

LEGAL UNCERTAINTY AND CREDITOR PROTECTION IN THE BANKRUPTCY REGIME FOR INSURANCE COMPANIES IN INDONESIA

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Abstract This article examines the legal uncertainty surrounding Indonesia's framework for insurance company insolvency, with a particular focus on creditor protection. While current regulations grant the Financial Services Authority (OJK) exclusive authority to initiate bankruptcy petitions to safeguard financial stability and the public interest, this centralized model raises significant concerns regarding transparency, procedural fairness, and the limited remedies available to policyholders and other creditors. Employing normative and doctrinal legal research methods, the study analyzes statutory provisions, judicial decisions, and theoretical perspectives on legal protection, certainty, and the economic role of law. A comparative analysis with the Netherlands, the United States, and Singapore reveals that these jurisdictions have developed more structured insolvency regimes and effective policyholder guarantee mechanisms. The findings demonstrate that Indonesia's system, though normatively grounded, perpetuates legal uncertainty through excessive reliance on regulatory discretion, the absence of operational policyholder protection schemes, and delays in creditor remedies. To address these deficiencies, the study recommends objective criteria for OJK's filing authority, acceleration of the Policy Guarantee Program under the Indonesia Deposit Insurance Corporation (LPS), enhanced judicial oversight, inter-agency coordination, and strengthened legal literacy for policyholders.

Keywords Creditor protection; insurance bankruptcy; legal uncertainty

1 Introduction

The insurance sector constitutes a critical component of the national economy, yet remains inherently vulnerable to insolvency risks that jeopardize policyholder protection. Major default cases such as Jiwasraya—a state-owned insurance company—during 2018–2019, which resulted from mismanagement and fraudulent practices (including a Ponzi scheme and window-dressing of financial reports), severely undermined public trust (Hidajat, 2021). Similarly, the Kresna Life case highlights similar fragility; the company failed to honor approximately 12,000 insurance claims totaling IDR 6.4 trillion, leading the Financial Services Authority (OJK) to revoke its business license in 2023 (ASPN, 2024). Creditors of Kresna Life are estimated to receive only around 20% of their submitted claims during liquidation proceedings (Mahatma, 2024). These situations raise questions regarding how Indonesia's legal framework for insurance company bankruptcy ensures legal certainty and creditor protection, particularly for policyholders.

Legally, insurance companies in Indonesia are subject to special bankruptcy provisions. Article 2(5) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations stipulates that if the debtor is an insurance company, reinsurance company, pension fund, or a state-owned enterprise engaged in the public interest, only the Minister of Finance may file for bankruptcy (Anggara & Warsifah, 2022). Following the establishment of OJK, this authority was transferred; Article 8B of Law

No. 4 of 2023 on the Development and Strengthening of the Financial Sector (P2SK Law) confirms that only OJK holds the authority to initiate bankruptcy or restructuring filings against insurance companies. This means that creditors, including policyholders, cannot independently file for bankruptcy but must instead request action from OJK ([Chofifah et.al., 2023](#)). While this provision is designed to safeguard public interest and financial stability, it also raises concerns about creditors' access to justice.

From the standpoint of legal certainty theory, the law must offer clarity, consistency, and predictability to all parties involved ([Panjaitan et.al., 2022](#)). The exclusive filing authority of OJK warrants evaluation to determine whether it meets these principles—for instance, whether procedures are transparent, consistently followed by the regulator, and allow creditors to anticipate how their rights will be addressed ([Manihuruk et.al., 2020](#)). Meanwhile, legal protection theory posits that the law must shield the rights of legal subjects—including creditors and policyholders—from arbitrariness and ensure they can enjoy the entitlements promised by the law ([Syazali et.al., 2022](#); [Sigalingging et.al., 2022](#); [Syahran & Marwanto, 2020](#)). In this context, it is critical to assess whether current bankruptcy regulations provide sufficient safeguards for creditors, such as through priority claims or guarantee mechanisms, and whether any legal gaps create undue harm.

The literature review indicates that research on the bankruptcy of insurance companies in Indonesia remains limited. Previous studies emphasize the importance of regulatory roles in bankruptcy proceedings and their impact on creditors. For example, debates over the authority of OJK versus creditors' rights [Saraswati et al., \(2019\)](#), suggest potential tensions between stability objectives and legal certainty for creditors. The international experience illustrates various models: the Netherlands applies an administrative resolution regime under its central bank; the United States relies on state-level receiverships supported by the State Insurance Guaranty Association (SIGA) or guaranty associations; and Singapore employs a Policy Owners' Protection Scheme to insure policyholders. Comparative legal studies suggest that Indonesia could benefit from adopting aspects of these systems to enhance creditor protection without compromising financial stability ([Brinkhoff et.al., 2022](#); [International Monetary Fund and Capital Market Department, 2024](#)).

Based on the above, this study aims to doctrinally and normatively analyze legal certainty and creditor protection within Indonesia's insurance company bankruptcy regulations, including a comparative analysis with the systems in the Netherlands, the United States, and Singapore. The research questions include: First, how do Indonesia's positive laws (Bankruptcy Law, Insurance Law, P2SK Law, and OJK regulations) regulate the bankruptcy of insurance companies and what are the implications for creditors? Second, do these provisions adequately ensure legal certainty and creditor protection (especially for policyholders) from a legal theory perspective? and third, what lessons can be learned from comparative practices in the Netherlands, the U.S., and Singapore to enhance Indonesia's legal framework? The study is expected to produce prescriptive recommendations for regulatory and procedural improvements to ensure a balance between legal certainty, creditor protection, and industry stability.

This study employs a doctrinal legal research method with a prescriptive approach ([Elias & Levinkind, 2004](#); [Langbroek et.al., 2017](#)). The data used are secondary in nature, comprising statutory regulations, academic literature (journals and books), court decisions, as well as relevant reports and articles. The analysis applies the following four approaches:

First, statutory approach that involves an examination of positive legal provisions governing insurance company bankruptcy and debt restructuring procedures in

Indonesia. It particularly analyzes Law No. 37/2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU), as amended and interpreted; Law No. 40/2014 on Insurance (regarding policyholder rights); and Law No. 4/2023 on the Development and Strengthening of the Financial Sector (P2SK Law), which amended the financial sector bankruptcy regime. This is complemented by OJK Regulations, including POJK No. 28/POJK.05/2015 and its amendment POJK No. 38/2024 on Dissolution, Liquidation, and Bankruptcy of Insurance Companies. These provisions are interpreted systematically to understand the prevailing legal framework.

Second, conceptual approach applies legal theories as normative analytical tools, particularly the theory of legal certainty and the theory of legal protection. As Adipuspito explains, the legal certainty theory—rooted in the works of Hans Kelsen, Gustav Radbruch, and Jan M. Otto—is used to assess the clarity and consistency of bankruptcy rules applicable to insurance companies (Adipuspito, 2020). Meanwhile, the legal protection theory—as articulated by Philipus M. Hadjon and Satjipto Rahardjo—serves to evaluate the extent to which creditors' rights are protected under current legal instruments (Atmajaya, 2018).

Third, comparative approach. Following Lukito, the comparative approach is used to examine and contrast the legal framework and practices of insurance insolvency in Indonesia with those of other jurisdictions: the Netherlands, the United States, and Singapore (Lukito, 2022). The Netherlands is selected due to the historical influence of Dutch law on Indonesia and its progressive insurance resolution regime. The U.S. represents the common law system with distinctive insurer receivership processes managed by state regulators and the existence of guaranty schemes. Singapore was chosen for its modern and well-structured insurance protection framework (administered by the Monetary Authority of Singapore and the Policy Owners' Protection Scheme). Data for comparison are drawn from international academic literature, foreign regulations, and official reports (Menski, 2006; Ginsburg, 2011; Mousourakis, 2019; Reed, 2022).

Fourth, case study approach examines real-world case studies to evaluate the application and implications of existing regulations. The domestic cases analyzed include PT Asuransi Jiwasraya (Persero) and PT Asuransi Jiwa Kresna (Kresna Life), to identify legal challenges and assess the practical effectiveness of the regulatory framework (Malawat, 2023; Nola, 2020). Comparative references are also made to selected international cases such as the Executive Life or Penn Treaty insolvency proceedings in the U.S. (Houston, 2023; Cothren & D'Alleva, 2021; Holly, 2002) and the *Vie d'Or* case in the Netherlands during the 1990s (Tzankova, 2016; Tecmen, 2020).

The data collection process involved library research and a comprehensive review of legal databases and journal repositories. The data were then analyzed using qualitative content analysis, which interprets the textual meaning of legal documents, and comparative analysis to identify similarities and differences across legal systems.

2 Literature overview

Legal Framework for Insurance Company Bankruptcy in Indonesia

Based on regulatory analysis, Indonesia applies a special legal regime for the bankruptcy of insurance companies. This is established under a *lex specialis* in the Bankruptcy Law. Article 2(1) of Law No. 37/2004 generally permits creditors to file for bankruptcy against a debtor who has at least two creditors and overdue debt. However, Article 2(5) provides an exception: “*In the case of a debtor being an insurance company, reinsurance company, pension fund, or a state-owned enterprise operating in the public interest, the bankruptcy petition may only be submitted by the Minister of*

Finance.” This means that only a governmental authority (formerly the Minister of Finance) may file a bankruptcy petition against insurance companies—neither creditors nor the companies themselves may do so.

Following the establishment of the Financial Services Authority (OJK) in 2011, which assumed supervisory functions over the insurance sector from the Ministry of Finance, regulatory adjustments were made. In 2023, Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector (P2SK Law) was enacted, designating OJK as the sole authority entitled to submit bankruptcy and PKPU (debt restructuring) petitions for insurance companies. Thus, the legal standing to initiate bankruptcy proceedings lies exclusively with the regulator. The same restriction applies to PKPU petitions, as reaffirmed by Article 2(5) of Law No. 37/2004, aiming to prevent irresponsible parties from coercively restructuring debts (Mahatma, 2024; Pramono, 2023; Shubhan, 2020).

This provision restricts creditors’—particularly policyholders’—access to formal bankruptcy procedures. They cannot directly petition the Commercial Court and must instead channel their requests through OJK. OJK has regulated such requests through POJK No. 28/POJK.05/2015 (amended by POJK No. 38/2024), which allows creditors to submit a written request to OJK for bankruptcy initiation, along with supporting data and evidence of debt. OJK is given a maximum of 30 days to respond with either approval or rejection, as stipulated in Article 54(1) POJK 28/2015 (Sugiyono et.al., 2023). In cases where OJK fails to respond within this period, some creditors have attempted to invoke the doctrine of positive fictitious decision under the Administrative Procedure Law to claim their petition is automatically granted (Maridjo, 2022). However, OJK has consistently rejected such petitions when it deems bankruptcy unnecessary. For example, in the Kresna Life Case (2020), OJK publicly rejected a PKPU petition filed by several policyholders through legal counsel in August 2020 (ASPN, 2024). OJK chose to pursue internal supervision and restructuring efforts before ultimately revoking the company’s license in 2023 when recovery failed.

In addition to the Bankruptcy Law, Law No. 40 of 2014 on Insurance provides special protection for policyholders in cases of bankruptcy or liquidation. Article 52 stipulates that: (1) policyholders, the insured, or participants shall have priority over other creditors in asset distribution; (2) the statutory insurance guarantee fund must be used first to fulfill obligations to policyholders/insured parties; and (3) only after these claims are satisfied may any surplus be distributed to other creditors. These provisions are further reinforced by OJK regulations on liquidation procedures. Accordingly, policyholders are legally recognized as preferred creditors, receiving priority in asset distribution during liquidation or bankruptcy. This constitutes a specific form of legal protection for privileged creditors (Samiaji & Latumahina, 2022).

Furthermore, a review of POJK No. 28/2015 (as amended by POJK No. 38/2024) affirms OJK's central role in the entire dissolution, liquidation, and bankruptcy process of insurance companies. These regulations cover procedures from license revocation to the formation of liquidation teams and claim payment mechanisms. Key amendments introduced in POJK 38/2024 include: a) liquidation may be extended from 2 to a maximum of 4 years, after which OJK may initiate alternative resolution mechanisms; b) prioritization of payments is clarified—liquidators must prioritize returning premiums or settling obligations to policyholders/insured parties before other creditors; c) portfolio transfers are encouraged—policies may be transferred to other companies, or premiums returned if the transfer fails, ensuring continued benefits for policyholders; d) proportional returns (pro-rata) are applied if assets are insufficient (Sativa, 2022; Sinaga, 2022).

These provisions aim to enhance the clarity and fairness of the resolution process for insurance company liquidation, thus improving legal certainty and justice for policyholders.

3 Research Case-Based Analysis of Legal and Institutional Responses to Insurance Failures

Findings from case studies highlight the challenges in implementing the aforementioned regulations. In the Jiwasraya case, the government did not pursue a formal bankruptcy process through the court despite the company's acute insolvency (with negative equity of IDR 38.6 trillion and debts of IDR 19.3 trillion as of November 2020) (Astuti, 2019). Instead, an extrajudicial restructuring was undertaken: Jiwasraya's clean and clear assets were transferred to a new state-owned insurance company (IFG Life), along with policy transfers involving significant benefit reductions (haircuts). The government injected IDR 22 trillion in state capital (PMN) into IFG Life to ensure continued payment of restructured claims. While this approach succeeded in averting open bankruptcy—which could have disrupted industry confidence—many Jiwasraya policyholders had to accept reduced policy values (e.g., only 71% of benefits were paid in five-year installments without interest under the Plan B restructuring package). From the creditors' perspective, this solution remains controversial. On one hand, their claims were not entirely lost; on the other, their contractual rights were diminished, and the restructuring was imposed top-down, without any objection mechanism through the Commercial Court (Deriyanti et.al., 2022; Haryanti, 2023). Some policyholders even filed civil lawsuits and administrative claims (PTUN), arguing that the restructuring violated their legal rights. Despite these challenges, the restructuring was eventually executed (Sativa, 2022).

In contrast, the Kresna Life case presents a different scenario. Here, creditors (policyholders) attempted to initiate a PKPU process in 2020, hoping for debt restructuring via the court. However, as previously discussed, OJK—holding sole authority—rejected the petition (Samiaji & Latumahina, 2022). OJK employed a phased approach, including: limiting Kresna's business operations (partial suspension) and repeatedly issuing Financial Recovery Plan (RPK) requirements. When Kresna failed to meet the ten RPKs imposed, OJK revoked its business license in June 2023. This revocation automatically triggered liquidation by a team of liquidators appointed by OJK. During this period, policyholders were left waiting for clarity on payments. Data indicated that Kresna's Risk-Based Capital (RBC) was far below requirements (solvency ratio < 0%), leading to initial estimates that only ~20% of claims might be repaid. Some policyholders filed lawsuits challenging OJK's decisions, including the license revocation. In a controversial move, the Administrative Court (PTUN) temporarily granted the shareholder's lawsuit, overturning the revocation on procedural grounds—though OJK appealed the ruling (ASPN, 2024). This legal back-and-forth reveals procedural uncertainty: while the regulator acted to protect consumers, it encountered prolonged legal resistance. Eventually, the Supreme Court upheld OJK's authority to revoke Kresna's license, allowing liquidation to proceed under regulatory supervision (Parinduri et.al., 2022).

Another significant development is the establishment of the Policy Guarantee Institution (LPP) under the 2023 Financial Sector Development and Strengthening Law (P2SK). This law mandated the Indonesia Deposit Insurance Corporation (LPS) to guarantee insurance policies and participate in resolving failed insurance companies (Gultom et.al., 2024). This represents a major shift, as Indonesia previously lacked any

policyholder protection scheme comparable to bank deposit insurance. Under the P2SK Law, LPP is now tasked with ensuring full or partial recovery of policyholders' rights from liquidated insurers, thereby aiming to restore public confidence in the industry (Palyama, 2022). LPP is also authorized to perform resolution actions for failed insurers, mirroring its role in handling troubled banks.

As of 2025, this policy has not yet been tested in practice, but the establishment of the Policy Guarantee Program (PPP) under LPS is expected to fill the protection gap. LPS has announced that the program will cover both life and general insurance policyholders, using a scheme similar to deposit insurance (Kasmiri, 2024). Although technical details—such as coverage limits and industry contribution premiums—are still being finalized, this regulatory measure is a critical response to the Jiwasraya and Kresna Life cases.

4 Discussion

Legal Certainty Analysis of OJK's Exclusive Bankruptcy Authority

The preceding findings demonstrate that Indonesia's insurance bankruptcy regime emphasizes the regulator's role—Otoritas Jasa Keuangan (OJK)—as the sole institutional gatekeeper (Christian & Edenela, 2020; Syukron, 2023). Doctrinally, this policy is grounded in the concept of a “public interest entity,” where insurance companies are deemed essential to public welfare due to their function in securing policyholders' livelihoods. Therefore, their insolvency proceedings require state supervision (Diba et.al., 2020; Pikahulan, 2020). The primary goal of such regulatory control is to prevent systemic panic and safeguard the public interest, especially avoiding sudden claim runs when an insurer collapses (World Bank Group, 2021).

The statutory stipulation that only OJK may petition for bankruptcy offers jurisdictional clarity. Stakeholders know precisely who has the standing to initiate insolvency proceedings, avoiding issues of competing petitions or jurisdictional confusion. This aligns with Jan M. Otto's criteria for legal certainty: the availability of clear rules and recognized state authority (Panjaitan et.al., 2022; Nur, 2023). Additionally, having OJK as the exclusive petitioner supports consistency, as every case undergoes uniform regulatory review rather than depending on individual creditor initiatives. In theory, this structure enhances predictability, as OJK procedures are codified (e.g., POJK 28/2015). Creditors need not race to the courts but may submit a formal request to OJK (Deriyanti et.al., 2022; Haryanti, 2023; Pikahulan, 2020).

Paradoxically, centralizing such authority in OJK may generate legal uncertainty when procedural consistency is absent or discretionary power is too broad (Anggara & Warsifah, 2022). According to legal certainty theory, state action must also conform to existing legal rules. In practice, OJK possesses wide discretion to delay or deny bankruptcy filings, even if the statutory requirements—such as the presence of two creditors and overdue debt—are met. The Kresna Life case illustrates how creditors face temporal uncertainty, unable to anticipate when OJK will act, due to the absence of a clear “trigger threshold” for insolvency petitions (Samiaji & Latumahina, 2022). Instead, OJK may repeatedly allow restructuring efforts, effectively postponing creditor rights enforcement. In other instances—such as Jiwasraya—OJK opted for extrajudicial restructuring, bypassing bankruptcy proceedings entirely. Such inconsistent regulatory responses reduce normative certainty and hinder creditor behavior adjustment (Panjaitan et.al., 2022; Nur, 2023). This dilemma reveals the urgent need for a more detailed regulatory guideline regarding OJK's use of bankruptcy powers. To uphold legal certainty, OJK should establish objective thresholds (e.g., solvency ratios or claim default benchmarks) to trigger bankruptcy petitions. Without such benchmarks, creditor

rights risk being subject to arbitrary administrative decisions. According to the theory of legal protection, arbitrary laws violate legal subjects' rights to due enforcement (Panjaitan et.al., 2022; Nur, 2023).

Comparatively, under the Netherlands' Financial Supervision Act (*Wet financieel toezicht*), the central bank (DNB) has the authority to initiate insolvency or resolution, but only upon meeting clear "*failing or likely to fail*" standards (Dekker, 2012). Furthermore, DNB must ensure that its actions—bankruptcy or resolution—do not result in higher losses for policyholders than under standard insolvency scenarios (Brinkhoff et.al., 2022; International Monetary Fund and Capital Market Department, 2024). Indonesia can adopt such a model by clearly demarcating the balance between financial stability and creditor rights in its regulatory framework.

From the perspective of judicial oversight, limiting standing exclusively to OJK also limits early court involvement in bankruptcy adjudication. Typically, bankruptcy entails judicial review from the outset. Under the current system, courts are involved only after OJK initiates proceedings. Creditors have no direct forum to compel OJK action. Some scholars propose an administrative appeal or limited judicial review mechanism for cases where OJK denies creditor requests—to provide procedural certainty (Hartley, 2024; Zuroidah & Prasetyo, 2024).

Analysis of Creditor (Policyholder) Protection

Existing regulations in Indonesia have incorporated the principle of protecting policyholders as primary creditors. Granting policyholders priority over concurrent creditors reflects the legal protection doctrine—safeguarding the most vulnerable parties. Insurance involves the pooling of public funds, and it is therefore logical for policyholders to be given preferential status. In general bankruptcy procedures, employees and the state (e.g., tax authorities) often rank as preferred creditors. However, in insurance insolvency, policyholders are prioritized; indeed, Law No. 40 of 2014 mandates the establishment of a specific insurance guarantee fund to satisfy policyholder claims. This aligns with Satjipto Rahardjo's view as cited in Julyano, that legal protection "*provides legal shelter so that citizens can enjoy their rights.*" Thus, normatively, the legal framework accommodates substantial protection through priority rights (Julyano & Sulistyawan, 2019).

However, substantive protection alone is insufficient without corresponding procedural and institutional safeguards (Syazali et.al., 2022). The Jiwasraya and Kresna Life cases illustrate that, despite policyholders' formal priority status, they remain exposed to significant losses in practice—e.g., Jiwasraya's benefit haircut and the 20% estimated recovery rate in Kresna. These shortcomings stem from limited asset availability, significant liabilities, delayed resolution processes, and the absence of external compensation mechanisms. Legal protection, therefore, must be viewed through a broader systemic lens (Adha & Adriaman, 2025; Syamsuddin & Putri, 2022).

The creation of a policyholder guarantee scheme through the 2023 Financial Sector Development and Strengthening Law (UU P2SK) is a critical milestone. With LPS (Indonesia's Deposit Insurance Corporation) mandated to provide policyholder guarantees, insured parties now have an added protection layer beyond the insurer's residual assets (Syafitri, 2023). This mirrors mechanisms in Singapore and the United States. For instance, Singapore's Policy Owners' Protection (PPF) Scheme provides 100% coverage for general insurance policies and capped protection for most life insurance benefits, ensuring consumer claims are honored by the protection fund if an insurer fails (Booyesen, 2013).

Similarly, in the U.S., each state has a guaranty association that pays claims up to statutory limits (e.g., \$300,000 for annuities or \$500,000 for life insurance), funded by

industry contributions, and activated upon liquidation orders (Hartley, 2024). Indonesia’s model with LPS follows this logic. Normatively, this arrangement strengthens creditor protection since policyholder rights are “guaranteed by law,” rather than being contingent solely on the remaining assets. However, successful implementation depends on LPS issuing technical regulations (e.g., coverage limits, contribution schemes, claims procedures) and conducting effective public communication. Without such clarity, legal certainty for policyholders remains questionable (Kasmiri, 2024; Gultom et.al., 2024).

Creditor protection also depends on OJK's role in conducting early intervention. OJK holds the authority to impose capital adequacy requirements, issue formal directives, and even appoint statutory managers, if necessary (Pamungkas, 2021). Firm implementation of such preventive oversight is a form of ex-ante legal protection—mitigating risks before creditor rights are jeopardized due to undisclosed or worsening financial conditions. Failure to supervise effectively can be construed as a failure to protect policyholders, as alleged in the Kresna Life case where OJK was accused of regulatory inaction (ASPN, 2024).

On the curative side, OJK—as the exclusive bankruptcy petitioner—is expected to act in creditors' best interests. Bankruptcy should be pursued when it is the optimal path for protecting creditor claims. Delayed action by OJK in the face of worsening insolvency erodes asset values and lowers recovery rates due to continued operational costs or distressed asset sales. This was evident in large-scale insolvencies such as the Penn Treaty (U.S.), where delayed resolution depleted insurer assets and prolonged uncertainty for policyholders (Hartley, 2024). Hence, “*time is of the essence*” in ensuring creditor protection, and regulations should incentivize timely action from OJK.

Legal protection also entails ensuring that creditors have sufficient access to timely and accurate information. In the Jiwasraya case, the restructuring was accompanied by formal announcements and proposed options to policyholders (albeit as a “take it or leave it” offer) (Hartley, 2024). In Kresna, OJK issued public statements during the liquidation process and urged policyholders to follow established claims procedures. Such initiatives are vital in minimizing confusion and misinformation, which could harm creditor interests. Regulation should mandate that within a specified timeframe after license revocation, the Liquidation Team (under OJK oversight) must publish a clear settlement roadmap. This supports transparency as a pillar of good governance, reinforcing legal certainty (OJK, 2023).

Comparative Study: The Netherlands, United States, and Singapore

To gain a broader perspective, this paper compares Indonesia's system with three other jurisdictions: the Netherlands, the United States, and Singapore (Mousourakis, 2019). The following table summarizes the key differences between these systems in addressing insurance company insolvency and their implications for legal certainty and creditor protection:

Table 1. **Comparison of Insurance Insolvency Regimes**

Country	Regime Model	Resolution Authority	Policyholder Guarantee Scheme	Creditor Access
Indonesia	Judicial-based, full control by OJK	OJK (exclusive filter to Commercial Court)	LPS Planned	Limited – creditors cannot file directly
Netherlands	Administrative Resolution Regime	De Nederlandsche Bank (DNB)	Strong Structural	Creditors may be involved in

USA	Guaranty Association + Judicial Process	State Regulators & Courts	Safeguards & State Guaranty Associations	resolution planning Creditors can file claims with GA's
Singapore	Hybrid (Judicial + SDIC-administered protection)	MAS & the Courts	SDIC (PPF Scheme)	Policyholders are automatically protected

Source: Adapted from [Booyesen, \(2013\)](#); [DNB \(2025\)](#); [Hartley, \(2024\)](#).

Based on this comparative table, Indonesia remains reliant on formal judicial mechanisms and highly centralized authority under OJK, yet lacks an operational payout guarantee—creating both procedural uncertainty and a gap in material protection. The Netherlands emphasizes resolution over liquidation, implemented through its central bank with a more predictive and technocratic process—ensuring legal certainty even in the absence of a formal policyholder guarantee scheme. The United States adopts a state-based approach, with nearly all states operating Guaranty Associations that activate during insurance failures—well-structured and efficient in execution. Singapore represents a near-optimal model, combining judicial proceedings with automatic protection administered by SDIC, alongside strong public education and no need for manual claims filing by creditors.

In the Netherlands, the insolvency regime for insurance companies falls under the supervision of *De Nederlandsche Bank* (DNB) as the resolution authority. While insurers can be declared bankrupt through standard court procedures under the *Faillissementswet*, if their failure is deemed to have a significant systemic or societal impact, DNB may assume control through special resolution mechanisms ([DNB, 2025](#)). The *Wet herstel en afwikkeling van verzekeraars* (in force since 2019) provides DNB with four resolution tools: bail-in (including haircutting liabilities and policyholder claims), transfer of business (portfolio sale to another insurer), bridge institution, and asset & liability management vehicle ([Brinkhoff et al., 2022](#)). This framework ensures policy continuity—where possible, portfolios are transferred so that coverage remains uninterrupted. If the insurer is not considered systemic (e.g., small or with transferrable products), DNB may instead initiate regular insolvency proceedings ([International Monetary Fund and Capital Market Department, 2024](#)). The Netherlands does not have a national insurance guarantee fund. However, the resolution process is designed to ensure that policyholders will not be worse off than under bankruptcy ([Brinkhoff et al., 2022](#)).

From a legal certainty perspective, the Dutch model provides a clear dual pathway: regular bankruptcy vs. special resolution. Creditors can anticipate which track will be taken based on explicit criteria such as firm size and systemic risk. For creditor protection, early intervention (e.g., asset sales before depletion) helps minimize losses. The downside is that policyholders are not government-guaranteed—if assets fall short, losses are still possible, although mitigated.

In contrast, the U.S. prohibits insurance companies from filing under the Federal Bankruptcy Code. Instead, insurance insolvencies are governed at the state level. The insurance commissioner of the state where the insurer is domiciled petitions the state court for receivership—which may be conservation, rehabilitation, or liquidation ([Hartley, 2024](#)). Only the regulator can initiate this process; creditors or policyholders cannot. Upon a court's declaration of insolvency, State Guaranty Associations (GA) step in. These are industry-funded entities that pay policyholder claims up to statutory limits (e.g., \$300,000 for annuities or \$500,000 for life policies, depending on the state) ([Hartley, 2024](#)). Funds are raised ex-post through assessments on active insurers in that

state. The U.S. model, while decentralized, offers mature and predictable protection. Policyholders understand that claims will be covered within guarantee limits. Though the court process exists, it's typically uncontested since most insurers do not resist liquidation when initiated by regulators. Protection is among the strongest globally—nearly all retail policyholders are covered, though non-policyholder creditors (e.g., reinsurers, bondholders) often incur substantial losses. However, claim delays and complex processes may occur, as evidenced in cases like Executive Life.

Singapore integrates a robust regulatory approach with a pre-funded guarantee system. The Monetary Authority of Singapore (MAS) has broad powers under the Insurance Act to monitor insurer solvency (Nordin et.al., 2018; Yin & He, 2018). If insolvency is suspected, MAS may order restructuring, appoint a statutory manager, limit asset transfers, or ultimately petition the High Court for liquidation. Like Indonesia, only MAS can initiate winding-up proceedings; individual creditors may not (Chen, 2016). Policyholder protection is ensured through the Policy Owners' Protection (PPF) Scheme, administered by the Singapore Deposit Insurance Corporation (SDIC). PPF guarantees 100% of general insurance obligations and life insurance up to SGD 500,000 in cash value or SGD 100,000 per benefit type per insured. When an insurer fails, the PPF can either transfer portfolios to another company with financial support or pay claims directly (Allen & Gledhill, 2019). Singapore's model provides legal certainty: policyholders have guaranteed outcomes, and the legal route is controlled and predictable. MAS is known for proactive interventions, often revoking licenses before severe deficits occur. Combined with the financial safety net, Singapore's framework ensures both legal certainty and strong creditor protection, rarely resulting in policyholder losses (Anwar & Yuangga, 2019; Palyama, 2022; Yin & He, 2018).

The issue of creditor protection in the bankruptcy of insurance companies in Indonesia cannot be detached from broader debates on sustainable development and social justice. As Jeffrey Sachs in Simonis, (2017) underscores, "*sustainable development is the organizing principle for global cooperation and policy in the twenty-first century, focusing not only on economic prosperity but also on social inclusion and environmental sustainability*". In this sense, the failure to provide adequate legal safeguards for policyholders not only reflects a technical weakness in Indonesia's insolvency regime but also raises questions of distributive justice and long-term systemic stability.

When viewed comparatively, Sachs' emphasis on collective action and shared ethics contrasts with the utilitarian orientation of the economic analysis of law, which tends to prioritize efficiency and cost-benefit outcomes (Sachs, 2008; Lubis et.al. 2025). At the same time, his vision converges with the philosophy of sustainable justice articulated by scholars such as Rawls and Sen, which stresses equity, intergenerational responsibility, and access to fundamental rights. Thus, integrating Sachs' framework into the discourse on insurance insolvency highlights that creditor protection should be regarded as a matter of public good—essential to ensuring both legal certainty and sustainable economic governance.

The comparison highlights a global trend toward regulatory insolvency regimes in the insurance sector, where ordinary creditors cannot directly initiate insolvency. Instead, centralized regulatory oversight (by DNB, Insurance Commissioners, or MAS) ensures systemic stability. Indonesia's exclusive role for OJK aligns with this model. The distinction lies in how creditor protection is structured—via guarantee funds, resolution frameworks, or both—and in the speed and transparency of the process. Until 2022, Indonesia lacked such mechanisms and relied on ad hoc bailouts (e.g., Jiwasraya).

The 2023 P2SK Law signifies a move toward a hybrid model, incorporating guarantee elements (via LPS) while maintaining OJK's control (Kasmiri, 2024).

From a law and economics perspective, strong legal protection for policyholders enhances public trust, promoting deeper insurance penetration. This aligns with Sachs' vision that markets alone cannot secure public goods such as stability and trust; collective frameworks are indispensable. Conversely, weak legal frameworks undermine confidence and depress market growth (Sachs, 2015). The Jiwasraya scandal illustrates this—post-scandal, the entire industry saw declining demand for savings-based products (Anggara & Warsifah, 2022). Strengthening legal certainty and protection mechanisms is a long-term investment in the financial sector's stability.

Legal Design for Closing the Protection Gap in Insurance Bankruptcy

Based on the foregoing analysis, it can be concluded that although Indonesia's positive legal framework has established the principle of creditor protection in the bankruptcy of insurance companies, its implementation continues to face various challenges, both normative and structural. The heavy reliance on the discretionary authority of the Financial Services Authority (OJK), the limited access of creditors to legal proceedings, and the delayed operationalization of the Policyholder Protection Institution (*Lembaga Penjamin Polis*) demonstrate a tangible gap between the normative framework and the actual protection received by creditors, particularly policyholders. To bridge this gap, prescriptive measures of a systemic and solution-oriented nature are required in order to strengthen legal certainty and ensure that creditors' rights are guaranteed fairly and effectively. The following recommendations are formulated as a legal design of solutions, grounded in the research findings and comparative analysis undertaken.

The government and OJK must issue implementing regulations (e.g., in the form of OJK Regulations or Commissioner Decrees) that define objective parameters under which OJK shall file for bankruptcy of an insurance company. These may include criteria such as solvency ratios (e.g., RBC below a certain percentage for a defined period), claim default levels exceeding a specific threshold, or violations that threaten business continuity. The SOP should also include timelines for regulatory interventions—how long OJK may attempt internal restructuring before initiating liquidation or bankruptcy. Clear criteria will enhance legal certainty by allowing stakeholders to anticipate regulatory action, reduce allegations of arbitrariness, and protect OJK institutionally from undue external pressure.

The insurance guarantee function of LPS must be effectively implemented without further delay. The government should promptly issue Government Regulations or LPS rules specifying the scope of coverage, maximum guaranteed claims, funding sources and industry contributions, and the claims procedure (Gultom et.al., 2024). Ideally, retail policyholders (individual life, health, etc.) should be fully guaranteed up to a certain limit that covers the majority of policies to preserve public trust. LPS must also launch public education campaigns to inform policyholders that insurance policies are now guaranteed—similar to how LPS publicizes deposit insurance (Kasmiri, 2024). However, the messaging must be carefully calibrated to avoid inducing moral hazard among insurers (Gultom et.al., 2024). The existence of such guarantees would ensure legal protection for policyholders, even when the insurer lacks sufficient assets.

To balance financial stability and creditor protection, OJK and LPS must establish coordinated protocols for handling troubled insurers. For example, upon license revocation and bankruptcy initiation by OJK, LPS should be promptly notified to activate guarantee mechanisms. During the preventive phase, when OJK appoints a Statutory Manager, LPS could be involved in estimating potential guaranteed liabilities. This coordination will ensure a seamless transition from supervision to resolution,

preventing uncertainty for policyholders. Drawing from the U.S. model, where guaranty associations activate only after court-ordered liquidation, Indonesia can be more proactive—allowing LPS involvement even before formal liquidation concludes (Gultom et.al., 2024). Furthermore, regulatory frameworks must ensure the involvement of ministries such as SOEs and Finance in state-owned insurer cases (as with Jiwasraya) under a structured and institutionalized framework.

Consideration should be given to amending the Bankruptcy and Suspension of Debt Payment Obligations (PKPU) Law to grant creditors conditional access to judicial remedies. For example, if OJK declines to file for bankruptcy despite the fulfillment of material requirements and lapse of a certain period, major creditors or policyholders could petition a special review committee or directly request a Commercial Court order compelling OJK to reconsider. While this extraordinary mechanism would need careful design to avoid undermining OJK's authority, it could serve as a procedural remedy against regulatory inaction. An alternative would be to strengthen a dedicated Ombudsman for Financial Services to address creditor complaints regarding OJK's inaction or delay in such cases (Zain & Ali, 2016).

Beyond regulation, implementation is crucial. OJK must strengthen early warning systems for insurance solvency to enable timely interventions before equity becomes significantly negative. This includes strict enforcement against financial misconduct such as window dressing and speculative investment—as seen in the Jiwasraya case (Hidajat, 2021). Transparent communication with the public regarding insurer health (without triggering panic) is also essential. Sanctions against insiders or regulators complicit in wrongdoing should be strengthened to uphold process integrity (as highlighted by moral hazard issues in the Kresna case) (Sayekti, 2020; Nurdiana, 2019).

Finally, legal literacy programs are recommended to empower policyholders with knowledge of their rights in the event of insurer failure. Many retail customers are unaware of the distinctions between liquidation, bankruptcy, and restructuring, leaving them vulnerable to misinformation or passivity. Well-informed policyholders can proactively file claims in bankruptcy, participate in restructuring programs, or vote in PKPU proceedings when applicable (OJK, 2022; OJK, 2020). Informed creditor engagement will facilitate fairer and more efficient resolution processes.

Through the above measures, it is expected that Indonesia's insurance bankruptcy regime will evolve into a more robust system that ensures both legal certainty and the substantive protection of policyholders as creditors. Legal certainty will be reinforced through clear and consistently applied rules, while creditor protection will be strengthened via statutory priority rights, guarantee mechanisms, and resolution practices centered on policyholder interests. This approach will not only promote justice for creditors but also enhance public trust in the insurance industry and the stability of the national financial services sector.

5 Conclusions

The current regulatory framework for the bankruptcy of insurance companies in Indonesia emphasizes the authority of the financial regulator (OJK) as the exclusive petitioner, aiming to safeguard public interest and maintain sectoral stability. Doctrinally, this policy aligns with global trends and is supported by the legal foundations set forth in Law No. 37/2004 in conjunction with Law No. 4/2023. Normative efforts have been made to ensure legal certainty through clear rules on OJK's authority and to protect creditors by prioritizing policyholder claims and establishing a new policyholder protection scheme (LPS). However, the implementation reveals several gaps: First, procedural legal certainty for creditors remains weak, as the decision to initiate bankruptcy is heavily reliant on OJK's discretion without transparent and

measurable criteria—creating uncertainty regarding timelines and resolution pathways. Second, material protection for creditors, while formally guaranteed, has not been fully effective—before 2023, policyholders were not assured compensation in the event of asset shortfalls, and legal enforcement mechanisms (such as bankruptcy or PKPU petitions) were inaccessible to them. The Jiwasraya and Kresna Life cases illustrate that without a robust guarantee framework and timely response, creditors may suffer losses or delays in claim fulfillment, despite having prioritized rights under the law. Accordingly, Indonesia’s challenge is not merely the absence of regulation, but the persistence of legal uncertainty caused by discretionary authority, delayed institutional mechanisms, and insufficient guarantees. Comparative lessons suggest that without reducing this uncertainty, creditor protection will remain fragile and systemic trust elusive. Comparative analysis with the Netherlands, the United States, and Singapore highlights the need for Indonesia to adopt a hybrid approach: maintaining regulatory control while complementing it with objective criteria, an operational guarantee scheme, and equitable legal access for creditors. This would enable the insurance insolvency system to become more responsive, just, and sustainable.

Based on the research findings, it is recommended that OJK and relevant stakeholders immediately: *First*, establish objective criteria and standard operating procedures (SOPs) for filing bankruptcy petitions against insurance companies to enhance legal certainty. *Second*, accelerate the operationalization of the Policyholder Protection Institution (LPS) through comprehensive regulations and effective public outreach. *Third*, strengthen coordination among OJK, LPS, and related authorities such as the Ministry of Finance and the Ministry of SOEs in the management of troubled insurers. *Fourth*, revise formal legal provisions to enable corrective mechanisms against OJK’s administrative inaction. *Fifth*, improve internal supervision and early warning systems to prevent emerging crises at an earlier stage. *Sixth*, promote legal education and literacy for creditors, particularly policyholders, to empower them to actively exercise their rights during bankruptcy proceedings. These measures are expected to fortify the Indonesian insurance insolvency legal regime by enhancing both legal certainty and substantive protection for policyholder creditors, while ultimately bolstering public trust and the long-term resilience of the national financial services sector. These reforms are essential not only to enhance legal certainty but also to restore and maintain public trust in Indonesia’s insurance sector.

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