

## **Belt and Road Summit • 18 May 2016 • Hong Kong**

The Belt and Road Initiative is a development strategy and framework proposed by the People's Republic of China to bring more investment, economic co-operation and technology transfer to the Silk Road Economic Belt and the 21st-century Maritime Silk Road, including Indonesia.

In mid October 2015, the China Railway International Co Ltd confirmed it had joined with an Indonesian state-owned company to build Indonesia's first-ever high-speed railway between Jakarta and Bandung. This is one of the initiatives of the Belt and Road Initiative, and there will be more to come.

Indonesian businessmen are encouraged to attend this Summit to:

- learn more about the opportunities arising from Belt and Road Initiatives, including infrastructure development, logistics, railways, highways, power plants, telecommunication, banking and finance etc.
- meet with potential investors and/or business partners from mainland China (Business Matching Service will be provided)

### **Belt and Road Summit**

**Date : 18 May 2016**

**Time: 08:30 – 18:00**

**Venue : Hong Kong Convention and Exhibition Centre, 1 Expo Drive, Wan Chai, Hong Kong**

Seats are limited. Interested parties, please register with HKTDC Jakarta Office at [Jakarta.office@hktdc.org](mailto:Jakarta.office@hktdc.org) or Tel: 021 3005 2101

## **OJK's authority in question**

**Jakarta:** As part of its efforts to maintain the stability of the insurance sector, the Financial Services is being challenged by a no longer operational insurance company. PT Bumi Asih Jaya (“**Bumi Asih Jaya**”), a now-defunct insurance company, questioned the OJK's move to submit a bankruptcy petition to the Commercial Court at the Central Jakarta District Court.

The bankruptcy petition was filed by the OJK after Bumi Asih Jaya was deemed financially incapable and not able to pay its customers' insurance claims which have fallen due and payable. Consequently, the OJK revoked Bumi Asih Jaya's business license in 2013, a move which was also challenged at the administrative court and is now being processed through the Supreme Court. OJK has taken the position that current circumstances justify and are sufficient for it to file a bankruptcy petition. However, Bumi Asih Jaya challenged this by filing a rebuttal against the Commercial Court's jurisdiction to hear the petition.

According to Wilsye Damanik, Bumi Asih Jaya's legal counsel, the bankruptcy petition is merely a gesture by the OJK to accelerate the revocation of her client's business license while waiting for the final decision from the Supreme Court. In this regard, Ms. Damanik says that the OJK has no standing to submit a bankruptcy petition. Referring to Article 51 (1) of the Insurance Law, Ms. Damanik is arguing that the OJK can only submit a bankruptcy petition based on a request from Bumi Asih Jaya's creditors. “Meanwhile, this petition was initiated by the OJK only, not the company's policy holders,” said Ms. Damanik elaborating on her statement. In addition, Ms. Damanik is also arguing that insurance claims cannot be categorized as debts under the definition set out in the Bankruptcy Law. To that end, Ms. Damanik believes that her client does not fall under the criteria of a bankrupt company.

Responding to these arguments, Tongam L. Tobing, OJK's attorney, argued that the OJK may submit a bankruptcy petition on its own volition. In support of this argument, the OJK drew on expert opinion from Hadi Subhan of the Law Faculty of Universitas Airlangga who explained that the OJK may take such actions based on its authority to maintain protection of relevant parties in every financial institution. Furthermore, Mr. Tobing also clarified that Bankruptcy Law has a broad definition of debt which includes every obligation arising from a debtor's activities and that Bumi Asih Jaya's obligation to settle insurance claims is a debt and provides a basis for the OJK to submit a bankruptcy petition.

*Source: <http://en.hukumonline.com/pages/lt552371db7b25e/ojk-s-authority-in-bankruptcy-matter-questioned>*

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## **Supreme Court rules that Bumi is bankrupt**

**JAKARTA:** The Supreme Court of Cassation has rendered a decision in respect of the petition of the Financial Services Authority (OJK) on PT Asuransi Bumi Asih Jaya. Based on information from the official website of the highest judicial body, the Supreme Council of Judges has granted the request of the OJK [to declare Bumi bankrupt]. Based on the verdict, PT Asuransi Bumi Asih Jaya is now officially bankrupt. As a matter of background information, the OJK filed an Appeal on June 10, 2015. Earlier, both sides went to court over the Suspension of Payment (PKPU) at the Central Jakarta Commercial Court where the court rejected the bankruptcy petition. Sabas Sinaga, the Coordinating Attorney for PT Asuransi Bumi Asih Jaya, would not comment. "We have not received the formal decision, so we cannot say anything," he stated at *KONTAN*, Wednesday (9/9). Sabas was also not sure when they would receive a copy of the judgment of the Supreme Court.

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## **Legal News**

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According to information obtained by *KONTAN*, the OJK revoked the business license of Bumi on October 18, 2013 because it had unpaid claims to customers. The OJK noted that Bumi had debt of Rp85.6 billion from 10,584 policyholders, both individuals and aggregate insurance policies.

Source: <http://nasional.kontan.co.id/news/ma-putuskan-asuransi-bumi-asih-jaya-pailit>

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### **Supreme Court affirms OJK's authority in filing bankruptcy petition**

*MKK Insurance team (research by Wahyu Azhari, S.H.)*

After a prolonged struggle, the OJK has succeeded in having PT Asuransi Jiwa Bumi Asih Jaya (Bumi) declared bankrupt. The OJK in fact had revoked the company's business license as far back as 2013 by Decision of the Board of Directors of the OJK No KEP-112/D05/2013. The OJK made the bankruptcy petition as a result of Bumi being unable to honor its obligations to premium holders. Bumi contested the bankruptcy petition, referring to Article 51 (1) of the Insurance Law, with three key arguments:

- Bumi claimed that such a petition may only be initiated by the premium holders themselves, and therefore filing a petition for bankruptcy did not reside with the OJK;
- Bumi also claimed that insurance claims cannot be categorized as debt/unpaid bills;
- Bumi claimed that the matter was not within the jurisdiction of the Commercial Court.

In rebuttal, the OJK's lawyer contended that the Bankruptcy Law takes a very broad definition of bankrupt assets and as such, failing to pay claims did constitute failure to pay debts/make good on financial obligations. Further, the OJK maintained that it did have the authority by virtue of Law 40/2014 on Insurance to initiate bankruptcy proceedings at the Commercial Court.

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The Commercial Court rejected the bankruptcy petition stating it was outside its jurisdiction to make a ruling, but upon appeal, the Supreme Court upheld the OJK's petition. This was an important decision in affirming the authority of the OJK as the regulatory body empowered to declare insurance companies bankrupt. Under Law 37/2004 on Bankruptcy, authority to declare a company bankrupt lay with the Minister of Finance; however, with the promulgation of Law No. 40/2014 on Insurance, authority was vested with the OJK to declare an insurance company bankrupt and by this decision, the Supreme Court affirmed the OJK's authority in this regard.

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## **Hate Speech Circular Letter**

### **MKK litigation team**

*(research by Miranda Mamahit, S.H.)*

The Police Force of the Republic of Indonesia released Circular Letter Number SE/6/X/2015 on 8 October 2015, regarding Hate Speech ("**Circular Letter**"). The Circular Letter consists of four parts which, among others, includes a definition of what can be categorized as hate speech.

The purpose of issuing the Circular Letter is to assist members of the police force in understanding the action to take in the event of hate speech and in encouraging officers to conduct precautionary action in handling acts of hate speech.

The issuance of this letter has caused controversy among the public and legal practitioners. Luhut Pangaribuan of the Indonesian Advocates Association (PERADI) has urged the Police Force to revoke the Circular Letter. According to Luhut, the Circular Letter will only be regarded as an option or guidance for the police when an allegation of hate speech is leveled at someone. The Circular Letter will not have any legal effect, and this Circular Letter shall be applied as a means for law enforcement to crack down on those who instill hatred against ethnic groups, races and any particular religion. Issuance of the Circular Letter raises the questions, "*What is the enforceability of the Circular Letter?*"; "*Is the Circular Letter binding on society in general?*"

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## **Legal News**

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### **Enforceability of the Circular Letter**

Jimly Asshiddiqie, HAS Natabaya, HM Laica Marzuki, and Philipus M. Hadjon. Circular Letters have termed the Circular Letter as policy guidance. *Beleidsregel* and *pseudo wetgeving* are “legal products” whose content is materially binding; however, they shall not be construed as laws in the absence of the authority to promulgate legislation.

### **Legal impact of the Circular Letter**

Before the Hate Speech Circular Letter was released, provisions regarding hate speech already existed and were set out in a number of laws and regulations. The current legislation is stipulated not only in the Circular Letter but also in the Indonesian Criminal Code (“*KUHP*”) (Article 156, Article 157).

The abovementioned regulations are:

1. Law Number 11 of 2008 regarding Information and Electronic Transaction (“*UU ITE*”)
  - [Article 28 jo. Article 45 paragraph (2)]
2. Law Number 40 of 2008 regarding Elimination of Racial and Ethnic Discrimination
3. Law Number 7 of 2012 regarding Social Conflict Handling (“*UU 7/2012*”)
4. Regulation of Head of the Police Force of the Republic of Indonesia Number 8 of 2013 regarding Technical Guidance on Social Conflict Handling (“*Perkapolri 8/2013*”)

In addition to the above, there are also articles in *KUHP* which are relevant to cases of purported criminal acts of hate speech, namely Article 310 and Article 311 of *KUHP*. Neither of the articles is included in the Circular Letter. A former Minister of Law and Human Rights, Amir Syamsuddin, is of the view that Article 310 and 311 of *KUHP* cannot be considered as binding on those who spread hatred. This is because Article 310 and Article 311 are complaint-based offenses that are considered as being in the private sphere. Consequently, the national police will not be able to follow the procedures if there is not a complaint from an applicant. According to Amir, the Circular Letter has no effect on the current law, and hate speech can be punished by having recourse to existing regulations.

## **Forms of Hate Speech**

The forms of hate speech which are criminal offenses are stipulated in the Penal Code and other regulations, as follows:

1. Contempt;
2. Defamation;
3. Humiliation;
4. Unpleasant Act;
5. Provocation;
6. Instigation; and
7. Spreading false news.

A copy of the Hate Speech Circular Letter can be accessed directly at:

<http://www.gatra.com/hukum/172241-ini-isi-lengkap-surat-edaran-hatespeech-kapolri>

### *DISCLAIMER*

*The views contained herein are purely informational in nature and should in no way be construed as constituting legal advice.*