Justice Aspects of Financial Service Authorities’s Competence for Bankruptcy and PKPU of Financial Service Institutions Based on Law No. 4 Year 2023

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Abstract

The Law on the Development and Strengthening of the Financial Sector was legalized by President Joko Widodo. The Act is known as Law No. 4 of 2023 often known as the P2SK Law, which stipulates that the Financial Services Authority or Otoritas Jasa Keuangan (OJK) is the only party that has the authority to file for bankruptcy and postpone debt payment obligations for financial service institutions. This research will provide novelty, especially on the definition of justice in the financial services sector, especially related to the interests of consumers and creditors with regulatory authority. This right has eliminated the creditor rights of insolvent financial service institutions. Creditors do not have any rights or legal action against defaulting or insolvent financial institutions. This research aims to examine the authority of OJK over bankruptcy and PKPU of Financial Services Institutions and justice for other creditors and consumers according to the OJK’s authority. This researchers employed the normative juridical method. This study concluded that the authority of the OJK must be reviewed with consideration of the authority already possessed by the OJK, practical conditions in the business world specifically for financial service institutions, and the position and rights of creditors for loans to financial service institutions. The results of the study also found that the authority of the Financial Services Authority did not reflect the value of justice for consumers and creditors

Keywords: Bankruptcy; Financial Service Institutions; Financial Service Authorities; Deferral of Debt Obligations

INTRODUCTION

Law No. 37 of 2004 concerning Bankruptcy and Suspension of Obligations and Debt Payments or Kepailitan dan Penundaan Kewajiban dan Pembayaran Utang (PKPU) has regulated the requirements for filing bankruptcy and PKPU for a company as a debtor. Debtors who have a minimum of two or more creditors with at least one debt that is past due and collectible debt may file for bankruptcy and/or PKPU. Bankruptcy and/or PKPU must be decided by a court. In bankruptcy, all assets of a debtor who has been declared bankrupt and whose settlement is overseen by a supervising judge are confiscated. While creditors are those with collectible receivables. Meanwhile, creditors are people who have receivables that can be collected.

President Joko Widodo has enacted the Law on the Development and Strengthening of the Financial Sector or Undang-Undang tentang Pengembangan dan Penguatan Sektor Keuangan (UU P2SK) (Pratama 2023). The P2SK Law covers five concerns: strengthening financial authority institutions, strengthening governance and public trust, encouraging long-term funding in the financial sector for financing sustainable development, protecting consumers in the financial industry and literacy, financial inclusion, and innovation (Kristianus 2023). The P2K Law consists of 27 chapters and 341 articles that supersede 17 financial industry-related statutes. (Indraini 2023).

The P2SK Law contains several controversies. One of them is the Financial Services Authority or Otoritas Jasa Keuangan (OJK), which is the only party that has authority over the bankruptcy and PKPU of financial services institutions. This research is unique in discussing specifically the authority of the OJK as the only party entitled to file for bankruptcy of a financial services institution. OJK’s authority has been expanded from that in Law No. 21 of 2011 concerning the Financial Services Authority. OJK’s authority does not reflect the principles of justice and balance (Suwinto Johan et al. 2022).

OJK was formed on the basis of many cross-sectoral issues in the financial industry. (Diba, Disemadi, and Prananingtyas 2020). OJK has the role of supervising the activities of the financial industry so that it can grow steadily and sustainably and gain public trust (Ridho 2020). Prior to the existence of the OJK, banking was regulated by Bank Indonesia (Pikahulan 2020). Meanwhile, other non-bank financial service institutions are regulated by the ministry of finance (Supriatna 2020). The supervisory system for financial service institutions is one of the ways to create stability in the financial industry (Falihah, Abrini, and Paraya 2020). OJK supervision of financial institutions includes preventive and repressive supervision (Saad, Usman, and Burhanuddin 2020).

Many financial institutions, particularly insurance companies, receive payments. Financial Services Institutions are those that manage finances originating from the public. Banking manages deposits from the public. Insurance is an institution that manages public funds for retirement and when needed. Securities companies manage investment funds from the public.

This has caused public unrest. The insurance company’s customer seeks compensation for the insurance company’s default. Insurance customers cannot file for bankruptcy against insurance companies based on Law No. 21 of 2011. The bankruptcy authority for insurance companies only belongs to the Financial Services Authority (Haryadi 2021). Asuransi Jiwasraya experienced defaults on policy payments to its customers. Insurance companies are required to follow Insurance Law No. 40 of 2004. Insurance is also regulated in the Commercial Code, while bankruptcy requirements are regulated in Law No. 37 of 2004 (Verayanthi and Kurniawan 2021). OJK,
through its board of commissioners, can petition the commercial court for the bankruptcy of an insurance company in order to achieve legal certainty and legal justice (Anggara and Warsifah 2022). However, submission of a bankruptcy application to the Commercial Court can be submitted by two customers who can prove their claims are due. The decision to accept this bankruptcy application depends on the beliefs and knowledge of the judge, clerk, and court concerned (Alwi 2021).

OJK will facilitate the settlement of customer complaints (Musyafah 2019). Disputes between consumers and financial institutions have occurred in almost all financial service institutions. These disputes include those between microfinance institutions and consumers, disputes in the capital market under Law No. 8 of 1995 concerning capital markets (Suwinto Johan, Ariawan, and Yuan 2022), other disputes between capital market supporting professions and capital market issuers have also occurred (Suwinto Johan and Adam 2022). Creditors or customer can be classified into preferred creditors, separatist creditors and concurrent creditors. Separatist creditors are collateralized creditors and concurrent creditors are unsecured creditors.

In addition, technology-based financial services or financial technology need to be regulated by the institutions that will supervise and regulate this industry. UU No. 21 of 2011 does not include OJK’s authority regarding regulation of the financial technology industry (Faried and Dewi 2020). The regulation of the financial industry requires a special institution or special regulation (Johan & Sugiarto, 2022). UU No. 4 of 2023 has included financial technology as part of OJK’s authority. Before Law No. 4 of 2023, the foundation for OJK supervision of financial technology is Bank Indonesia Regulation (PBI) No. 19/23/PBI/2017 AND POJK NO. 77/POJK.01/2016 (Zein 2019).

OJK has full authority for regulating and supervising the financial services sector based on Law No. 21 of 2011 and Law No. 4 of 2023 (Loilewen and Titawati 2020). Under this supervision, OJK can issue warning sanctions up to the revocation of business licenses for financial services institutions (Simbolon 2019). OJK’s authority includes criminal sanctions against related parties (Suwinto Johan 2022a).

OJK pays debts to parties who do business with financial institutions. This levy is a source of financing for the OJK. This levy is stipulated in Government Regulation No. 11 of 2014 (Uspitasari, Koewahyono, and Soekesi 2020). However, the OJK claim has been amended by Law No. 4 of 2023.

Constitutional Court Decision No. 25/PUU-XII/2014, which removes the word "free from interference from other parties" in Article 1 Point 1 of the OJK Law. So that the OJK is an independent institution, that has the functions, duties, and authority of regulation, supervision, examination, and investigation (Isharyanto and Laxamana 2017).

This research will focus on the theory of justice, the theory of benefits and the theory of legal certainty. This is due to the interests of investors and creditors in claiming their rights to financial service institutions that have defaulted. Creditors are unable to collect until the financial services institution is bankrupt. Based on the P2SK Law, OJK has the authority to conduct bankruptcy and PKPU for financial service institutions. This research is unique in discussing the recently issued P2SK Law compared to the Bankruptcy and PKPU Laws and the OJK Law.

OJK’s authority will be reviewed from the perspective of fairness, benefits and legal certainty for parties with creditor status. Creditors can claim their rights, but financial service institutions cannot be bankrupt. Creditors can only collect, if we go bankrupt we have to submit it to the OJK.
OJK will submit to the Commercial Court for a bankruptcy or PKPU decision. After being submitted to the Commercial Court, creditors can participate in the process of bankruptcy and PKPU.

The research will discuss the theory of justice. The theory will be the basis for the formation of laws and regulations. Laws and regulations form a better and stronger financial services industry against potential crises that will occur. Discussions related to justice is related to the rights of creditors and the authority of the OJK as the only institution that has absolute rights in bankruptcy and PKPU for financial service institutions. If the OJK has the authority for PKPU, then the OJK’s authority removes the authority of all other creditors in approving the homologation (conciliation proposal) of financial service institutions. OJK represents all creditors and all creditors do not have voting rights on the settlement proposal submitted by the debtor.

The theory of justice is seen as suitable to be used as a tool for analyzing this research, because: The position of creditors' claims against financial service institutions is ruled out. The position of creditors takes precedence, it will have an impact on the economy as a whole. From the point of view of distributive justice theory, this is unfair because it does not give justice to everyone based on their merits. The theory of legal expediency is the next analytical knife to analyze the benefits of the Financial Sector Development and Strengthening Law, especially related to the position of OJK and creditors of financial service institutions. In addition, the discussion will also cover legal benefits, legal justice and legal certainty regarding the regulation regarding the authority of the Financial Services Authority for financial service institutions.

Based on the background above, this research has the following research questions: What is the position of OJK as the only party authorized to file bankruptcy and PKPU for financial service institutions? Does OJK's authority over this reflect the principles of justice and balance?

**RESEARCH METHODS**

This research used a normative juridical method. This study examined the primary research materials, secondary research materials, and other research materials (Marzuki 2017). Other research materials are published article materials including news on research topics. It also examined the synchronization of existing laws and regulations both vertically and horizontally. This research is in the form of normative juridical. The object of this

Investor funds will be able to enter the capital market and banking in Indonesia. Banking and capital markets will support economic development. With economic development, Indonesia will achieve its ideals, namely towards a just and prosperous society. Regulations that provide legal certainty, legal benefits and legal justice will make investors feel comfortable investing in Indonesia. With the existence of investor funds, development that requires financing becomes easier and faster.

Arrangements regarding bankruptcy and PKPU are based on Law no. 4 of 2023 concerning Strengthening and Development of the Financial Sector (P2SK) and Law no. 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt (UU K and PKPU) accompanied by Law no. 21 of 2011 concerning the Financial Services Authority (OJK). In addition, the discussion will also cover legal benefits, legal justice and legal certainty regarding the regulation regarding the authority of the Financial Services Authority for financial service institutions.
research is the authority of the OJK in accordance with Law No.4 of 2023 concerning the authority of the OJK over the bankruptcy of financial services institutions. The research was conducted from March 2023 to May 2023. Data collection was based on purposive sampling.

The researchers reviews from the side of directors, shareholders, and the company. The primary research material was the 1945 Constitution and Law No. 4 Year 2023, Law No. 37 Year 2004. Meanwhile, the secondary research materials consisted of scientific research articles, books, results of proceedings, or research seminars. Then, other research materials were available in various communication media such as research articles and media publications or news (Suwinto Johan 2022b).

RESULTS AND DISCUSSION

The position of Financial Services Authority (OJK) as the only party authorized to file bankruptcy and Postponement of Debt Payment Obligations (PKPU) for financial service institutions

OJK’s authority based on Law 21 of 2011 is to supervise and regulate the financial industry. Supervision includes granting licenses for the business activities of financial service institutions and supervising the prudential aspects of financial service institutions. Financial services institutions are industries that require special supervision because they have broad implications for the economy and people's lives in general.

OJK also has regulatory duties or authority over financial service institutions which include establishing and ensuring the implementation of regulations that support the implementation of laws. The application of this regulation is known as the Financial Services Authority Regulation (POJK). OJK also has regulatory authority covering the establishment of policies in the financial industry to the establishment of OJK’s internal organizational structure. This authority is owned by the OJK board of commissioners.

Based on Article 1 point 6 of Law no. 4 of 2023, OJK has the functions, duties and authorities to regulate, supervise, inspect and investigate financial service institutions. The fourth part of Article 8 of the P2SK Law stipulates that the Board of Commissioners is the highest leader of the OJK, led by the Chairman of the Board of Commissioners. Article 8A and Article 8B of the P2SK Law stipulates that the OJK is the only party authorized to apply for a declaration of bankruptcy and/or PKPU against debtors that are financial service institutions.

OJK is led by the Board of Commissioners. Decisions made by the OJK Board of Commissioners are based on deliberation for consensus. However, if no agreement is reached, the decision will be based on majority vote. Based on article 25 of the P2SK Law, the chairman of the board of commissioners has the authority to represent OJK inside and outside the court.

Law no. 4 of 2023 article 8B has given authority to the OJK as the only party that can file for bankruptcy and postponement of debt payment obligations to financial service institutions. This authority has enhanced OJK’s ability to supervise financial service institutions. The previous authority has been determined in Law no. 21 of 2011 concerning the Financial Services Authority and Law no. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. Previously, OJK’s authority was limited to consumer-to-consumer or C2C businesses, such as the insurance industry, insurance-related industries, and the financial industry, especially banking. Previously, OJK’s authority was only on bankruptcy authority. Filing for bankruptcy can be an extension of the PKPU filing submitted by
creditors or debtors. Thus, based on UU K and PKPU, creditors and debtors can only submit up to PKPU, cannot file for bankruptcy in a commercial court, unless the OJK approves the bankruptcy of the financial services institution.

Prior to the entry into force of Law no. 4 of 2023, Bankruptcy and PKPU applications can be submitted by creditors for financial service institutions that have creditors, such as finance companies. Where creditors can take bankruptcy and PKPU against financial service institutions in accordance with Law no. 37 of 2004. This submission was made through the relevant commercial court.

Based on the P2SK Law article No. 72, the chairman of the board of commissioners is the party with the most authority in determining the position of financial service institutions experiencing financial problems or defaults. Based on the P2SK Law, OJK will have a supervisory unit in which OJK supervisory members are bodies whose function is to assist the House of Representatives (DPR) in carrying out supervision of OJK in order to improve its performance, accountability, independence, transparency and creditability.

Based on the P2SK Law article 1 (6), OJK has the authority or penalty process for financial service institutions in the form of administrative sanctions, such as written warnings up to revocation of business licenses. OJK also has the authority to investigate criminal acts in the financial services sector. OJK has bankruptcy authority and/or PKPU which will require a longer process than the filings made by creditors. The OJK must go through a process of warnings, administrative sanctions and filing for bankruptcy before it is decided by the commercial court. This has been seen in the process of filing for bankruptcy of an insurance company by the OJK. Some people filed for bankruptcy of an insurance company to the commercial court, one example is Kresna Life insurance.

By considering the authority possessed by OJK, the right to file for bankruptcy and PKPU should not only be given to OJK as the only institution that can file for bankruptcy and PKPU for financial services institutions. OJK already has the authority to revoke the license of a financial service institution; by revoking the license, the financial service institution has experienced a condition of default on its customers so that indirectly, the revocation has resulted in the financial service institution going bankrupt.

The concentration of power in the OJK institution, especially the board or chairman of the board of commissioners, has the potential to result in erroneous decision making. Filing for bankruptcy or/and PKPU will result in a financial services institution in suspended animation. The revocation of the license for a financial service institution has resulted in a financial service institution being in default. OJK’s authority is not in accordance with the principle of justice, where the creditor has a bill but cannot submit the claim, when the debtor is in default.

Authority of Financial Services Authority (OJK) over Bankruptcy and Postponement of Debt Payment Obligations (PKPU) for Financial Services Institutions does not reflect the principle of justice

Pension funds manage pension savings from the public. The community is a party that keeps their funds in financial service institutions. Banking is a party that provides loans to finance companies. The community is also an investor in securities issued by financial service institutions. Creditors provide loans to financial service institutions. Consumers trust their funds to financial service institutions. However, financial service institutions are unable to fulfill their obligations. Only OJK has the authority to file for bankruptcy and PKPU. Consumers and creditors face risks to
financial service institutions, in the event of a financial crisis.

The community or people in this case are the creditor of financial services institutions. They have the right to withdraw the money in accordance with the fund management agreement as agreed at the beginning. The people are creditors from banks, financial institutions, insurance companies, securities companies and also pension funds. This is explained in Figure 1.

![Figure 1: Relationship between Consumer or Creditors and Financial Services Institutions](image)

The people should have the authority to claim their rights to financial service institutions. A bankruptcy filing decision that is only given to the OJK will slow down the process. OJK can apply for bankruptcy, but this institution will go through a process that takes a long time. OJK will be able to take sanctions, revoke licenses, and apply for bankruptcy. This lengthy process results in the potential for diversion of funds by financial service institutions.

CONCLUSION

The authority of the OJK as the only party that can apply for bankruptcy and postponement of payment of debts of financial service institutions has neglected creditors' rights to loans of financial service institutions. OJK's authority will also slow down the process of debt settlement or liquidation of financial service institutions. OJK's authority also overlaps with other authorities in imposing sanctions on financial service institutions. OJK as a supervisory institution must be separated from the function of applying for liquidation or bankruptcy. This research has drawbacks by focusing on normative juridical research. On the other hand, this research can be developed by conducting field research, for example through a survey of the opinions of business actors.

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BIBLIOGRAPHY


