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Legal Protection For Policyholders Concering Insurance Companies Restructuring In Default

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Abstract : Financial Management in an insurance company has been regulated in the Financial Services Authority Regulation (POJK) Number 71 / POJK.05 / 2016 which regulates an assessment of the health of insurance and reinsurance companies in Indonesia. In the case of default, the insurance company in restructuring has a restructuring option, but the restructuring has a significant impact on the customer, but the insurance policyholder customer can ask for legal protection and justice in terms of the return of compensation experienced. This legal protection is based on authentic evidence, that is, an insurance policy. In the context of insurance company restructuring, legal protection for policyholders may also involve financial supervisory institutions, such as the Financial Services Authority (OJK). The research method used in this study is normative legal research, which uses the statutory approach (statute approach) and conceptual approach (conceptual approach). The legal materials used are primary, secondary and tertiary legal materials. The legal material collection techniques used are primary, secondary and tertiary legal material collection techniques. Legal protection for policyholders in the event of default by the insurance company Policyholders can take legal action through non-litigation means such as mediation or litigation in court. The legal protection of policyholders is regulated in the Insurance Law.

Keywords: Legal Protection, Restructuring, Insurance, Default

1. Introduction

A. Background

One of the finest ways to shield a legal topic from the application of arbitrariness is through legal protection. Its legal system is inclusive of legal protection. In order to protect a business and guarantee that it continues to run effectively, legal protection is essential. Legal protection refers to a system of regulations or standards that might serve as a barrier between one object and another, or it can be defined as the defense of the rights and respect for human dignity that belong to legal subjects. As it relates to the insured, this indicates that the law safeguards clients' rights against circumstances that prevent their rights from being realized.[1]

The number of human enterprises grows along with the evolution of humanity and the population in order to safeguard people and their belongings from potential threats and calamities. Getting insurance is one way to prepare for potential dangers outside the cave. In legal parlance, insurance is a contract in which two or more parties enter into an agreement whereby the first, the insurer, insures the second, the insured, in exchange for payment of a premium in the event that a prearranged event

[1] Phillipus M. Hadjon, Legal Protection for the People of Indonesia, Surabaya: PT. Bina Ilmu, 1987, p. 25

materializes or is referred to as an uncertain event (element). The transfer of risk is the foundation of this agreement.

Insurance is a legal term used in legislation and insurance companies. The term insurance comes from the word "assurance" which means coverage or protection of an object from the threat of danger that causes loss. In the understanding of "insurance", it always includes two types of activities, namely insurance business and supporting insurance business. Insurance companies always include insurance companies and insurance support companies[2]

Recorded to the Financial Services Authority (OJK), there are 136 insurance companies in Indonesia, 71 of which are general insurance companies, 7 are reinsurance companies, 3 are mandatory insurance companies, 2 are social insurance companies, and 53 are life insurance companies. Some insurance companies in Indonesia are state-owned enterprises (BUMN), one of which is PT. Asuransi Jiwasraya (Persero).

Awareness of risks and the need for insurance is a measure of the insured party's insurance awareness. Insurance awareness can reflect how much the insured party sees insurance as a necessity for risk transfer mechanisms and how far insurance industry players have reached them. Insurance awareness is influenced by the efforts of insurance companies to build competitiveness in the insurance industry, making it appealing to customers, and the government's role in creating an attractive investment climate and establishing regulatory provisions that govern procedures and behaviors in a healthy insurance business.

Based on the PT Jiwasraya case, it can be confirmed that it should be declared bankrupt or even insolvent. Moreover, the failure to pay policy claims by PT Asuransi Jiwasraya has led to an increasing claims debt over time. As of May 31, 2020, the claims debt from JS Saving plan products reached IDR 16.5 trillion, involving 17,452 participants. Additionally, claims debt from traditional corporate customers amounted to IDR 600 billion from 22,735 participants, and claims from traditional retail customers totaled IDR 900 billion from 12,410 participants. Therefore, the total maturity of customer policies as of May 31, 2020, is IDR 18 trillion.[3]

Two further choices for handling the aforementioned problem have been made available by law: filing for bankruptcy and deferring making debt payments. This was carried out since the insured party was the exclusive beneficiary of the company's bankruptcy declaration. However, it appears that the government decided against going this way and instead went with "restructuring." Following a study involving several stakeholders, including the government, the People's Consultative Assembly (DPR) members, new management, authorities, and numerous independent consultants, this alternative was selected. This was created following Minister of SOEs No.

[2] H.U. Adil Samadani, Fundamentals of Business Law, Jakarta: Mitra Wacana Media Publisher, 2013, p. 117.

[3] Ihya Ulum Aldin, Jiwasraya Obtains Approval for Restructuring from 40 Corporate Clients accessed on July 27, 2022

143/MBU/05/2020 and SKB Menkeu 227/KMK/06/2020. It makes reference to OJK Regulation No. 71 of 2016 on the Financial Health of Insurance and Reinsurance Companies.

Nonetheless, the reorganization plan does have drawbacks from the standpoint of policyholders. First of all, even for policyholders whose policies have matured, there is no cash compensation for consumers as policyholders; they have to wait a minimum of 13–15 years to liquidate their rights. IFG Life cannot cancel a contract with an insured party unless the policyholder passes away. This is the second point to consider. This is a result of the Financial Services Authority Regulation No. 71 of 2016's unclear normative language regarding the financial health of insurance and reinsurance companies. Policyholder consumers face legal uncertainty as a result of this ambiguity. As a result, the researcher is eager to discuss the subject of policyholder legal protection in the restructuring of insurance companies that default.

B. Problem Formulation

This study analyzes whether restructuring is the best plan of action if an insurance corporation experiences default because it protects the insured party's rights. The insured party is viewed as a policyholder whose rights have been ignored by the defaulting insurance company.

Researchers are interested in this research, so there are many problem formulations: What is the restructuring scheme for insurance companies that fail to pay? What is the legal protection for policyholders regarding the restructuring of insurance companies that experience default?

C. Research Methods

This study on policyholder protection related to the restructuring of underperforming insurance companies employs a normative research approach, which involves examining literature or secondary data. The research utilizes two (2) approaches: the statutory approach, involving a review of all laws and regulations relevant to the legal issues being addressed, and the conceptual approach, which stems from perspectives and doctrines evolving in legal studies[4].

The legal materials used are primary legal materials and secondary legal materials. Primary legal materials are binding materials, usually in the form of laws, official records, or proceedings in the legislative process and judicial decisions. Secondary legal materials include legal books, including theses, dissertations, and journals.[5] The technique of collecting legal materials in this research involves conducting a literature review (Library Research). After collecting both primary and secondary legal materials, they are then analyzed descriptively and qualitatively, meaning the rules of legislation and legal concepts are described and explained, drawing conclusions based on their interrelation.

[4] Prof. Dr. Peter Mahmud Marzuki, Legal Research Revised Edition, Jakarta: Prenada Media Group, 2005, p. 178

[5] Dr. H. Suratman and H. Philips Dillah, Legal Research Methods, Bandung: Alfabeta, 2020, p. 77

2. DISCUSSION

A. Restructuring Scheme for Defaulted Insurance Companies

Studies indicate a trend of shifting values evident in current cases of default. Insurance companies are placing more emphasis on managing investments than risk management. Various cases of insurance company defaults, both in Indonesia and abroad, are predominantly identified with the root cause being errors in investing insurance funds. In Indonesia, as of the date of this research, there are five significant cases of insurance company defaults recorded from 2008 to 2020. These companies include (1) Bakrie Life (Group) with its Diamond Investa Bakrie product, (2) Bumi Asih Jaya, (3) Joint Life Insurance with Bumi Putra 1912, (4) PT Asuransi Jiwasraya (persero) with its JS Saving Plan product, and (5) PT Asabri (Persero).

Those five cases may be followed by several other insurance companies' default cases, leading to a ripple effect in other financial service sectors. The resolution of insurance company defaults has not favored consumer protection, and the scheme supervised by the OJK lacks a focus on Indonesia's economic development. Legal enforcement through regulatory oversight has been inconsistent and discriminatory.

The PT Asuransi Jiwasraya case arose because the company couldn't fulfill policy claims from matured clients. This Jiwasraya case is like the tip of the iceberg, visible recently but ongoing since the 2000s. Upon investigation, PT Asuransi Jiwasraya was found to manipulate financial records to appear profitable, though the gains were illusory. The Jiwasraya case resulted from factors such as investing in stocks of non-potential issuers, also known as speculative stocks.[6]

Accordingly, PT Asuransi Jiwasraya has transgressed the five principles of an agreement, which are as follows: the principle of individuality, the freedom to contract, the pacta sunt servanda, the principle of consensualism, and the principle of good faith. The PT Asuransi Jiwasraya (Persero) Policy Restructuring program has violated all of the principles stated in it, including consensualism, pacta sunt servanda, and good faith (utmost good faith).

In the Policy Restructuring Scheme, there is a pattern of deferring liabilities (claims) that have matured but remain unpaid, along with an extension of the repayment period adjusted to the chosen Policy Restructuring Scheme. The term "bailout" refers to assistance for companies facing financial difficulties by receiving a fresh and liquid capital injection from external sources (the government). In the case of PT Asuransi Jiwasraya (Persero), the government will provide a bailout of Rp22,000,000,000,000.00 (twenty-two trillion rupiah) gradually to the replacement company, IFG Life, under the state-owned insurance holding company.

PT Asuransi Jiwasraya (Persero) is undergoing debt or liability restructuring using the haircut method. Haircut involves a reduction in the principal and/or

[6] Ihya Ulum Aldin, 'Audit of Jiwasraya's Financial Report Completed, Capital at Minus IDR 34.6 Trillion,' https://katadata.co.id/febrinaiskana/finansial/5f17dc2cb8bdf/audit-laporan-keuanganjiwasrayarampung-modalnya-minus-rp-34-6-t, visited on.

interest payments made by the debtor. This debt or liability restructuring with the haircut method aims to prevent greater losses for policyholders in case PT Asuransi Jiwasraya (Persero) is unable to meet its excessively large debts or obligations. The haircut method can be applied when the debtor has nothing left to repay the debt or is facing a financial crisis. It must be executed with the agreement of both creditors and debtors, in this case, the policyholders and PT Asuransi Jiwasraya (Persero).

Debt or liability restructuring is not specifically regulated by any law regarding its implementation. This is because debt restructuring falls within the realm of casuistic practices based on the principle of freedom to contract. Due to the varying financial conditions, debts, or liabilities of each company and individual, regulations cannot be established for debt or liability restructuring. Jiwasraya Insurance has offered four restructuring schemes to policyholders to save the company from bankruptcy. The restructuring program aims to preserve policy benefits and involves the government, regulators, authorities, internal parties, and Jiwasraya agents. The program consists of four stages, and the company has seen an increase in program participants since it was announced in December 2020. The restructuring program is carried out through four schemes:

a. Saving Plan: This scheme is designed for policyholders who have consistently paid premiums and have not made any withdrawals. The scheme offers three options: (i) continuing the policy with a reduced sum assured, (ii) surrendering the policy and receiving a cash payment, or (iii) converting the policy into a new one with a reduced sum assured.
b. Investment Plan: This scheme is designed for policyholders who have previously invested in mutual funds or other investment products offered by Jiwasraya. The scheme offers three options: (i) continuing the policy with a reduced sum assured, (ii) surrendering the policy and receiving a cash payment, or (iii) converting the policy into a new policy with a reduced sum assured.
c. Annuity Plan: This scheme is intended for policyholders who have purchased an annuity plan from Jiwasraya. The scheme offers two options: (i) continuing the policy with reduced annuity payments, or (ii) surrendering the policy and receiving a cash payment.
d. Special Plan: This scheme is designed for policyholders who have purchased a special plan from Jiwasraya. The scheme presents two options: (i) continuing the policy with a reduction in the sum assured, or (ii) surrendering the policy and receiving a cash payment.

The restructuring program aims to optimize policy benefits and involves the government, regulators, authorities, internal parties, and Jiwasraya agents. The company has seen an increase in the number of participants since it was announced in December 2020. The program consists of three stages, and the company is still in the process of refunding policyholders as planned.

B. Legal Protection for Policyholders Regarding the Restructuring of Defaulted Insurance Companies.

Insurance is derived from the Dutch term "assurantie," and often the term "verzekering" is used, which means coverage. "Verzekering" then gives rise to the terms "verzekeraar," meaning insurer, and "verzekerde," meaning insured (Seokanto, 2010, p. 201). As defined in Law Number 40 of 2014 concerning Insurance (hereinafter referred to as the Insurance Law) Article 1, insurance is based on an agreement between two parties, namely the insurance company and the policyholder.

Regulations related to the insurance policy guarantee institution are governed by the Insurance Law Article 53 paragraph 1, which states, "Insurance Companies and Sharia Insurance Companies are obliged to participate in the insurance policy guarantee program." The implementation of the insurance policy guarantee program is regulated by law. It is also mentioned in the Insurance Law Article 53 paragraph 4 that the law must be formed no later than 3 years from the enactment of the Insurance Law, which means that it has been 7 years since the Insurance Law was enacted, and the Law on the Implementation of Insurance Policy Guarantee is still pending.

The case of PT Asuransi Jiwasraya (Persero) falls within the scope of consumer protection as defined in Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as the "Consumer Protection Law" or "UU PK"). Consumer protection in the insurance industry involves three parties: the first party being the consumers themselves, the second party being the insurance company or underwriter, and the third party being the Financial Services Authority (OJK).

The insured's protection from themselves means that consumers are expected to be able to protect themselves, and the insured is required to understand the products and services they purchase. In the Consumer Protection Law (UUPK), it is mentioned that one of the obligations of business actors is to protect consumers. In the context of insurance, an example of protecting consumers by business actors is by providing accurate, true, clear, honest, and non-misleading information about the information, conditions, and guarantees of services and/or products offered, as regulated in Article 4 of the Financial Services Authority Regulation Number 06/POJK.07/2022 concerning Consumer and Public Protection in the Financial Services Sector (hereinafter referred to as "POJK 6/2022"). Article 36 of POJK 6/2022 stipulates that Financial Services Business Actors (insurance companies) must safeguard the security of deposits, funds, or assets of Consumers that are under the responsibility of Financial Services Business Actors. The default of payment by PT Asuransi Jiwasraya (Persero) illustrates that PT Asuransi Jiwasraya.

In the Financial Services Authority Regulation (POJK) No. 73/POJK.05/2016 on Good Corporate Governance for Insurance Companies, Article 59 stipulates that 'The Company's Board of Directors is obligated to make investment decisions professionally and optimize the Company's value for stakeholders, especially policyholders, insured parties, participants, and/or parties entitled to benefits.' In this regard, companies that violate these regulations may face sanctions as outlined in Article 80 :

1) Administrative sanctions in the form of:
   a. Written warning;
   b. Restriction of business activities for part/all of the business activities
   c. Revocation of business license.
2) The administrative sanctions are implemented gradually.
3) In addition to those administrative sanctions, OJK may impose additional sanctions, namely the prohibition of holding shares, controlling, serving as a director, commissioner, or equivalent position to a shareholder, controller, director, and commissioner, or occupying an executive position below the directorship, or a position equivalent to an executive position below the directorship. Furthermore, regarding insurance companies, sanctions may be imposed on the insurance company.

Jiwasraya Insurance has been in default for more than two years, in violation of Law No. 40 of 2014 on Article 31 and the Financial Services Authority Regulation on Good Corporate Governance for Insurance Companies, but the Financial Services Authority (OJK) has not yet imposed any sanctions on the company. The only reason administrative sanctions have been imposed by the Financial Services Authority is that PT. Jiwasraya Insurance's 2018 financial reports were submitted beyond the deadline. As the Jiwasraya Insurance (Persero) shareholder in this case, the government moved to restructure policies to handle the default. Compared to liquidating or rescinding the business license, this endeavor is thought to be the best course of action

The option of policy restructuring was chosen by Jiwasraya Insurance after obtaining approval from the Government, DPR, and OJK. However, in the process, the government, DPR, and OJK have disregarded civil law provisions. The entire restructuring process did not involve creditors as Jiwasraya's customers. This restructuring step was taken unilaterally, was intimidating, and the offered options were detrimental to policyholders.

Policyholders object to the policy restructuring program because the clauses in the policy restructuring entail a reduction in insurance benefits, which are the rights of the policyholders. Based on Hard Complain data from Jiwasraya Insurance policyholders, obtained from the customer service section of Jiwasraya Insurance, policyholders express dissatisfaction. The insured party does not agree with the policy restructuring offer and the management of policies; thus, the old policies of customers will be managed by PT Asuransi Jiwasraya (Persero). Subsequently, after all restructured policies are transferred to IFG Life, PT Asuransi Jiwasraya (Persero) will cease to operate as a life insurance company, and policies still managed by PT Asuransi Jiwasraya (Persero) will be terminated, resulting in a change from an insurance agreement to a debt, with the settlement of this debt to be carried out by PT Asuransi Jiwasraya (Persero) using the proceeds from the remaining asset management.

This clause is considered intimidating; policyholders of Jiwasraya Life Insurance are directed to approve the restructuring program, as failure to participate will result in losses and uncertainty regarding their policies. Jiwasraya Life Insurance policyholders expect the government, as the shareholder, to take

responsibility and provide capital to fulfill its obligations in paying insurance benefits, which are the rights of policyholders. In this position, policyholders as creditors are only given two options: to approve the offered policy restructuring or to reject it, referencing the Balance Theory of Contracts.

In the case of Jiwasraya Insurance, which has violated many regulations from corporate governance to policy restructuring as a resolution to the failed payment cases, the weak oversight by state institutions has worsened Jiwasraya's condition. Essentially, claim payments submitted by policyholders should be promptly disbursed by Jiwasraya, as stipulated in Article 40 (1) of Financial Services Authority Regulation Number 69/POJK.05/2016 regarding the Operation of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies. This regulation mandates insurance companies to settle claims as a form of insurance policy benefit within a maximum period of 30 days from the agreement between the policyholder and the insurance company regarding the certainty of the claim amount to be paid.

Based on the provisions of Financial Services Authority Regulation Number 69/POJK.05/2016, it has been stipulated that insurance companies are obligated to pay insurance claims submitted by policyholders if they have fulfilled all the conditions stated in the policy. However, in the case of Jiwasraya Insurance, which announced its failure to pay insurance claims to policyholders, it indicates an inability to fulfill its obligations, impacting policyholders who suffered losses and require legal protection. Legal protection can be preventive or repressive, where preventive aims to prevent violations, and repressive involves sanctions imposed after a violation has occurred. In the context of the Jiwasraya Insurance case, repressive legal protection is needed due to the occurrence of a violation.

Customer legal protection for insurance policy restructuring is crucial to comprehend. Here is some information related to legal protection for policyholders in insurance restructuring:

a. During insurance execution, the basis is that claim payments submitted by policyholders should be promptly settled by the insurance company.
b. According to the Financial Services Authority Regulation Number 69/POJK.05/2016, it is stipulated that insurance companies are obligated to pay insurance claims submitted by policyholders if they have fulfilled all the conditions stated in the policy
c. The government can rescue policyholder funds through several options: (1) restructuring and (2) privatization. In this case, the return of policyholder funds should be a government priority.
d. Policy restructuring is carried out following with applicable legal foundations, namely insurance laws and Financial Services Authority Regulation Number 71/POJK.05/2016 Year 2016 regarding the Financial Health of Insurance and Reinsurance Companies.
e. Jiwasraya insurance policyholders have not yet received legal protection from the government.

f. The restructuring program is aimed at all Jiwasraya policies and is considered a goodwill effort by the government to protect policyholders.

Based on the above, it can be concluded that insurance policyholders have the right to receive claim payments following with the conditions stated in the policy. Additionally, the government has an obligation to protect the insured's funds through restructuring and privatization options. However, there are still cases where policyholders have not received legal protection from the government. Therefore, there is a need for efforts to strengthen legal protection for insurance policyholders in cases of policy restructuring.

Article 1267 of the Civil Code, when applied in insurance agreements, provides legal protection from a civil law standpoint for insurance policyholders. It states that if the insurer, who is required to provide indemnity or a sum of money to the insured, fails to fulfill the promise, the insured may demand reimbursement of expenses, compensation, and interest. This article aims to require the insurance company to reimburse the insured for any losses incurred as a result of the delay if the insurance company fails or is unable to pay the promised premium after an agreement or covenant.

Article 1338 paragraph (1) of the Civil Code regarding all agreements made in a validly shall become law for those who enter into them, providing freedom for the parties. Through the principle of freedom to contract or pacta sunt servanda, the judge as the third party must respect the essence of the agreement among the parties and not disturb the substance of their agreement. All agreements between the guarantor and the insured are included in the insurance policy. If the applicable law regulates it, and if any party to the agreement breaches it, the parties can annul the agreement and may face legal sanctions according to the applicable law.[7]

According to insurance expert Irvan Raharjo, the restructuring of PT Asuransi Jiwasraya (Persero) violates several legal regulations, including the Civil Code Article 1266 and Article 1338, which state that the cancellation of agreements must be done through the court's decision, and an agreement cannot be revoked except with the good faith of both parties.[8]

Some Jiwasraya policyholders have refused to participate in the restructuring process, prompting the Financial Services Authority (OJK) to request Jiwasraya to offer restructuring again to those who declined. As of September 2023, the percentage of policyholders refusing restructuring is only 0.4%. However, those who decline restructuring have not yet received their rights. The restructuring scheme for policies contradicts OJK Circular Letter number 19/SEOJK.05/2020 regarding the Marketing Channels of Insurance Products. Insurance business practitioners are prohibited from engaging in

[7] Ricardo Simanjuntak, "Consequences and Legal Actions Against the Inclusion of Standard Clause in Insurance Policies Contrary to Article 18 of Law No. 8/1999 on Consumer Protection," Article, Journal of Business Law, Vol. 22, No. 2

[8] Vera W. S. Soemarwi, Karen Markoan, "Legal Protection for Jiwasraya Insurance Policyholders Against the Insolvency Condition of Insurance Reviewed from the Decision of the District Court Number 431/Pdt.G/2020/Pn.Jkt.Pst," Faculty of Law Lecturer, Tarumanagara University 2022, p. 15.

Churning, which is the act of marketing insurance products that persuade and/or influence policyholders to change or replace existing insurance policies with new ones from the same company, and/or purchase new insurance policies using funds from active insurance policies from the same company without prior explanation to policyholders about the potential losses they may incur due to such changes/replacements.

The insured who feels wronged may bring a civil lawsuit in court. Policyholders connected to different forums have filed a lawsuit against Jiwasraya Insurance in the Commercial Court, claiming that Jiwasraya's failure to pay past-due insurance benefits amounts to both an unlawful act under Article 1362 of the Civil Code and a breach of contract (wanprestasi) under Article 1243 of the Civil Code. Additionally, they insist that Jiwasraya pay the insurance benefits right away.

3. Conclusion

Based on the descriptions in the previous chapters, a conclusion can be drawn as follows;

A. Legal protection for policyholders occurs when there is a breach by the insurance company. The obligations of the policyholder and the insurance company are interrelated, with the policyholder responsible for paying premiums, and the insurance company obligated to compensate for claims. In case of a breach by the insurance company, the policyholder can seek legal protection and justice through compensation for the incurred losses. The policyholder can pursue legal avenues through non-litigious methods such as mediation or litigation in court. Legal protection for policyholders is governed by the Insurance Law, which imposes sanctions on insurance companies violating the law. The law also protects for consumers, including policyholders, under the Consumer Protection Law.

B. The restructuring scheme in an underperforming insurance company involves several proposals. At PT Jiwasraya, there is a scheme for creating a holding company and establishing a limited liability company. Restructuring can be carried out once the insurance company has obtained government approval, and then the restructuring scheme is formed by the underperforming insurance company.

4. Advince

Legal remedies for insurance policyholders exist if an insurance company breaches its contract. Before entering into an insurance agreement, the policyholder should seek accurate, clear, and detailed information from the insurance company regarding the product or service, including risks, benefits, and especially the rights and obligations of both the insurance company and the policyholder. In a restructuring scheme, the insurance company should make appropriate offers. There is a need for an evaluation of the OJK product that is overly productive, legal product window dressing, and the consolidation of regulations that contain repetitions. In resolving default, attention should be given

to two important legal protections: protection for policyholders to obtain the right to insurance fund refunds or benefits and protection for the insurance company to sustain its business activities.

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