

**LEGAL PROTECTION FOR CONSUMERS
IN CASE OF FAILURE TO PAY AN INSURANCE CLAIM
IN INDONESIA**

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Abstract

Good corporate governance or better known as Good Corporate Governance is a value system that is a benchmark for a company's ability to carry out operational activities and business processes in a healthy manner. The Financial Services Authority (OJK), which was formed in accordance with Republic of Indonesia Law Number 21 of 2011, is not running effectively and is considered to have been negligent in its supervision process, resulting in actions involving deviant practices such as corruption and money laundering in the case of PT Asuransi Jiwasraya consumer failure to pay. Law enforcement in order to guarantee that the public gets their rights, consumers who fail to pay PT Asuransi Jiwasraya (Persero) have found a solution through restructuring. So that urgent changes can be implemented ably by the state, financial sector reform Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector exists as legal protection. Legal protection is carried out to restore trust. Legal protection is the state's effort to compile the achievements of the Indonesian Long Term Development Plan (RPJPN) 2025-2045 as part of legal development. The aim of the research is to determine law enforcement and legal protection from criminal acts of corruption in the financial sector which operates in the insurance sector, case study PT Asuransi Jiwasraya which has a progressive legal correlation of asset confiscation. The type of research, problem approach, theory used is normative legal research with a statutory approach with a conceptual approach. The theory used to analyze is the basic theory of Lex Specialis Derogat Legi Generalis. The research results show that the application of law and corporate legal protection from criminal acts of corruption in the Jiwasraya case study is intended to provide legal certainty and legal protection to help maintain the image of good government.

Keywords : Legal Protection, Legal Enforcement, Insurance

1.1. Background

Based on the Decree of the Minister of Finance of the Republic of Indonesia Number 792 of 1990, a Financial Institution was formed. Its task is to collect and

distribute funds to certain communities to finance company investments. Finance consumption activities; and finance the distribution of goods and services. Financial institutions are grouped into two forms, namely Banks and Non-Banks.

The insurance industry is a form of non-bank financial institution that acts as one of the pillars driving the national economy. In modern society, there has been a growing awareness to transfer the risk of adverse events in the future so that the insurance business can develop better. Life insurance is one of the products that people are interested in, therefore insurance services will be closely related to public trust.

Good Corporate Governance is the principles applied by companies to maximize corporate value. Good corporate governance is built to create *stakeholder* trust in the company, increase compliance with laws and regulations and applicable values and provide protection to all stakeholders.

Insurance is an agreement between two or more parties. By which the insurer binds itself to the insured by accepting insurance premiums, to provide reimbursement to the insured for loss, damage or loss of expected profits or third party legal liability that may be suffered by the insured, arising from an uncertain event or provide a payment based on the death or life of an insured person.

The default event of PT (Persero) Asuransi Jiwasraya was caused by a management error. In the event of default of PT Asuransi Jiwasraya (Persero) caused by such mismanagement, there must be law enforcement or law enforcement that is accountable to the state because the state has suffered losses. If the principles of integrity, objectivity, prudence and professional behavior have been violated, it means that PT Asuransi Jiwasraya (Persero) has violated RI Law Number 40 of 2014 concerning Insurance or called the 2014 Insurance Law as article 11 paragraph (2) Further provisions regarding corporate governance as referred to in paragraph (1) are regulated in the Financial Services Authority Regulation.

As per the Financial Services Authority Regulation Number 73 / POJK.5 / 2016 concerning Good Corporate Governance for insurance companies, it is stated that Good Corporate Governance for Insurance Companies hereinafter referred to as Good Governance is the structure and process used and determined by the Insurance Company organs to improve the achievement of business results targets and optimize the value of Insurance Companies for all stakeholders, especially Policyholders, Insured, Participants, and/or Parties entitled to benefits, accountably and based on laws and regulations and ethical values.

Insurance activities born from legal awareness are a legal contract regulated in the Commercial Law Law (KUHD) of the Dutch heritage, that Insurance or coverage is an agreement in the name of an insurer binding itself to the insured by receiving a premium, to compensate him for a loss, damage or loss of expected profits that may be suffered due to an unspecified event. Therefore, insurance is an uncertainty regulated in legal

certainty. The uncertainty that is regulated is the object/*cassie*. While in banking, Life Insurance Policy can be classified as movable property so that it can be used as collateral for bank credit using a lien or fiduciary as long as the policy is still valid and has a cash balance.

JS Saving Plan Jiwasraya (starting 2013) is the cause of mismanagement of PT (Persero) Asuransi Jiwasraya as a Financial Sector Business Actor. Insurance Business License and Supervision at that time by the Capital Market Supervisory Agency-Financial Institutions (Bapepam-LK). As previously known, Bank Indonesia regulates and supervises the Banking, while Bapepam-LK regulates and supervises the Capital Market and Insurance Sectors, Pension Funds, Financing Institutions and Other Financial Service Institutions. Furthermore, the establishment of the Financial Services Authority (OJK) occurred and caused the supervisory authority of non-bank financial institutions for insurance services to shift from BI and Bapepam-LK to OJK. Therefore, Bank Indonesia (BI) only has authority in the field of Monetary Policy. Meanwhile, Bapepam-LK merged into OJK and is no longer under the Ministry of Finance.

OJK functions to organize an integrated regulatory and supervisory system for all activities in the financial services sector. Meanwhile, based on Article 6 of Law Number 21 of 2011, the main task of OJK is to regulate and supervise to:

- a. Financial services activities in the Banking sector;
- b. Financial services activities in the Capital Market sector;
- c. Financial services activities in the Insurance sector; Pension Fund; Financing Institutions; and Other Financial Service Institutions.

The existence of capital market institutions in having an important role in increasing various financial potentials in the community. Through the role of the capital market, sources of funds can be optimally explored as an alternative investment to encourage healthy and prospective and professional companies.

Insurance company bond investments can be in the form of Government Securities, Bonds, stocks, land and buildings, time deposits, policy loans, mortgages, SBI, mutual funds, direct participation, murabahah financing and mudharabah financing, etc. Total investment of insurance companies during 2008-2012 experienced compound growth.¹ Insurance companies' investment strategies tend to be dominant in financial assets that can provide certainty in income because insurance companies need adequate availability of funds for claims to their customers.

However, in 2018 and 2019, PT Asuransi Jiwasraya (Persero) has experienced liquidity difficulties, resulting in defaults to policyholders or those entitled to receive benefits. In accordance with Article 22 of the Insurance Law, Paragraph (1) Insurance Companies are required to submit reports, information,

¹ Setya Wijayanto, *Corporate Bond Investigation Strategy*, 2015. Kompas, Jakarta, p.. 41

data, and/or documents to the OJK. Paragraph (4) Insurance companies, sharia insurance companies, reinsurance companies, or sharia reinsurance companies are required to provide information about their financial position, financial performance, and risks faced to interested parties in a manner that is in accordance with the provisions of laws and regulations. Ambiguous Facts (understandable situation) in the event there have been no sanctions or penalties for OJK because there are no laws and regulations governing it. Ambiguous Meanings in the Big Dictionary Indonesian used to refer to something that has double or more than one meaning. This term is to describe something full of doubt, vagueness, vagueness.

Although in its development, OJK, the Law and Investigation Commissioner Division, now has the authority to investigate. Certain employees other than Civil Servant Investigators (PPNS) in OJK can also become investigators in the financial services sector and become an integral part of the OJK investigator sub-system in accordance with Law of the Republic of Indonesia Number 21 of 2011 concerning the Financial Services Authority. So that at that time the function of Bapepam-LK, which previously carried out regulatory and supervisory authority in the financial services sector, had shifted to OJK (until 2018) the climax of mismanagement of JS Saving Plan Jiwasraya products.

Therefore the State needs to have fair regulations. A fair rule is if there is a balance between the interests protected, the balance of rights and obligations in which everyone obtains as much as possible as he or she is a part of.² So as not to be dualistic. That is, the application of two legal systems for different social groups within a unified social group or a country. Law enforcement is the basis of fair legal certainty as guaranteed in Article 1 Paragraph (3). The state of Indonesia is a state of law. Return everything to the laws that govern it. It is necessary for the financial services sector to grow sustainably and stably by prioritizing the safety of consumers and the public. Fair legal process in the form of formal application of laws or regulations (which are formulated fairly) and also contains consumer guarantees to obtain their rights. Consumers as fund providers, over time they are affected by liquidity crises and affected by losses on accurate services.

1.2. Problem Statement

Based on the background of the problems that have been raised, the problem formulation is prepared, namely: How is the legal protection for customers in cases of default on insurance claims in Indonesia?

² Junus Sidabalok, 2014. *Corporate Law*, Nuansa Aulia, Bandung, p.30.

1.3. Research Methods

The type of research used by the author in this study is normative juridical research because it is carried out by examining the rules associated with legislation related to the legal issues that the author is observing. Normative juridical research is legal research that uses secondary data where secondary data other than those sourced from employment agreements also come from the study of laws and regulations and literature research related to the research topic.

2. DISCUSSION

2.1. Corporate Responsibility in Insurance Claim Default Problems

The establishment of corporations as a result of modernization in order to meet the needs of society. Today the development of corporations is so rapid that there is almost no area of life that is separated from corporate services. The existence of corporations does bring many benefits to the community, but it can also cause losses to the community, including the emergence of corporate crime.

The discussion of criminal acts committed by corporations is still relatively new compared to conventional criminal acts where the perpetrators are people or groups of people. Furthermore, the term white collar crime was born, which is a criminal act committed by people who have a high socioeconomic position related to their profession.

Corporate crime is a criminal act committed by a corporation that can be subject to criminal, administrative, or civil sanctions. One form of corporate crime is window dressing, which is an act to deceive the public by presenting incorrect information or data with the aim of getting a positive image in the eyes of the community.

The formulation of the concept of criminal responsibility is very important because it is the basis for the development of the concept of corporations as subjects of criminal acts. Corporations are qualified as subjects who can commit criminal acts and can account in addition to the management of the corporation as legal subjects of persons. The concept contains two things, namely the corporation as a subject of a legal entity that can commit a criminal act, and a corporation as a subject of a legal entity that can be held criminally liable.

Insurance is an agreement between two parties, namely the insurance company and the policyholder which is the basis for receiving premiums by the insurance company in return, to provide reimbursement to the insured or policyholder due to loss, damage, costs incurred, loss of profit. Or legal liability to third parties that may be suffered by the insured or policyholder due to the occurrence of an uncertain event. Provide payments based on the death of the

insured or payments based on the life of the insured with benefits that have been determined and/or based on the results of fund management.

Insurance is also called coverage, which is an agreement between two or more parties by which the insurer binds itself to the insured by receiving insurance premiums, to provide reimbursement to the insured for loss, damage or loss of expected profits, or legal liability to third parties that may be suffered by the insured arising from an uncertain event or to provide a payment based on died or the life of an insured person. Protection through compensation of a monetary sum or payment of damages provided based on a written contract between two experts in case of unforeseen events in accordance with the agreement.

If until the end of the life insurance period there is no death of the insured, then the insured as a party to life insurance is entitled to a refund of a certain amount of money from the insurer, the amount of which has been determined based on the agreement. If the insurance ends, the premium received by the insurer is considered an investment that will be returned to the depositor, namely the insured.

The early history of insurance was created to reduce the risk of them writing rules if a merchant received a loan from another party for the delivery of goods, had to pay a certain amount of money to the borrower to guarantee the debt was not collected if the shipment was robbed or lost at sea. Then in 1600 in a coffee shop that took place an unofficial exchange for the English empire became a meeting place for merchants and other parties seeking insurance.

The next protection is the emergence of the pascal calculation which is the first actuarial table and is still used to calculate insurance premiums until now. The need at that time was related to protection of business risks, especially maritime trade which was growing. In this context, the concept of insurance policy began to be widely used. An insurance policy is a written contract that provides financial protection against certain risks with the payment of premiums. In case of loss or loss covered by the insurance policy, so the policyholder is entitled to receive compensation.

Since then life insurance products began to exist in London. Although life insurance was banned under the laws in the Netherlands and France, eventually life insurance companies developed throughout the world with various types and now life insurance has become an important instrument to protect yourself and your family.

The development of insurance in Indonesia is built with a long historical span. Indonesia is still known as *Nederland Indie*. The Dutch then established the first life insurance company in Indonesia under the name *Nederlands Indisch Leven Verzekering En Liefrente Maatschaapij* (NILMIY) in 1859.

Starting from the traditional form of insurance at that time was a mutual responsibility association, which cooperatively collected dues from members regularly every month to take care of the funerals of deceased citizens. The application of customary law in the form of community mutual aid traditions referred to in the family is to bear the survival of the family left behind. Finally, the ability to budget, save, collectively to be managed by the government of the Republic of Indonesia became the beginning of what is now known as PT (Persero) Asuransi Jiwasraya Through various policies led to the intention to establish a life insurance company from several name changes. In 1984-1986 there were 6 (six) new insurance companies to become 23 (twenty three) insurance companies operating in Indonesia. As one of the corporations or state corporations, PT (Persero) which has the responsibility to protect the interests of its customers and maintain the financial health of non-bank financial sector business actors through insurance services can fulfill claim payment obligations arising from insurance policies owned by consumers as legal protection. As lifestyles change, most people make aware of the need for a sense of security and protection. In order not to hurt confidence in insurance that is afraid of difficult when submitting claims, and others.

Life goes well without transverse aral without trials is indeed everyone's dream. But anyone cannot resist God's power when suddenly given the ordeal of illness or abandoned by the person we love and become a life support.

Insurance is a way of managing risk. By having insurance we transfer the risks we may face to the insurance company. Legal certainty in law enforcement must create a community to be well served in law enforcement of its crimes. Law of the Republic of Indonesia Number 40 of 2014 provides legal protection for normative insurance companies. Meanwhile, Law of the Republic of Indonesia Number 10 of 1998 concerning Banking provides normative protection for commercial banks.

In social life, interaction among community members must occur both in social life and in meeting economic needs. The interaction and fulfillment of economic needs directly or indirectly will give birth to norms that are used as joint guidelines in the association between individuals and individuals with society, as well as between the roles of insurance and commercial banks respectively.

Insurance is not an investment. Actually, when compared to other investment instruments, it is not appropriate to say that insurance is an investment. The purpose of insurance is to provide protection against legal events. There is an interest in having income to give to the family as if the breadwinner can no longer provide a living. The purpose of investment is to develop assets in the long term.

Along with the need for life insurance, the need for the fulfillment of health degrees ultimately becomes the attention of consumers. Every activity and effort to improve the highest degree of public health is carried out based on the principles of non-discriminatory, participatory, protection and sustainability which are fundamental for the formation of Indonesian human resources, increasing the resilience and competitiveness of the nation and national development³. National development must be based on health insights, which means that national development itself must pay attention to public health.

If something happens that causes health problems to the Indonesian people, it will certainly cause large economic losses for the country, but on the other hand, any successful efforts to improve the degree of public health will increase investment for the country's development. Thus, all parties, both government and society, are responsible for paying attention to public health⁴.

In consideration of the SOE Law, it is recognized that the important role of SOEs in the national economy in order to realize the principle of people's welfare benefits has a special assignment, that the government can give special assignments to SOEs to carry out general benefit functions while still paying attention to the aims and objectives of SOE activities.

Each assignment must first obtain approval from the General Meeting of Shareholders (GMS). Related to PT Asuransi Jiwasraya (Persero) is to review the validity of the agreement, in accordance with Article 18 paragraph (1) letter g of Law Number 8 of 1999 concerning Consumer Protection. Review customer data that is obliged to pay premiums past due, in accordance with Article 18 paragraph (1) letter g of Law Number 8 of 1999 concerning Consumer Protection. Review the data of customers who died after a free period, in accordance with Article 18 paragraph (1) letter a of Law Number 8 of 1999 concerning Consumer Protection. Review customer data that has not paid premiums and does not have cash value, in accordance with article 18 paragraph (1) letter f of Law Number 8 of 1999 concerning Consumer Protection. Review data on the termination of premium payments and policies that have cash value, in accordance with Article 18 paragraph (1) letter f of Law Number 8 of 1999 concerning Consumer Protection. Review customer data that restores policies, in accordance with Article 18 paragraph of Consumer Protection. Material for submitting compensation claims, in accordance with Article 25 letter a of the KEP of the Minister of Finance No.422 / KMK.06 / 2003 concerning the Operation of Insurance Business and Reinsurance Companies

³ Fherial Sri Isriyawati, *State Responsibility in Granting the Right to Public Health Based on the 1945 Constitution of the Republic of Indonesia*, Journal of Legal Opinion, Edition 2. Vol. 3 Year 2015, p.. 2.

⁴ Bunga Agustina, *Government Authority in Legal Protection of Traditional Health Services Reviewed from Law of the Republic of Indonesia Number 36 of 2009 concerning Health*, Journal of Legal Insights, Vol. 32. No. 1 February 2015.

and Article 18 paragraph (1) letter a of Law Number 8 of 1999 concerning Consumer Protection.

In the judicial review of Law Number 40 of 2014 concerning Insurance. The agenda of the hearing is to hear the applicant's expert testimony. The case application integrated with Number 32/PUU-XVIII/2020 was filed by the Joint Life Insurance Member Representative Body (AJB Bumiputera 1912). The Constitutional Law expert as the applicant's expert explained the value of nationality, namely gotong royong which is typical of the tradition of the Indonesian nation. A new nuance to mutual aid exists in consideration of previous Court rulings that were characteristically "capitalist". Which finally changed the pattern of insurance that was born from customary law turned into an industry.

Legal certainty through consistency of legislation in the implementation of insurance. Legal certainty is part of the general principles of good governance (AUPB). Similarly, insurance companies are required to meet business conduct standards which include provisions regarding

- 1) Policy
- 2) Premiums and contributions,
- 3) Underwriting and introduction of Policyholders, Insureds and Participants,
- 4) Settlement of claims,
- 5) Expertise in insurance,
- 6) Distribution and marketing of products,
- 7) Handling complaints of Policyholders, Insured, or Participants, and
- 8) Other standards related to business operations.

2.2. Duties and Functions of the Financial Services Authority

To ensure that the financial system can run well, healthy, and safe, it is necessary to restructure the organizational structure of institutions that carry out the roles and functions of regulation and supervision in the financial sector. Effective corporate supervision is needed where regulations will not work well without good supervision.

With the increasing complexity of the financial system, an institution is needed that has the task and function of regulating and supervising the financial sector. OJK was formed to answer the complexity of the financial system based on the principles of transparency, accountability, independence, responsibility, and honesty.

OJK conducts one-stop supervision of all financial sector industries including banking, insurance, capital markets, and other non-banking financial institutions.

Jurnal Magister Hukum “Law and Humanity” 59-78

With the enactment of the Financial Services Authority Law, the authority to supervise the financial sector which was originally the authority of Bank Indonesia, the Capital Market and Financial Institution Supervisory Agency (BAPEPAM-LK) was delegated to the Financial Services Authority (OJK).

The legal vacuum creates several risks such as fraud, mis-selling and *white collar crime* as *corporate crime* or corruption related to Law Number 8 of 1995 concerning Capital Market. It takes a stern threat of violation of article 91, article 92, and article 93, creating opportunities for conspiracy to rob the Jiwasraya corporation.

What is happening to the Jiwasraya corporation. There is a crisis of Moral Integrity of corporate management that reduces personal and corporate dignity and deviation of authority of directors which causes default due to *fraud* in Indonesia. *Fraud* is fraud to cover up mismanagement. The audit findings of the Public Accountant at that time stated that there was a shortage of technical reserves of Rp 7 T not published to the public as a form of openness and transparency in violation of Article 22 Paragraph (3) Insurance companies, Sharia Insurance Companies, reinsurance companies, or sharia reinsurance companies are required to announce their financial position, financial performance, and financial condition, and the company's financial health condition in Indonesian-language daily newspapers circulating nationally and electronically, Article (4), Insurance Companies, Reinsurance Companies, or Islamic reinsurance companies are required to provide information on their financial position, financial performance and risks faced to interested parties in a manner that is in accordance with the provisions of laws and regulations. Paragraph (5) Insurance Companies, Sharia Insurance Companies, Reinsurance Companies and Sharia Reinsurance Companies must publish audited financial statements no later than 1 (one) month after the deadline for submitting such financial statements to the Financial Services Authority.

As well as related to having a profit of IDR 360 billion , it is also incorrect to be processed in accordance with Article 23 Paragraph (1) Certain reports and analysis results of reports as referred to in Article 22 Paragraph (1) cannot be opened by OJK to other parties, except to the police and prosecutors for investigation purposes, judges for judicial purposes, Bank Indonesia for the implementation of their duties, or other parties based on laws and regulations.

The Audit Committee's guidance should be strict on integrity articles for government employees who commit fraud and result in state financial losses. Which ends in the realm of criminal law for corruption and is acted upon in accordance with Law Number 31 of 1999 concerning the Eradication of Corruption Criminal Acts juncto RI Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Criminal Acts or the so-called Tipikor Law.

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PT (Persero) Asuransi Jiwasraya, which is *in deficit*, has been given legal action by the government of the Republic of Indonesia through the provision of State Finance policies through State Capital Participation (PMN). Of course, in this case, all data obtained will be submitted to law enforcement and comprehensive steps must be taken in order to provide certainty to consumers, namely policyholders.

The dispute related to the PT Asuransi Jiwasraya (Persero) scandal by the Audit Board (BPK) stated that the potential state financial losses reached Rp 16.8 T stemming from investigations of files for 10 years from 2008 to 2018. The details are losses from stock investments of IDR 4.65 T and state losses due to Mutual Fund Investment of IDR 12.16 T. Corn Investigators have confiscated assets related to the Jiwasraya Insurance case of IDR 18.4 T. This value is certainly higher than the value of Jiwasraya's investment losses set by BPK. The assets are designated as confiscated goods belonging to the state. And returned to the state in an effort to fulfill the rights of defaulting consumers. The government helped save the Jiwasraya corporation.

The use of the State Budget to save PT (Persero) Jiwasraya is stipulated by PT Bahana Pembinaan Usaha Indonesia (Persero) or BPUI aka Bahana, namely the Holding of SOEs Guarantee and Insurance. Sri Mulyani, Minister of Finance, said the government prepared assistance to SOEs amounting to 37.38 T. One of which would be allocated for the rescue of government corporations amounting to Rp 20 T.

Law Number 4 of 2023 concerning the Development and Expansion of the Financial Sector provides a clear legal framework for the establishment and operation of corporations in the financial services sector, especially life insurance. This includes the requirements and procedures for establishing a corporation, the obligations and responsibilities of the corporate management as Financial Sector Business Actors.

Law Number 4 of 2023 encourages legal protection for consumers who use financial services, especially insurance corporations in resolving disputes between corporations and consumers as a form of government sincerity guarantee.

Supervision and Regulation Law Number 4 of 2023 provides a legal basis for tighter supervision and regulation of insurance corporations on the fairness and financial health of corporations. This aims to prevent the initiative practices of congregational crime. The law also regulates dispute resolution mechanisms involving corporations in the financial services sector, especially life insurance. There are established dispute resolution institutions, such as OJK, the Commercial Court, and the Consumer Dispute Settlement Agency (BPSK), which are also legal protections for corporations in resolving disputes with other parties.

Prevention and Handling of Financial Crisis Financial Sector Business Actors is a measure to prevent and handle financial crises that can affect

corporations in the financial services sector, especially insurance through Insurance Guarantee Institutions (LPAs).

Recovery plans and Restructuring or Liquidation mechanisms are stipulated in the law to create a fair, transparent, and stable business environment. With a clear legal framework and effective dispute resolution mechanism so that PUSK can operate properly.

In accordance with the SOE Law and also regulated provisions regarding restructuring. Restructuring is an effort made in the context of revitalizing SOEs which is one of the strategic steps to improve performance and increase company value. The obligation of the state to provide a return on compensation by taking the means of Restructuring. Restructuring is a corporate management term for the act of reorganizing a legal structure, ownership structure, operational structure or other structure. The purpose of Restructuring in accordance with article 72 of the SOE Law is to improve company performance and value, provide benefits in the form of dividends and taxes to the state, produce products and services at comprehensive prices to consumers, and facilitate the implementation of *privatization*. The definition of privatization is a shift in management by the state to the private sector.

PT Jiwasraya's Restructuring acceleration team has been formed. SOEs have prepared and 22 T from PMN to establish a new insurance company called IFG *Life* and additional capital worth 4.7 T derived from IFG dividend deposits and will later become the largest insurance company because it has a target policyholder from the BUMN ecosystem and the General Public.

The purpose of Revitalization Restructuring is to keep the Jiwasraya corporation still sustainable. In accordance with article 2 paragraph (1) of the Regulation of the State Minister of State-Owned Enterprises of the Republic of Indonesia Number: PER 05 / MBU / 2012 concerning Amendments to the Regulation of the State Minister of State-Owned Enterprises Number PER 01 / MBU / 2009 concerning Guidelines for Restructuring and Revitalization of State-Owned Enterprises by the Company (Persero) PT Perusahaan Pengelolaan Aset.

Policy restructuring to IFG *Life* is an acquisition or takeover by taking over majority shares, resulting in a transfer of control over the Jiwasraya corporation. The definition of acquisition or takeover in article 11 of Law Number 40 of 2007 concerning Limited Liability Companies is "Legal acts carried out by two or more companies to merge themselves by establishing a new company which due to law acquires assets and liabilities from the merged company and the company's legal entity status ends because of the law".

IFG *Life* in resolving the default case of PT. Asuransi Jiwasraya (Persero) will be given a capital injection by the central government through State Capital Participation (PMN) worth IDR 20 trillion in 2021. The funds that have been received will be processed first by IFG *Life* before later being given to customers of the policy restructuring program. Apart from receiving capital injections through

PMN, IFG *Life* also received asset transfers from PT Asuransi Jiwasraya (Persero). These assets consist of securities, land and buildings owned by PT Asuransi Jiwasraya (Persero). The assets of PT Asuransi Jiwasraya (Persero) are estimated at Rp 4.4 trillion.

The fate of PT. Asuransi Jiwasraya (Persero) that is not approved with the policy restructuring process, will remain at PT. Asuransi Jiwasraya (Persero). Legal relations among PT. Asuransi Jiwasraya (Persero) with customers who do not agree to restructure the policy will later be in the status of accounts receivable. Because all assets of PT. Asuransi Jiwasraya (Persero) that can be saved and that has a selling value has been transferred to IFG *Life*. Then for the remaining assets will be calculated first by PT. Asuransi Jiwasraya (Persero) which will then be paid to former employees of PT. Asuransi Jiwasraya (Persero). After being paid to former employees of PT. Asuransi Jiwasraya (Persero) and if there are still remaining assets, it will later be distributed to policyholders who do not agree with the policy restructuring program.

Transfer of PT. Asuransi Jiwasraya (Persero) to a new company called IFG Life is carried out based on approval from the government as the largest shareholder of PT. Asuransi Jiwasraya (Persero). IFG Life is a subsidiary of Indonesia Financial Group (IFG) which in this case has committed a legal action that will later cause a legal effect.

Dispute resolution in the field of law, especially in business law, is divided into two, namely litigation settlement (via court) and non-litigation (outside the court). Litigation settlement (via court) is the settlement of disputes between parties carried out before the court based on the legal process in force in Indonesia. Non-litigation settlement is the settlement of participants carried out outside the court through the Alternative Dispute Resolution (APS) method or *Alternative Dispute Resolution* (ADR). The settlement made by IFG *Life* is a non-litigation settlement because it is carried out by accepting the transfer of the customer's policy to IFG *Life*. Transfer of PT. Asuransi Jiwasraya (Persero) to IFG *Life* based on a letter from OJK number S-387/NB.2/2021.

The systematics of government accountability offers several payment options that are considered beneficial for customers and for the state as a form of protection from customer losses. There are three payment options that have been determined by IFG *Life*, namely:

The main option, payment will be made in *full* 100% in installments to customers for fifteen years. Payment in the first ten years will be paid at 5% of the policy value and the dilemma of the last year will be paid at 10% of the policy value.

Option 1, payment will be made in installments to customers for five years. In this option, the payment to be paid to the customer is only 71% of the policy value because there is a discount of 29% of the policy value.

Option 2, this option is the last option offered by IFG *Life* where payments will be made in installments to customers for five years. IFG *Life* will make an

advance payment of 10% of the policy value. Then the remaining 59% will be paid in installments to customers with details of 10% in the first year, 5% in the second year and third year, 9% in the fourth year and 30% in the fifth year. The total policy value paid to the customer in option 2 is 69% of the policy value because there is a discount of 31% of the policy value.

The P2SK Law is in accordance with the objectives of criminal law enforcement in the financial services sector by looking at the increasingly complex development of the financial services sector through recovery of the aggrieved parties. With the specificity of criminal acts and investigative techniques in the financial sector.

The P2SK Law which regulates the authority of OJK to conduct investigations in the financial services sector and this does not annul the authority of other law enforcement officials because certain employee investigators at OJK have added value as investigators in the financial services sector because of several things, namely the duties and functions as supervisors of employee rotation patterns, supporting the formation of special investigator expertise in the financial services sector. Experience and ability to supervise the financial services sector will accelerate the study of types of criminal acts in the financial services sector including the expansion of criminal acts in the P2SK Law according to Article 8 Number 21, Article 49 Paragraph (5) and Article 8 Number 21, Article 49 Paragraph (1) letter c.

The OJK Law mandates investigations as stated in the Code of Criminal Procedure to ensure legal certainty for the sake of justice. In order to account for his criminal acts.

2.3. Legal Protection for Insurance Consumers in Indonesia

The rights and obligations of insurance companies as insurers and policyholders are not specifically regulated in laws and regulations but are regulated in insurance contracts or agreements. Article 255 of the KUHD states that a coverage must be stated in the form of a written deed in the form of an insurance policy. An insurance policy is evidence of a binding insurance agreement.

Legal protection can be distinguished in two forms, namely preventive legal protection and repressive legal protection. Preventive legal protection aims to prevent disputes from occurring, while repressive legal protection aims to resolve disputes that occur. As already mentioned, the form of preventive legal protection for consumers or insurance policyholders is through the establishment of regulations to provide legal certainty for the fulfillment of policyholder rights for Insurance Financial Sector Institutions (PUSK) to provide protection and legal certainty from losses.

Repressive legal protection can be pursued through civil lawsuits through the courts in the form of tort claims. Based on Article 1267 of the Civil Code, it stipulates that a party against whom an engagement is not fulfilled can sue the other party to fulfill the engagement with compensation and interest.

The law aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can be done by limiting various interests on the other hand. Legal interests are concerned with human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected.

Legal protection must see stages, namely legal protection born from a legal provision and all legal regulations provided by the community which is basically an agreement of the community to regulate behavioral relations between community members and between individuals and the government who are considered to represent the interests of the community⁵. Law can be used to realize protection that is not only adaptive and flexible, but also predictive and anticipatory⁶.

Legal protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and / or victims, legal protection of crime victims as part of community protection, can be realized in various forms, such as through the provision of restitution, compensation, medical services, legal aid, compensation, and as a *restorative justice*⁷ approach. Legal protection is a matter of protecting legal subjects through applicable laws and regulations and forced implementation with a sanction.

Preventive legal protection is protection provided by the government with the aim of preventing violations before they occur. This is contained in laws and regulations with the intention of preventing a violation and providing signs or replies in carrying out an obligation. Repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment and additional penalties given if there has been a dispute or a violation has been committed⁸.

Preventive legal protection aims to prevent disputes, which directs government actions to be prudent in making decisions based on discretion, and repressive legal protection aims to resolve disputes, including handling them in judicial institutions. Efforts to obtain legal protection, of course, what is desired by humans is order and order between the basic values of law, namely the existence of Legal certainty, legal usefulness and legal justice, although in general

⁵ Satjipto Rahardjo. *Legal Science*. 2000. Bandung: Citra Aditya Bakti, p. 53.

⁶ Lili Rasjidi and I.B Wisa Putra. *Law as a System*. 1993. Remaja Rosdakarya., Bandung, p. 118.

⁷ Soerjono Soekanto. *Introduction to Legal Research*. 1984. Jakarta: UI Press, p. 133.

⁸ Muchsin. *Legal Protection and Certainty for Investors in Indonesia*, . 2003.: Sebelas Maret University, Surakarta.

in practice the three basic values conflict, must be sought for all three basic values together⁹.

Legal protection is an effort to protect a person's interests by allocating a human right power to him to act in the framework of his interests¹⁰. Legal protection is an action or effort to protect society from arbitrary actions by rulers who are not in accordance with the rule of law, to create order and tranquility so as to enable humans to enjoy their dignity as human beings¹¹. The form of legal protection provided by a country has two characteristics, namely prohibitive and sanction¹².

Legal protection is the protection of dignity and dignity, as well as recognition of human rights possessed by legal subjects based on legal provisions from arbitrariness or as a collection of regulations or rules that will be able to protect one thing from another¹³.

Legal protection is an activity to maintain or maintain the community in order to achieve justice. Then legal protection is constructed as a form of service, and the subject is protected¹⁴.

COVER

Based on data analysis and discussion that has been explained, research conclusions were concluded that legal protection for customers in cases of default on insurance claims can be carried out preventively and repressively. Preventive protection is carried out through the creation of regulations that provide legal certainty for insurance policyholder customers. Repressive protection is carried out through law enforcement, both civil and criminal. Civil law enforcement is carried out through tort lawsuits to the insurance PUSK and Asset Forfeiture to be controlled by the state, while law enforcement is in the form of prosecuting perpetrators of corruption and money laundering crimes.

⁹ Mary Alfons., *Implementation of Geographical Indication Protection of Local Community Products in the Perspective of Intellectual Property Rights. Summary of the Doctoral Dissertation*. 2010. Brawijaya University, Malang, p. 18.

¹⁰ Satjipto Rahardjo. *Other Sides of the Law in Indonesia*. 2003. Kompas, Jakarta, p.121.

¹¹ Setiono. *Rule of Law*. 2004. Surakarta: Sebelas Maret University, p. 3.

¹² Rafael La Porta. Investor Protection and Corporate Governance. 1999. *Journal of Financial Economics*. No. 58, h. 9.

¹³ Philip M. Hadjon. *Legal Protection for the People of Indonesia*, 1987. Surabaya: Bina Ilmu. p.25.

¹⁴ Salim HS and Erlies Septiana Nurbaini. *Application of Legal Theory to Thesis and Dissertation Research*, 2013. Rajagrafindo Persada, Jakarta, p. 261.

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