions of orders, sales, and purchases of securities still use typewriters and faxes. With the development of technology, capital market transaction activities have used systems and applications. Therefore, the content material of the Bill on the Development and Strengthening of the Financial Sector in the capital market sector will generally cover capital market activities, both conventional and sharia, both in terms of regulators, capital market players, namely investors, issuers, market organizers and self-regulatory organizations, capital market supporting institutions and professions, capital market mechanisms and / or rules of the game of market participants, regulatory and supervisory principles (market conduct principles and prudence) and coordination mechanisms, to law enforcement (types of violations and criminal acts, examination and investigation processes, and determination of sanctions).

Likewise, the regulatory direction related to insurance companies, money markets and foreign exchange, and other financial institutions is refined in the Financial Sector Development and Strengthening Bill. Which includes

delegation of authority and scope for regulation and supervision, scope of ITSK, obligation to obtain registered status or license for organizers, coordination and / or cooperation between supervisors in regulation and supervision, as well as financial literacy and fintech consumer protection. The ITSK content material in this bill will reach all ITSK providers and regulators and supervisors. The regulatory direction for the application of sustainable finance will encourage the creation of Sustainable Finance in the financial services sector that supports economic, social and environmental sustainability in the development process in Indonesia. The content material for the application of sustainable finance in this will reach Financial Services Institutions (LJK), Issuers and Public Companies in the context of transaction activities in the financial market including Ministries / Institutions and parties who become authorities that will encourage sustainable finance policies.

B. Bankruptcy arrangements in law No. 4 of 2023 on financial sector development and strengthening

The development of bankruptcy law began with the assumption that it was categorized as a crime. Where the action is based on debtors who avoid their obligations in paying debts to creditors. However, along with its development, bankruptcy law has become an alternative settlement for debt payment and collection that can be carried out by creditors. This development is based on the fact that it is no longer the debtor who does not want to pay debts, but the debtor who can no longer pay debts. This is done because the debtor's assets are smaller than the obligations that must be fulfilled^[12].

Bankruptcy law was first developed in Indonesia using derivatives from the Netherlands, namely Faillissements Verordening Stb. 1905 No. 217 jo Stb. 1906 No. 348. Then during the monetary crisis in Indonesia with the weakening of the rupiah against the dollar became the basis for the establishment of a new bankruptcy law at the insistence of the IMF (International Monetary Fund) through Government Regulation in Lieu of Law (Perpu) No. 1 of 1998 concerning Amendments to the Bankruptcy Law and then promulgated in Law Number 4 of 1998 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 1998 concerning Amendments to the Bankruptcy Law into Law (hereinafter referred to as Law No. 4/1998). Furthermore, in 2004 there was another change regarding bankruptcy law as outlined in UUK-PKPU. The background of the formation of the Law is based on the principles contained in Articles 1131 and 1132 of the Civil Code (KUHP), namely as an effort to prevent the seizure of debtors' assets by concurrent creditors and the arbitrary actions of separatist creditors who carry out their own executions, as well as fraud that can be committed by both debtors and their creditors^[13].

The definition of omnibus law consists of two words, namely omnibus which in Latin means a whole, every kind, all. While law itself means regulation so that if interpreted omnibus law is a regulation from a set of regulations that have different substances. Omnibus law was first applied in America which adheres to the common law legal system in 1888. Indonesia as a country that adheres to the civil law system makes the omnibus law cause discourse in its application. This is because the contents of the omnibus law regulate the substance of various cross-sectors. Meanwhile,

civil law has rigid assertiveness regarding the substance of what is regulated in the provisions of the Law formed. This can be seen through the title of the Law which specifically mentions and provides an overview of what is regulated therein ^[14].

Along with the times with the aim of overcoming various problems related to overlapping and disharmony of regulations, Indonesia passed several omnibus law regulations. The P2SK Law as an omnibus law replaces 17 regulations on the financial sector into one regulation consisting of 27 chapters and contains 341 articles. The scope of this regulation is about strengthening governance and public trust, encouraging long-term funding in the financial sector in financing sustainable development, literacy and protection of financial industry consumers, inclusion and innovation related to the financial industry ^[15]. The purpose of the omnibus law in the financial sector itself is to participate in the development of the financial industry related to the intermediary function of the productive sector, creating a competitive and efficient financial industry, developing financial instruments with risk mitigation, increasing financial literacy and inclusion, improving and strengthening the financial system for customer protection, and strengthening regulations on the financial industry. Furthermore, the regulation was formed to harmonize various regulations in the financial sector into a comprehensive regulation, namely the P2SK Law.

In the P2SK Law there are several provisions that have significantly changed the Bankruptcy and PKPU law in Indonesia. Among them are provisions containing applicants for bankruptcy statements against financial institutions and financial institutions involved in the bankruptcy and PKPU process. One of the things regulated in the P2SK Law is the authority of the OJK to be given absolute authority which is only owned by the OJK as previously regulated in Law No. 21 of 2011 concerning the Financial Services Authority. So that the OJK has the authority to file for bankruptcy of financial institutions. That authority is called formal power, which is power that comes from legislative power (granted by law) or executive power. The definition of authority (authority, *gezag*) is power that formally comes from legislative and governmental power, over a certain group of people, or power over a certain branch of government in the form of unanimity ^[16].

In addition to emphasizing the authority of OJK, the P2SK Law has also authorized Bank Indonesia as the only party that has the authority to submit applications for bankruptcy statements and / or PKPU against debtors who are:

Payment service providers and Payment System infrastructure providers;

1. Provider of rupiah money processing services;
2. Money Market brokerage firm;
3. Provider of trading facilities; clearing facilities for over-the-counter interest rate and exchange rate derivative transactions;
4. Other institutions that are licensed and/or designated by Bank Indonesia as long as their dissolution and/or bankruptcy is not regulated differently by the provisions of other laws and regulations.

Then the P2SK Law also made other changes to Law No. 23 of 1999 concerning Bank Indonesia, which was last amended by Law No. 6 of 2009 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2008

concerning the Second Amendment to Law No. 23 of 1999 concerning Bank Indonesia into Law (hereinafter referred to as the Bank Indonesia Law) by adding Article 35D. Which Article regulates the restrictions on the enforcement of bankruptcy on the assets of electronic money issuers. Where electronic money issuers, bankruptcy does not cover funds that have been separated by the issuer in fulfilling the issuer's obligations to users and / or providers of goods / services in the implementation of electronic money.

Arrangements regarding bankruptcy in the P2SK Law have also made changes to Law No. 7 of 1992 concerning banking which was previously amended by Perpu Ciptaker. In the Banking Law, the changes regarding bankruptcy are focused on the provisions regarding bank secrets. Article 40A states that based on the request of the curator in the bankruptcy process, the provisions related to bank secrecy do not apply. Based on the request of the Curator, the Bank is obliged to provide information in the form of information regarding the deposits of depositing customers in the Bank. It should be noted that this provision does not apply to information on the debtor's credit status or bank claims on the bankrupt debtor.

In the cooperative sector, the P2SK Law affirms and expands the position of cooperatives including in the financial services sector. So that all forms of licensing, regulation, and supervision in the service sector carried out by cooperatives are supervised by the OJK. As a party that has full authority over the cooperative business, the application for a bankruptcy declaration against the cooperative can only be requested by the OJK. This provision is also in line with the Supreme Court Circular Letter No. 1 of 2022 which regulates the dualism of authority over cooperatives, namely:

1. Application for Bankruptcy Declaration and application for Postponement of Debt Payment Obligation (PKPU) against cooperatives can only be submitted by the Minister in charge of government affairs in the field of cooperatives.
2. Requests for Bankruptcy Declarations and requests for Postponement of Debt Payment Obligations (PKPU) against cooperatives that run Microfinance Institutions (MFIs) whose licenses are from the Financial Services Authority (OJK) can only be submitted by OJK.

One of the changes regarding bankruptcy in Indonesia as regulated in the P2SK Law occurred in the financial market and foreign exchange sector. Significant changes occur in the close-out netting mechanism. If one party later experiences a default caused by bankruptcy, the other party can perform netting or debt set-off by calculating the value of the value or amount of the rights or obligations of the party in default so that the calculation of debts and receivables becomes simpler. The definition of close-out netting itself is the process of terminating all derivative transactions in a master agreement by calculating the netting value of the total rights and obligations of the defaulting party. Netting can be done with reference to market prices ^[17].

Close-out netting has not previously been defined nor has the implementation mechanism been regulated in previous laws. In fact, close-out netting provisions are considered very important to strengthen the financial sector. This mechanism is considered a legal instrument to help protect parties conducting financial transactions in the Financial

Market or Foreign Exchange Market from the risk of default. Close-out netting arrangements are an integral part of the overall legal framework to stabilize and minimize risks in financial markets by ensuring higher levels of liquidity, close-out netting helps prevent debilitating debt growth that could threaten financial arrangements and destabilize markets. The existence of a harmonized framework to govern close-out netting provides certainty and liquidity, which helps avoid market destabilization.

In accordance with the PPSK Law, the close-out netting provision can apply if the parties have agreed/required in the master agreement. The implementation of close-out netting can also be done before the bankruptcy verdict is pronounced or after it is pronounced. The implementation of close-out netting does not require a debt set-off application. In addition, close-out netting is also final. Thus, there is no attempt to cancel *actio puliana* on the termination of financial transactions in the financial market carried out based on the master agreement of financial transactions in the financial market. Further provisions related to close-out netting will be regulated in Bank Indonesia Regulation. The establishment of the P2SK Law is an effort to strengthen the financial sector in Indonesia. Related to bankruptcy and PKPU, the P2SK Law seeks to protect the rights and obligations of the parties involved in bankruptcy and PKPU cases involving financial services institutions.

C. The effect of the existence of law no. 4 of 2023 on the development and strengthening of the financial sector on the legal conditions of bankruptcy in Indonesia

The need for bankruptcy law is most evident in the case of a corporation borrowing from several creditors. Without bankruptcy law in place, coordination problems between creditors may trigger bankruptcy prematurely^[18]. Bankruptcy law distinguishes between debtors from the financial sector such as banks, insurance companies, securities companies, stock exchanges, and other financial institutions and other debtors, both individuals and companies. The competency of a request for bankruptcy declaration of a financial institution cannot be submitted by the customer as a direct party involved in the bankruptcy. Article 2 to paragraph (5) of the UUK-PKPU regulates the parties that can file bankruptcy petitions against financial institutions. However, after the establishment of OJK and the enactment of the OJK Law, the authority of the Minister of Finance, Bank Indonesia, and BAPEPAM was automatically transferred to OJK.

OJK is an independent institution free from interference from other parties that has the functions, duties, and authority to regulate, supervise, examine, and investigate as stipulated in the OJK Law. OJK has a function in organizing an integrated regulatory and supervisory system for all activities in the financial services sector. One of the objectives of the OJK Law is to transfer the authority of Bank Indonesia to OJK so that Bank Indonesia only focuses on macroprudential. However, the application for bankruptcy of banks after the enactment of the OJK remains with Bank Indonesia. OJK is only tasked with giving consideration to the systematic impact of a bank when its status is petitioned for bankruptcy.

The filing of bankruptcy petitions against insurance companies is carried out by the OJK through the OJK Board of Commissioners. By taking on a big responsibility towards

insurance customers as creditors to protect their civil rights, it becomes a juridical reason for OJK to file for bankruptcy against insurance companies. The bankruptcy petition procedure filed by OJK is basically the same as other creditors as bankruptcy applicants under UUK-PKPU. However, based on Article 51 of Law Number 40 of 2014 concerning Insurance (hereinafter referred to as the Insurance Law), before undergoing the procedural process, a request is made to OJK by the creditor, in this case the insurance customer, to submit a bankruptcy statement to the local district court. Submission of the application by the customer must be responded to with approval or rejection by OJK within 30 days of receipt.

The Insurance Law has regulated the regulation and supervision of insurance institutions carried out by the OJK and Article 223 of the UUK-PKPU as amended by Article 55 of the OJK Law regarding the authority of the OJK to submit bankruptcy applications against insurance companies. However, problems arise if the application by the customer is not responded to by OJK. So in practice, the commercial court that has the authority and decides bankruptcy and PKPU cases has granted a petition regarding the bankruptcy of an insurance company filed by an individual customer. In case No. 389/Pdt.SusPKPU/2020/PN-Niaga.Jkt.Pst, the judge in his legal considerations stated that the creditor had good faith in submitting a bankruptcy application and was based on the submission of an application to the OJK which was not responded to for months. Therefore, the judge agreed with the testimony of constitutional law expert Dr. Margarito Kamis, SH, M.Hum. and bankruptcy and PKPU expert Prof. Dr. Johannes Ibrahim Kosasih, SH, M.H. who testified in court that in this case it is necessary to apply Law No. 30 of 2014 concerning Government Administration (hereinafter referred to as the Government Administration Law). As a state institution, OJK is referred to as an executive coalition so that it must comply with all provisions of the Government Administration Law. In this case OJK did not respond to the customer's request as stipulated in Article 53 paragraphs (2) and (3) of the Government Administration Law, so legally the request was granted^[19].

The application of the principle of *lex specialist derogate lex generalis* in the case, in this case the bankruptcy of an insurance company which should be regulated in the Insurance Law but is set aside and considers the Government Administration Law, indicates a legal vacuum. In addition to insurance companies, a legal vacuum regarding bankruptcy applications has also occurred in case No. 08/Pdt.Sus.PAILIT/2015 PN.Niaga.Jkt.Pst involving PT AAA Sekuritas as a bankrupt debtor with individual creditors as applicants for bankruptcy statements. In addition, prior to the enactment of the P2SK Law, specific requirements regarding troubled banks and their resolution through bankruptcy mechanisms had not been concretely regulated in the UUK-PKPU or OJK Law.

The occurrence of a legal vacuum in resolving bankruptcy disputes in the financial sector encourages a new legal umbrella through the P2SK Law. As an effort to reform the financial sector with integrated arrangements in regulating institutions, development, industrial strengthening, and stability in the financial system, the P2SK Law regulates the authority between OJK, Bank Indonesia, the Ministry of Finance, and the Deposit Insurance Corporation so that there is no overlapping authority which results in blurred law enforcement due to dualism of authority.

The strengthening of OJK through the P2SK Law affects bankruptcy law in Indonesia by adding authority through Article 8B of the P2SK Law which amends Article 8 of the OJK Law. The contents of the Article emphasize that OJK is the only institution that has the authority to submit bankruptcy and PKPU applications against the financial institutions it supervises. So that the absolute authority given by the Law to OJK as the party authorized to file bankruptcy applications against financial institutions has closed the gap for customers as creditors in filing bankruptcy applications. Therefore, the legal certainty of debt payment settlement in the financial sector through bankruptcy settlement is at the full decision of OJK.

Conclusions

The establishment of the P2SK Law in the financial sector aims to encourage the contribution of the financial sector to inclusive, sustainable and equitable economic growth, so it is necessary to regulate the objectives, functions, duties between institutions in each authority that have been regulated in the previous law with the establishment and improvement of new rules. This is necessary because many regulations regarding the financial industry are outdated. The P2SK Law as an omnibus law replaces 17 regulations regarding the financial sector into one regulation consisting of 27 chapters and contains 341 articles. Which is where the Bankruptcy and PKPU law in Indonesia has undergone several significant changes, one of which is the competence of bankruptcy applicants for financial institutions. This is an effort of the P2SK Law to protect the rights and obligations of the parties involved in bankruptcy and PKPU cases involving financial institutions. The existence of the P2SK Law provides for the addition and strengthening of OJK's authority as the party authorized to file bankruptcy applications against absolute financial institutions. This is to avoid legal vacuum and overlapping regulations that result in vague law enforcement.

Recommendations

The establishment of the P2SK Law still does not answer all problems in the financial sector, especially in bankruptcy. If OJK as having absolute authority in filing bankruptcy and PKPU applications does not respond to submissions made by customers, there will be a legal vacuum. There needs to be other alternatives and implementing regulations for the P2SK Law as an effort to protect the civil rights of customers in bankruptcy and PKPU against financial institutions.

References

- 1 Abdul Kadir Muhammad. Indonesian Insurance Law, Bandung, Citra Aditya Bakti Cet. VI, 2019.
- 2 Ann Seidman, Robert B Seidman, Nalin Abeyesekere. Drafting Laws in a Changing Democratic Society: a Guide for Lawmakers, translation, Second edition, Elliptical Project I, Jakarta, Ministry of Justice and Human Rights of the Republic of Indonesia, 2001.
- 3 Ariawan Gunadi et al. Legal Politics, Legal Reform, and Alternative Dispute Resolution: Implications of Law No. 4 of 2023 Related to the Financial Industry, Jakarta, Faculty of Law, Tarumanegara University, 2023.
- 4 Muhadi. Basics of Insurance Law, Depok, PT. Raja Grafindo Persada, 2017.
- 5 Academic Paper of the Bill on Financial Sector Development and Strengthening, draft dated July 6, 2022.
- 6 Peter Mahmud Marzuki. Legal Research, Jakarta, Kencana Perdana Media Group, 2016.
- 7 SF Marbun, State administrative justice and administrative remedies in Indonesia, Yogyakarta, UII Press, 2013.
- 8 Adonis Antoniadis. Commercial Bank Failures During the Great Recession: The Real (Estate) Story, ECB Working Paper 1779, 2015.
- 9 Alvita Novanilia, Elza Syarief. Quo Vadis Settlement of Bankruptcy Cases and Postponement of Debt Payment Obligations (PKPU) in Sharia Financial Institutions, Journal of Law And Policy Transformation, Volume 6, Number 2, December, 2021.
- 10 N Berger, WC Hunter, SG Timme. The efficiency of financial institutions: A review and preview of research past, present and future, J. Bank. Financ, 1993:17(2-3).
- 11 Arni Surwanti, et al. predicting corporate bankruptcy in Indonesia's transportation industry, Journal of Applied Management (JAM), 2022:20(2).
- 12 Bart M Lambrecht. Liquidation, Bailout, and Bail-In: Insolvency Resolution Mechanisms and Bank Lending, Journal Of Financial And Quantitative Analysis, 2022-2023, 58(1).
- 13 Lambok Marisi Jakobus Sidabutar. Bankruptcy Law in the Execution of Corporate Property as Payment of Restitution, Integrity Anti-Corruption Journal, 2019, 05(2).
- 14 Leverages Marinka, Ahmad Suryono. The Authority to File Bankruptcy Applications against Insurance Companies After the Establishment of OJK (Study of Decision Number 389/Pdt.Sus-PKPU/2020/PN-Niaga.Jkt.Pst), Indonesian Journal of Law and Justice, 2024, 1(3).
- 15 Matej Marinc, Razvan Vlahu. The Economic Perspective of Bankruptcy Law, DNB Working Paper, No. 310/August, 2011.
- 16 Ni Made Jaya Senastri, Luh Putu Suryani. The Function of Academic Paper (NA) in the Formation of Regional Regulation Drafts, Kertha Wicaksana, 2018, 12(1).
- 17 Financial Services Authority. Consultative Paper: Capital Adequacy for Banks' Exposure to Central Counterparties, Department of Banking Research and Regulation, 2020.
- 18 Olivia Pauline Hartanti, Rosa Agustina. Legal Vacancy Against Creditors Who Do Not Want to Submit Assets Listed in the Bankruptcy Estate, Bonum Commune Business Law Journal, 2022, 5(2).
- 19 Yuliana Syafitri. Implications of the Issuance of Omnibus Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector (P2SK Law) on the Role of the Financial Services Authority (OJK) in the Financial Sector, Unes Law Review, 2023, 6(1).