

State Insurance Guarantee As a Solution to Commercial Insurance Default: A Case Study in Indonesia

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Abstract: Injustice in private insurance practices in Indonesia often arises due to the imbalance of the position of attachment between the insurance institution and the insured party, such as in unilateral claim rejection or adverse standard clauses. This study aims to analyse the role of insurance guarantees from the state as an alternative to legal protection and justice for consumers. Through a juridical-normative approach and case studies on breaches of agreements committed by private insurers, based on the analysis conducted, it is known that state intervention in the form of an insurance guarantee scheme or Policyholder Protection Scheme (PPS) can provide legal certainty and public confidence in the insurance industry. The study recommends the establishment of a national insurance guarantee institution as a structural solution to the imbalances that occur in the commercial insurance system in Indonesia.

Keywords: Insurance, Policyholder Protection Scheme, Default

1. Introduction

Every human being cannot avoid the possibility of unexpected events that can bring risks, uncertainties and losses. To deal with this situation, insurance institutions act as a means of protection by transferring risks that may occur. Insurance is an institution that functions to provide protection to individuals who do not have the ability as a form of protection against risks arising from events that cannot be predicted in advance (eventement). Insurance institutions play an important role in providing protection guarantees to individuals who face potential losses. This risk transfer mechanism can be carried out by individuals, groups, and communities in society in general. Therefore, insurance is the only institution that carries out the function of transferring risk by providing protection for the insured party when an unpredictable event occurs.

The implementation of business in the insurance sector is under the authority and direct supervision of the Financial Services Authority (OJK), an independent institution that was born on the basis of the applicable legal basis. OJK is mandated to carry out the functions of regulation, supervision, examination, and investigation of financial services activities in order to ensure the creation of a healthy, fair and transparent financial system. The Financial Services Authority (OJK) is a body formed based on the provisions of legal regulations in the form of Law Number 21 of 2011 related to the Financial Services Authority (hereinafter referred to as the OJK Law). This institution has a role in carrying out regulatory and supervisory functions in the financial services sector, as well as providing protection to consumers, especially in non-bank financial institutions such as the insurance industry. In the insurance sector, OJK plays an important role in protecting consumers of non-bank financial services and maintaining the integrity and stability of the insurance industry.

The insurance contract is included in the type of agreement based on the agreement of the parties, namely the engagement between the insurer and the insured is considered valid and binding since the agreement of both parties. However, the agreement only becomes

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effective after the insured fulfills its obligation to pay the premium. So that the legal relationship between the parties can be proven juridically, an insurance policy is made. This policy is an authentic document and serves as written evidence of the existence of an insurance agreement between the insurer and the insured. Through Article 257 of the KUHD, there is clarity regarding, "even though the policy has not been made, insurance has occurred since the agreement between the insured and the insurer. So that the rights and obligations of the insured and the insurer arise from the agreement based on the memorandum of agreement. If written evidence is available, then ordinary evidence regulated in civil procedural law can be used".

In practice, the implementation of insurance contracts often faces various legal issues, especially if one party is negligent in carrying out its responsibilities. One of the most common forms of default is insurance companies that fail to pay claims as promised in the agreement, to the detriment of policyholders. The inability or refusal of the company to fulfill these obligations can be categorized as default. In fact, policyholders have the right to submit claims based on the agreed provisions in the insurance agreement, which also serves as a juridical guideline for the contractual relationship. Although the regulations regarding insurance agreements have been clearly regulated, the reality is that disputes between policyholders and insurance companies still occur frequently in Indonesia. The convoluted claims process, the difficulty of fulfilling consumer rights, and the rejection of claims on various pretexts are recurring problems and are the main complaints for the insured. Based on OJK reports and previous research, cases of default in the insurance industry often arise, such as delays in claim payments or even unilateral rejections by insurance companies. The AJB Bumiputera case, for example, is in the spotlight because many claims were not paid on time, causing huge losses to customers. Some concrete examples can be seen in the case of Great Eastern General Insurance, which was declared in default by the Central Jakarta District Court for refusing to pay claims worth Rp17.2 billion (Warta Ekonomi, 2024), the case of withholding claims by Allianz Life Indonesia (CNN Indonesia, 2017), and the delay in policy payments by AJB Bumiputera 1912 (USK Law Student Scientific Journal, 2023). Although there have been many studies on the law of insurance agreements, there are several research gaps that have not been widely explored, among others: The lack of empirical studies linking default and the effectiveness of legal protection for insurance consumers. Limited analysis of non-litigation dispute resolution mechanisms such as the role of BMAI as a dispute resolution institution in the insurance sector as an option other than the court. The absence of a comprehensive evaluation of OJK's role in supervising and enforcing consumer rights to insurance claims. From the description above and seeing the defaults that occur, researchers are interested in further examining what regulations and laws already exist to guarantee and protect policies to resolve disputes caused by the phenomenon of defaults that occur in the Indonesian context. Based on this, this research is themed "State Insurance Guarantee as a Solution to Overcoming Commercial Insurance Default: A Case Study in Indonesia"

2. Research Methods

This research method utilizes a qualitative approach, as described by Lexy J. Moleong in his book (2007: 6) According to the view of L. Morris Cohen in a quote submitted by Zainuddin Ali, legal studies can be understood as a form of scientific activity carried out to find answers to various legal issues, both theoretical and practical. This activity includes a study of legal foundations, juridical norms that are binding and continue to develop in society, along with legal realities that can be observed in a social context. In this research, a normative legal approach is applied, which focuses on literature study as the main source of analysis. As explained by Zainuddin Ali, legal studies that focus on written norms are research methods carried out by examining literature sources or secondary data sources that refer to legal rules that apply in society.

3. Discussion

Legal Basis of Insurance Agreement and Policy Instrument

Juridical protection of the insured party in Indonesia is an essential thing to be regulated, given its relationship with various objectives and needs in the civil relationship between insurance companies and customers. Regulations regarding such protection have been contained in a number of applicable legal regulations that are sectoral in nature. One of the relevant regulations, Law No. 40/2014 on Insurance, establishes criteria for business conduct standards that must be met by insurance companies. This provision is stipulated in Article 26 paragraph (1), which contains regulations related to important aspects of insurance such as policy contents, premium or contribution payments, risk selection and customer identification processes, claim settlement procedures, competence of experts in the field of insurance, distribution of insurance products, mechanisms for handling complaints from policyholders, and other operational standards related to insurance company activities. More detailed arrangements regarding these business conduct standards are further regulated through Regulations issued by the Financial Services Authority (OJK).

POJK No. 1/POJK.07/2013 on Consumer Protection in the Financial Services Sector is a more solid legal basis in an effort to provide guarantees of legal protection for the public as consumers of financial services, including in the context of insurance agreements. In this regulation, OJK is authorized to take preventive measures against potential violations of consumer rights. This provision is contained in Article 4 paragraphs (1) to (3), which stipulates the obligation for business actors in the financial services sector to convey information that is valid, clear, precise, and does not cause misunderstanding regarding the products or services they provide. Submission of such information must be done through official documents or other media that have legal force and can be used as evidence. In addition, the provision of information must be carried out both when explaining the rights and obligations of consumers and during the process of formulating agreements between business actors and consumers.

Legal guarantees for consumers are also provided after the contractual relationship in the form of an insurance agreement or policy. This provision is regulated in Article 7 of POJK Number 1/POJK.07/2013 which contains provisions on the obligations that must be fulfilled by business actors in the financial services sector in preparing documents relating to consumer rights and obligations. The provision emphasizes that every business actor is obliged to use simple, clear, and easy-to-understand Indonesian language in every document that contains consumer rights and obligations, so that the information can be used as a guide in the decision-making process, as well as those that contain legally binding conditions. If necessary, Indonesian can be paired with foreign languages. In addition, the information in the document must be conveyed using easy-to-read writing, symbols, or diagrams, and if there are terms or symbols that consumers do not understand, business actors are obliged to provide an explanation. In the event that a legal document is prepared in a foreign language in accordance with laws and regulations, the document must also be accompanied by a translation in Indonesian.

Legal protection of policyholders also obtains a normative basis from the general provisions contained in Law No. 8 of 1999 concerning Consumer Protection basically contains provisions that accommodate the interests of consumers, including in the field of insurance, especially in situations of losses experienced due to negligence or default of business actors. The Consumer Protection Law expressly regulates that business actors, including insurance companies, have an obligation to respect and protect consumer rights as stipulated in Article 4 of the Consumer Protection Law. These rights include security, comfort, safety in using products or services, the right to choose, obtain correct and transparent information, and express opinions and complaints. In addition, consumers also have the right to obtain legal protection, obtain a settlement in the event of a dispute, obtain education related to their rights and obligations as consumers, and obtain fair treatment without discrimination. Consumers also have the right to compensation or compensation if the goods or services received are not in accordance with the agreed agreement. Other rights owned by consumers are also guaranteed by applicable laws and regulations.

Preventive Efforts and Dispute Resolution in the Insurance Sector in Indonesia

As stipulated in Law No. 40/2014 on Insurance, OJK is fully mandated to carry out regulatory and supervisory functions over the insurance industry in Indonesia. This provision aims to strengthen risk mitigation efforts and legal protection in insurance business activities. Article 19 stipulates that all conventional and sharia insurance institutions, including reinsurance institutions, have an obligation to comply with the principles of financial soundness. In addition, insurance companies are also required to periodically evaluate the adequacy of the Insurance Fund or 'Tabarru' Fund in order to ensure the ability to pay. Insurance companies have an obligation to pay claims and fulfill other obligations that arise based on the provisions in the policy agreement. In addition, every insurance company is also required to design and implement risk mitigation strategies as an effort to maintain the stability and sustainability of the company's financial condition.

In this case, both the Financial Services Authority (OJK) and the Minister of Finance have important roles as parties responsible for supervising the financial services sector, including the authority to take legal steps such as filing for bankruptcy. This provision is clearly regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Referring to Article 2 paragraph (5), it is stated that if the debtor is an Insurance Company, Reinsurance Company, Pension Fund, or BUMN that organizes public services, then the application for bankruptcy statement can only be submitted by the Minister of Finance. The elucidation of this provision emphasizes that the granting of special authority to the Minister of Finance aims to maintain public confidence in the relevant financial institutions. This is important considering the strategic role of these institutions as risk managers and public funds in the national economic system.

The Juridical Basis for Insurance Policyholders in Indonesia

Efforts to provide legal protection to policyholders in Indonesia are essential and must be accommodated through provisions that are firm and comprehensive, given their relationship with various interests in civil relations between the community and insurance service business actors. Regulations regarding this matter have been contained in various applicable legal provisions, one of which is through Law Number 40 of 2014 concerning Insurance. In order to ensure such protection, the provisions in Article 26 paragraphs (1) and (2) stipulate the obligation for each insurance entity to always comply with ethical standards in carrying out its business activities. These standards cover various important aspects, including the preparation of policies, determination of premiums or contributions, underwriting and identification of the insured or participants, claim settlement mechanisms, competence of insurance professionals, steps in distributing or marketing insurance products, including mechanisms for resolving complaints from policyholders, which are an important part of regulating business conduct. In addition, more detailed arrangements related to these standards of conduct will be further outlined through regulations officially issued by the Financial Services Authority (OJK).

Financial Services Authority Regulation (POJK) Number 1/POJK.07/2013 on Consumer Protection in the Financial Services Sector provides a stronger foundation for legal protection efforts for consumers, including in the context of contractual relationships in insurance. In this regulation, OJK is given the authority to implement preventive measures to ensure that the rights of the public as users of financial services remain protected. The provisions contained in Article 4 paragraphs (1) to (3) require every financial services business actor to provide true, honest, open, and not misleading information about the products and services offered to consumers. The information must be submitted in the form of written documents or other media that are valid and can be used as legal evidence. In addition, the delivery of this information is also an obligation that must be fulfilled by business actors when providing explanations about consumer rights and responsibilities, including in the process of forming ongoing insurance agreements.

As part of the preventive measures against potential violations of consumer rights, the provisions in the Financial Services Authority Regulation (POJK) also provide legal protection guarantees to consumers, even after the agreement or after the insurance policy is issued. This is expressly regulated in Article 7 of POJK Number 1/POJK.07/2013, which requires all business actors in the financial services sector to use Indonesian language that is straightforward, easy to understand, and does not cause multiple interpretations in every form

of document relating to consumer rights and obligations, decision-making processes, and other provisions that have binding legal force. If necessary, the Indonesian language can be paired with foreign languages. In addition, business actors must ensure that the characters, text, symbols, and graphic illustrations, as well as indicators used in the document can be read properly. If there are terms or symbols that are not understood by consumers, business actors are obliged to provide explanations. In situations where the use of foreign languages is permitted as stipulated in statutory regulations, the document must be accompanied by a copy containing a version in Bahasa Indonesia to ensure comprehension by all interested parties.

The guarantee of legal protection for policyholders is also generally regulated in Law Number 8 Year 1999 on Consumer Protection. In the event that insurance consumers suffer losses, the principles in this law have substantially provided a basis for protection of their rights as users of insurance services. The regulation explicitly stipulates that consumer rights must be respected and fulfilled by all business actors, including insurance companies as financial service providers. This provision is clearly stipulated in Article 4, which states that every consumer is entitled to a sense of security, comfort, and safety protection when utilizing goods and/or services; entitled to choose and obtain goods and/or services in accordance with the promised value, conditions, and guarantees; and obtain correct, clear, and not misleading information about the products and services offered. In addition, consumers also have the right to express their aspirations, criticisms, and complaints regarding the services received. They are entitled to legal protection and dispute resolution in a fair and proportional manner. In addition, consumers have the right to access coaching and education programs to improve their understanding as service users. Equal treatment without discriminatory actions is also a guaranteed right for every consumer. If the goods or services received are not in accordance with the agreement that has been set, consumers are entitled to compensation, compensation, or other forms of replacement. Not only that, all other rights stipulated in various statutory provisions are also guaranteed protection.

Preventive Measures and Dispute Resolution in National Insurance Practice

Referring to the provisions contained in Law Number 40 of 2014 concerning Insurance, all responsibilities related to supervision and regulation of business activities in the insurance sector have been fully transferred to the Financial Services Authority (OJK) as the authorized institution, aiming to strengthen aspects of risk mitigation and legal protection in this sector. Article 19 states that every business entity, including insurance companies with conventional systems and those based on Islamic law, as well as reinsurance companies and sharia-based reinsurance, are required to comply with provisions relating to the financial health of the company. In addition, these companies must regularly evaluate the adequacy of the Insurance Fund or 'Tabarru' Fund to ensure their ability to make claim payments and fulfill other obligations stemming from agreements in insurance policies. Furthermore, they are also required to develop and implement risk mitigation strategies as part of efforts to maintain the company's financial stability on an ongoing basis.

The authority to supervise the sustainability and continuity of insurance company operations is fully under the responsibility of the Financial Services Authority (OJK). More detailed arrangements regarding this matter are contained in OJK Regulation Number 28/POJK.05/2015 concerning Dissolution, Liquidation, and Insolvency of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies. Based on the provisions of Article 1 paragraph (10), the revocation of the business license of an insurance company can be carried out if the entity no longer meets the requirements as stipulated in the laws and regulations in the insurance sector or if the company has been declared bankrupt through a court decision with permanent legal force. Furthermore, Article 1 paragraph (11) explains that the dissolution of the company is the stage of termination of the company's legal entity status that occurs after its business license is revoked, where this process generally begins with a bankruptcy procedure filed and decided through a judicial institution.

If an insurance or reinsurance company faces financial problems that have the potential to go bankrupt, the responsibility for providing legal protection to policyholders and related parties becomes the authority of the Financial Services Authority (OJK) or the Minister of Finance. Provisions related to this are emphasized in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Specifically, Article 2 paragraph (5) stipulates that in the event that the debtor is an insurance company, reinsurance, pension

fund, or State-Owned Enterprise (BUMN) that organizes services to the public, only the Minister of Finance has the authority to apply for a bankruptcy statement against the entity.

Exposure to these provisions emphasizes that the delegation of this exclusive authority to the Minister of Finance aims to maintain stability and public confidence in the insurance sector, considering that insurance and reinsurance companies play an important role as managers of public funds and institutions that mitigate risks in the national economic order.

Legal Aspects in the Establishment of Policy Guarantee Institutions in Indonesia

Indonesia is a member of the International Association of Insurance Supervisors (IAIS), an international organization that focuses on setting global standards in insurance industry supervision. IAIS plays a strategic role in developing and encouraging the implementation of various principles, operational standards, and technical guidelines aimed at strengthening the supervisory system in the insurance sector at the international level. The main mission of the organization is to ensure consistent and effective supervision around the world, with the hope of creating a transparent, safe, and stable insurance market. In addition, the IAIS is also committed to providing optimal protection to policyholders and contributing to the stability of the global financial system.

One of the important mandates issued by the international association is the encouragement to each member country to establish a policy guarantee institution as an instrument of protection for policyholders. The emphasis on the urgency of establishing this institution is reflected in the provisions of Article 6, which explicitly regulates the need for each member country to have a policy guarantee mechanism in its industry supervision system.;

Policyholder Protection Schemes (PPSs) are typically industry-funded collective arrangements that function as safety nets of last resort, offering fundamental protection to policyholders when all other preventive and remedial mechanisms have failed. These schemes are specifically designed to safeguard policyholders and beneficiaries in the event of an insurer's insolvency, effectively serving as a final line of defense for claim settlement. Although their primary purpose is to ensure a minimum level of protection, certain PPS models may be more expansive in scope. Where incorporated into their framework, PPSs may also support the broader objectives of insurance resolution frameworks by:

1. *enabling the ongoing provision of insurance coverage,*
2. *providing financial assistance to a failed insurer or to an acquiring entity, or to an entity receiving the transferred policies from the insolvent insurer,*
3. *acting as a temporary bridge institution in cases where no immediate acquirer for the failed insurer is available.*

To date, Indonesia has not implemented the establishment of a Policy Guarantee Corporation, although its establishment has become a mandate stated in Law No. 40/2014 on Insurance. The regulation regarding this matter is expressly stipulated in Article 53, which states that the government will establish an institution tasked with providing protection to policyholders. Furthermore, the plan to establish the institution is designed to be regulated through a separate legislation that is special and separate from the previous law.

Arrangements related to the establishment of a Policy Guarantee Corporation have been clearly stipulated in Law No. 40/2014 on Insurance. This provision is contained in Article 53 paragraph (1), which requires all insurance companies, both conventional and sharia, to be part of the policy guarantee program. In addition, the law also sets a deadline for the establishment of this program, which is no later than two years after the law is officially enacted. In the explanation section of Article 53 paragraph (1), it is emphasized that the main purpose of the Policy Guarantee Program is to provide protection in the form of returning part or all of the rights owned by policyholders, the insured, or participants, in the event of a revocation of business license and liquidation process of the insurance company or sharia insurance company concerned. In addition, the operation of this scheme is also expected to strengthen public confidence in the insurance industry sector in general, so as to encourage increased public participation in utilizing insurance services.

4. Conclusions

This research shows that the juridical protection of the rights of insurance policyholders in Indonesia still faces various obstacles, especially in the practice of private insurance. Cases of claim rejection, complicated claim processes, and unclear policy information are the main problems that harm customers. Although regulations such as Law No. 40/2014 on Insurance and its derivative regulations in the form of OJK Regulations have established a juridical basis for the legal protection of policyholders, in practice, the implementation of these provisions at the operational level is not always feasible has not been running optimally and effectively. The role of the Financial Services Authority (OJK) as the supervisory authority of the financial services sector provides strengthening in terms of regulation and supervision of insurance companies. However, customer protection efforts will be more optimal if the Policyholder Protection Fund mandated by the law is immediately realized. This institution is expected to realize protection and legal clarity for policyholders, especially in cases of liquidation or bankruptcy of insurance companies. This research also underscores the importance of the role of government and supervisory agencies in ensuring effective consumer protection in the insurance industry. The existence of a mechanism is also important for effective and efficient dispute resolution for aggrieved insurance customers. This encourages insurance companies to improve their transparency and responsiveness in handling customer claims to resolve disputes with insurance companies. Overall, concrete steps need to be taken by various parties, including insurance companies, the government, and regulatory agencies, to improve consumer protection in the insurance industry.

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