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Legal Implications of Insurance Supervisor's Liability in Policy Failure

Implikasi Hukum atas Tanggung Jawab Pengawas Asuransi dalam Kegagalan Polis

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Abstract

Ambiguitas norma dalam Pasal 15 Undang-Undang Perasuransian Nomor 40 Tahun 2014 menimbulkan multitafsir dalam praktik, khususnya terkait dengan ruang lingkup tanggung jawab pengendali perusahaan asuransi dalam kasus wanprestasi pemegang polis. Studi ini bertujuan untuk menganalisis batasan tanggung jawab pengendali perusahaan asuransi terhadap wanprestasi pemegang polis dengan merujuk pada kasus PT Asuransi Jiwasraya dalam perkara 676/PDT/2021/PT DKI. Penelitian ini menggunakan metode hukum normatif dengan pendekatan perundang-undangan, pendekatan konseptual, dan pendekatan kasus, serta dianalisis menggunakan interpretasi gramatikal dan sistematis. Hasil penelitian menunjukkan bahwa terdapat ketidakpastian hukum dalam pengaturan mengenai tanggung jawab pengendali perusahaan asuransi, yang berdampak pada perlindungan hukum bagi pemegang polis. Temuan ini menegaskan perlunya regulasi yang lebih eksplisit mengenai ruang lingkup tanggung jawab pengendali guna memberikan kepastian hukum dan perlindungan yang lebih optimal bagi pemegang polis. Oleh karena itu, rekomendasi yang diberikan mencakup perlunya revisi regulasi terkait serta penguatan mekanisme pengawasan terhadap pengendali perusahaan asuransi.

Keywords: *Ambiguitas Norma; Wanprestasi; Pengawas Asuransi*

Abstract

The ambiguity of the norms in Article 15 of Insurance Law Number 40 of 2014 has led to multiple interpretations in practice, especially in relation to the scope of the responsibility of the controller of an insurance company in the case of policyholder default. This study aims to analyze the limits of the responsibility of the controller of an insurance company for the default of policyholders by referring to the case of PT Asuransi Jiwasraya in case 676/PDT/2021/PT DKI. This research uses a normative legal method with a statutory approach, conceptual approach, and case approach, and is

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analyzed using grammatical and systematic interpretation. The results show that there is legal uncertainty in the regulation of the responsibility of the controller of the insurance company, which has an impact on legal protection for policyholders. This finding confirms the need for more explicit regulations regarding the scope of controlling liability in order to provide legal certainty and more optimal protection for policyholders. Therefore, the recommendations include the need for revision of related regulations as well as strengthening the supervision mechanism of insurance company controllers.

Keywords: Norm Ambiguity; Default; Insurance Supervisor

Introduction

The phenomenon of failure to pay insurance claims that occurred at PT Asuransi Jiwasraya reflects the legal uncertainty regarding the responsibility of the controller of the insurance company. In the context of insurance law, Article 15 of Law Number 40 of 2014 concerning Insurance regulates that the controller of an insurance company is responsible for losses suffered by the company due to the actions of parties under its control.[2] However, this norm creates ambiguity in practice, especially in determining the extent to which the controller's responsibility can be imposed for defaults committed by insurance companies against policyholders. Philosophically, the law aims to create certainty and protection for the community, including in the insurance sector which has a broad impact on the economy and social welfare. Juridically, the lack of clarity in this regulation raises questions regarding the effectiveness of legal protection for insurance policyholders who suffer losses due to the company's failure to fulfill its obligations.[3]

Several previous studies have discussed the issue of policy failure in the insurance industry, especially in the context of policyholder protection and insurance company supervision. Research conducted by Evelin Wiyasih (2021) highlights the legal protection for policyholders who are victims of insurance company defaults, emphasizing the role of the Financial Services Authority in enforcing regulations. Meanwhile, a study by Athika Rahma (2023) examined the chronology of Jiwasraya's problems and their implications for the insurance industry in Indonesia. However, these studies have not specifically discussed the scope of the responsibility of the controller of an insurance

[2] Mochtar Kusumaatdmaja, *Teori Hukum Pembangunan* (Jakarta: Epistema Institute dan Huma, 2012), 4.

[3] Satjipto Rahardjo, *Ilmu hukum* (Bandung: Citra Aditya Bakti, 1991), 2.

company in the context of applicable positive law. Therefore, this research contributes by filling the gap of previous research through a juridical analysis of the responsibility of the controller of an insurance company and its impact on legal certainty for policyholders[4]

The urgency of this research lies in the massive impact caused by the failure to pay insurance claims to thousands of policyholders in Indonesia. The lack of clarity in legal norms governing the liability of insurance company controllers has the potential to weaken legal protection for policyholders and create uncertainty in the insurance industry. From a ius constituendum perspective, clearer and firmer regulations regarding the limits of controlling liability are needed to avoid similar cases in the future and strengthen the supervisory system of the insurance industry by the Financial Services Authority.

In this research, there are several legal issues that will be studied, among others: (1) What is the scope of responsibility of the controller of an insurance company according to Law Number 40 of 2014 concerning Insurance? (2) To what extent can the controller of an insurance company be held liable in the case of policyholder default, as happened in the Jiwasraya case? (3) Does the current regulation provide sufficient legal protection for policyholders in the face of failure to pay insurance claims?

The purpose of this study is to analyze the scope of responsibility of the controller of an insurance company in the case of policyholder default and to evaluate the effectiveness of existing regulations in providing legal protection for policyholders. In addition, this study aims to provide recommendations for regulatory improvements in order to create better legal certainty in the insurance industry in Indonesia.

With this research, it is expected to contribute to the development of insurance law in Indonesia, especially in clarifying the responsibilities of insurance company controllers. In addition, the results of this study can be taken into consideration for regulators in formulating policies that are more effective in protecting the interests of policyholders and preventing the recurrence of similar cases in the future.

[4] Christian Thimann, "How Insurers Differ from Banks: A Primer in Systemic Regulation," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, 27 Juli 2014), 43, https://doi.org/10.2139/ssrn.2502458.

Method

The type of legal research conducted is normative/doctrinal legal research,[5] which aims to provide a structured explanation of legal norms related to the responsibility of insurance company controllers for policyholder defaults. This research is relevant to the background that has been described because it discusses legal uncertainty in the application of Article 15 of Law Number 40 of 2014 concerning Insurance.

This research involves examining the correlation between applicable legal norms or provisions, uncovering areas of law that face difficulties in implementation, and providing prescriptive analysis of workable solutions. In this approach, three main methods are used, namely:

1. Legislative approach, which analyzes Article 15 of the Insurance Law as well as other relevant regulations in the Indonesian legal system.
2. Conceptual approach, which explores legal theories on the responsibility of corporate controllers and how legal norms should be interpreted in the context of legal certainty for policyholders.
3. Case Approach, which evaluates the case of PT Asuransi Jiwasraya as the main case study in looking at the legal implications of insurance company controller liability.

The three approaches are processed based on primary and secondary legal materials, with an emphasis on prescriptive analysis that aims to provide legal solutions to improve legal certainty in the insurance industry in Indonesia. Thus, this research not only provides theoretical understanding but also offers recommendations for regulatory improvements in the protection of insurance policyholders.

Result and Discussion

As part of the insurance legal system, the responsibility of insurance company controllers is crucial in ensuring stability and protection for policyholders. Existing regulations, particularly in Law No. 40/2014 on Insurance, regulate the controller's obligation to report its activities to the Financial Services Authority (OJK) and ensure that the company continues to fulfill its obligations to policyholders. However, there is

[5] Irwansyah, *Penelitian Hukum : Pilihan Metode & Praktik Penulisan Artikel* (Mirra Buana Media, 2020), 8.

still ambiguity in the limits of the controller's responsibility, especially regarding defaults made by insurance companies in fulfilling claims.

In practice, controlling shareholders have great authority in determining the direction of company policy, as stipulated in Law No. 40 of 2007. However, the case of PT Asuransi Jiwasraya shows that the existing regulations have not been fully able to prevent abuse of authority that led to the default of policy claims. Therefore, it is necessary to update regulations that are more specific in determining the limits of the controller's responsibility so that legal certainty for policyholders can be better guaranteed.

Law No. 40/2014 on Insurance stipulates that every insurance company must appoint a controller who is responsible for the company's operations. However, the provision in Article 15 of the law still leaves ambiguity in its application, particularly in determining the extent to which the controller can be held liable for policyholder losses due to the failure of the insurance company to fulfill claims. This uncertainty has led to legal issues related to policyholder protection that have not been effectively resolved.[6]

In practice, the Financial Services Authority (OJK) has the authority to appoint a controller if the insurance company does not have a clear leadership structure (OJK Regulation No. 27/POJK.03/2016). In addition, controlling shareholders have the authority to determine the direction of company policy, including the appointment and dismissal of directors, as well as decision-making in the General Meeting of Shareholders (GMS) as stipulated in Article 13 paragraph (3) of Law No. 40 of 2007. However, despite the strategic role of the controlling shareholder, there is no provision that explicitly regulates the limitation of its liability in the context of an insurance company's default against policyholders.

One example of a relevant case is the case of PT Asuransi Jiwasraya, where the company experienced a huge default on policy claims. In case 676/PDT/2021/PT DKI, it was found that the company had made high-risk investments that caused huge losses to policyholders. However, in the court decision, the controller's responsibility was not explicitly explained, indicating the weakness of regulations in setting limits on the responsibility of insurance company controllers.[7]

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6 Indonesia, Pemerintah Pusat, "Undang-undang (UU) Nomor 40 Tahun 2014 tentang Perasuransian," 2014.

7 Indonesia, Otoritas Jasa Keuangan, "Peraturan Otoritas Jasa Keuangan Nomor 27/POJK.03/2016 Tahun 2016 tentang Penilaian Kemampuan dan Kepatutan bagi Pihak Utama Lembaga Jasa Keuangan," 2016.

Furthermore, in legal theory, the principle of piercing the corporate veil allows the limited liability of shareholders and directors to be waived in certain circumstances. This doctrine can be applied if it is proven that the controller of the company is directly involved in the policy that causes losses to policyholders. However, in Indonesian insurance regulations, this mechanism has not been fully accommodated, leaving policyholders in a vulnerable position.

Based on these findings, more stringent regulatory reforms are needed to determine the scope and limits of the liability of insurance company controllers. With a clearer regulation, it is expected that legal certainty for policyholders can be improved, and the controlling liability mechanism can be implemented more effectively

Investigating risk management in the insurance industry requires caution in determining the level of risk. Paul Hopkin (2010) explains that risk assessment can be done hierarchically in four main levels: strategy, tactics, operations, and compliance. At the strategic level, risks are analyzed to achieve better decisions; at the tactics level, consideration is given to choosing the best alternative; at the operational level, disruptions can be identified and controlled in advance; and in terms of compliance, legal and customer risks can be recognized and managed[8]

In the corporate governance system, the General Meeting of Shareholders (GMS) is the highest organ that has the main authority in the company, as stated in Article 13 paragraph (3) of Law No. 40 of 2007. Shareholders in the GMS play an important role in determining company policy, including the appointment and dismissal of directors and commissioners. However, despite their strategic role, their responsibilities in insurance company default cases are still not explicitly regulated in existing regulations.[9]

The role of the Controller in Insurance Companies is also a major factor in the stability of the industry. The controller has the authority to determine policy direction, including the appointment of directors and the selection of public consultants.[10] In the context of regulation, Article 15 of Law No. 40 of 2014 states that the controller is

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[8] Paul Hopkin, *Fundamentals of Risk Management: Understanding, Evaluating and Implementing Effective Risk Management* (London: Kogan Page Publishers, 2018), 74.

[9] Munir Fuady, *Hukum Perusahaan dalam Paradigma Hukum Bisnis (Berdasarkan UU Nomor 40 Tahun 2007)* (Bandung: Citra Aditya Bakti, 2009), 53.

[10] Indonesia, Otoritas Jasa Keuangan, "Peraturan Otoritas Jasa Keuangan Nomor 27/POJK.03/2016 Tahun 2016 tentang Penilaian Kemampuan dan Kepatutan bagi Pihak Utama Lembaga Jasa Keuangan."

responsible for losses incurred by parties under its control, but the limits of its responsibility are still unclear.

One case that highlights the weakness of this regulation is the case of PT Asuransi Jiwasraya (676/PDT/2021/PT DKI). The company defaulted on policy claims due to high-risk investments, but the controller's responsibility was not explicitly explained in the court decision. This shows the need for regulatory improvements to determine the limits of controlling liability more concretely.

From a legal perspective, the principle of piercing the corporate veil allows the limited liability of shareholders and directors to be overridden under certain conditions, such as if the shareholders utilize the company for personal interests or are involved in illegal acts (Article 3 paragraph (2) UUPT). However, in the context of insurance, this mechanism is still not fully implemented, leaving policyholders in a vulnerable position in the face of claim payment failure.

Based on Article 97 paragraph (3) of the Company Law, the board of directors can be held personally liable if proven to have committed errors or omissions in carrying out their duties. Therefore, transparency and accountability in organizing the GMS are key in ensuring the balance of interests of all stakeholders, including policyholders, minority shareholders, and the insured.

As a remedial effort, it is necessary to update firmer regulations related to the responsibilities of insurance company controllers in order to improve legal protection for policyholders and prevent abuse of authority in the insurance industry in Indonesia.

According to the definition in the legal dictionary, responsibility or "accountability" refers to a person's obligation to fulfill what has been required or mandated of him or her. It involves accountability and answerability for one's actions or duties.[11] Based on the grammatical interpretation of Article 15 of Law Number 40 Year 2014, it can be understood that the Controller shall be jointly and severally liable for losses suffered by the Insurance Company caused by parties under its control. On the other hand, a systematic interpretation referring to Article 1 paragraph 17 of Law Number 40 Year 2014 explains that the term "Party" refers to an individual or business entity, both incorporated and unincorporated. Thus, the phrase "by the Party under its control" can be understood as organs within the Insurance Company, Sharia Insurance Company, reinsurance company, or sharia reinsurance company.

[11] Andi Hamzah, *Kamus Hukum* (Bogor: Ghalia Indonesia, 2005), 31.

Article 1365 of the Indonesian Civil Code contains the doctrine of liability which is formulated as follows:

"Everyone is liable not only for damage caused by his actions, but also for damage caused by his negligence or lack of care..."

Based on the formulation of the phrase "responsible" in Article 15 of Law No. 40/2014, the concept of "Controller" liability is formed. This is in line with the concept of legal liability which is closely related to the concept of legal obligation. According to Hans Kelsen, the concept of legal obligation is the equivalent of the concept of legal norms. Furthermore, according to Hans Kelsen, a legal norm implies a legal obligation because every norm always creates a certain legal obligation. Therefore, according to Hans Kelsen, having a legal obligation means "being in a state as a subject in an offense" which in the book "The Pure Theory" is referred to as "delinquent".[12]

In his theory of responsibility, Hans Kelsen states that "A person is legally responsible for a particular act or he bears legal responsibility. Subjection means that he is liable to a sanction in the event of a contrary act."[13]

In the event of bankruptcy of the insurance company which results in policy default, the Insurer must still fulfill its obligations as stated in the insurance agreement. In the event of a policy default, this can be considered a violation of Article 31 of the Insurance Law, which states that "Insurance companies are prohibited from taking actions that can delay the settlement or payment of claims, or not taking actions that should be taken, resulting in delayed settlement or payment of claims." If an insurance company takes actions prohibited by Article 31 of the Insurance Law, the company may be subject to administrative sanctions as specified in Article 71 paragraph (2) of the Insurance Law, in the form of:

a) Written warning;
b) Restriction of business activities, either partially or wholly
c) Prohibition of marketing insurance products or sharia insurance products for certain lines of business
d) Revocation of business license;

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[12] Jimly Asshiddiqie dan M. Ali Safa'at, *Teori Hans Kelsen Tentang Hukum* (Jakarta: Konstitusi Press, 2006), 77, https://simpus.mkri.id/opac/detail-opac?id=563.

[13] Hans Kelsen, *General Theory of Law and State* (USA: The Lawbook Exchange, Ltd., 1999), 17.

e) Cancellation of registration of Insurance Brokers, Reinsurance Brokers, and Insurance Agents;
f) Cancellation of registration of actuarial consultants, public accountants, appraisers, or other parties providing services to insurance companies;
g) Revocation of approval for a mediation institution or association;
h) Administrative fines;
i) Prohibition of being a shareholder, controller, director, board of commissioners, or equivalent position in a cooperative legal entity or joint venture.

Article 15 of the Insurance Law stipulates that the Controller is responsible for losses suffered by insurance companies caused by parties under its control. In this case, the Controller of Jiwasraya Insurance Company is the Ministry of State-Owned Enterprises and the Ministry of Finance. Therefore, the Ministry of State-Owned Enterprises and the Ministry of Finance are responsible for the losses suffered by policyholders. The bankruptcy experienced by Asuransi Jiwasraya was caused by mismanagement and financial errors committed by the company's directors. The board of directors is under the supervision of the Ministry of State-Owned Enterprises. Liability can be fulfilled by providing compensation or compensation for late payments of 5.7% per year (net) for late payments, which will be paid together with the cash value/basic premium of the insurance policy that is disbursed.[14]

The Controller's obligation to be responsible for losses as stated in Article 15 of Law No. 40/2014 can be analyzed using Hans Kelsen's theory of responsibility. There is conformity with the forms of collective responsibility and absolute responsibility. According to Hans Kelsen, collective responsibility is a responsibility that arises because sanctions are not only imposed on the perpetrator of the unlawful act but also on individuals who are not actively involved in the unlawful act but have a certain legal relationship with the perpetrator of the unlawful act. In this case, the responsibility for losses incurred by the Insurance Company is also borne by the Controller because of the "control" relationship between the Controller and the Parties. Based on Hans Kelsen's theory, collective responsibility is always absolute responsibility. [15]This can be

[14] Vera W.S. Soemarwi, *Berhukum Di Masa Pandemi Covid-19* (Jakarta: Lembaga Penelitian dan Publikasi Ilmiah Universitas Taruma Negara, 2021), 66.
[15] Vera W.S. Soemarwi, 56.

understood by researchers because absolute responsibility is a form of responsibility owned by individuals for an offense committed unintentionally and unexpectedly.

The responsibility of the Insurance Company Management for losses suffered by the insurance company, according to the Financial Services Authority, if there are indications of other controllers other than those approved by the insurance company, the Financial Services Authority is authorized to appoint controllers other than those approved. Parties appointed as controllers cannot cease to be controllers without the approval of the Financial Services Authority. This is intended to prevent abuse by companies that have different objectives that can harm the insurance company by carrying out policies taken outside the General Meeting of Shareholders.

The main factors that lead to the liability of the controller of the insurance company are:

a) The existence of a controller who owns 25% (twenty-five percent) or more of the company's issued capital and has voting rights in the General Meeting of Shareholders.
b) Owning shares or capital of less than 25% (twenty-five percent) of the issued shares and having voting rights, but the person concerned can be proven to have controlled the company, either directly or indirectly.

In this case, the insurance company is PT Asuransi Jiwasraya, which is a state-owned life insurance company and is the oldest and only life insurance company owned by the Indonesian government. Jiwasraya originated from Nederlandsch Indiesche Levensverzekering en Liffrente Levensverzekering en Liffrente Maatschappij van 1859 (NILLMIJ). It was established on December 31, 1859, with notarial deed William Hendry Herklots with Number 185, making it the first life insurance company in Indonesia (Dutch East Indies). In 1957, Dutch-owned life insurance companies in Indonesia were nationalized as part of Indonesia's economic privatization program. On 17 December 1960, NILLMIJ van 1859 was nationalized based on Government Regulation Number 23 of 1958, and its name was changed to PT Perusahaan Pertanggungan Djiwa Sejahtera. Through Law Number 1 of 1995, the company was later amended and supplemented by

Notarial Deed Sri Rahayu H. Prasetyo, S.H., Number 03 dated July 14, 2003 to become PT Asuransi Jiwasraya (Persero). [16]

Problems arise when insurance companies experience failure to pay policyholder claims and irregularities in the management of company customer funds, Jiwasraya Insurance. The problem started with the fund-raising process of the Jiwasraya Saving Plan (JS) product. Jiwasraya Saving Plan is a life insurance program designed to provide protection, including compensation for death or total permanent disability caused by an accident, as well as investment certainty with guaranteed principal money and investment returns. Jiwasraya Insurance works with various banks to promote their insurance product known as Saving Plan. Some of the banks that partner with Jiwasraya for this insurance product are BRI, BTN, Victoria, QNB, SCB, and KEB Hana. However, due to the non-fulfillment of claims on the Saving Plan product, it was revealed that the investment placement of assets in the form of stocks and mutual funds was suspected of committing an Unlawful Act. As a result of the failure to pay the claim, the total loss reached Rp 16.81 Trillion, causing a shortage of funds to cover claims submitted by policyholders.[17]

An insurance claim is a formal request submitted by a policyholder to an insurance company for payment as agreed in the insurance contract. Claims submitted by policyholders will be reviewed by the insurance company for validity and will be paid to the policyholder or insured party if approved. According to Amrin Abdullah, a claim is the prosecution of a right by the insured party to the insurer to obtain coverage for losses based on an agreement or contract that has been made. Insurance claims must be fulfilled by the insurer to the insured party in accordance with the agreement that has been determined by all parties involved in the insurance policy. An insurance policy is an amount of money that must be paid to the insurer or insurance company every month, known as a premium:[18]

a. Reasonable Claims

[16] Jiwasraya, "https://www.jiwasraya.co.id/sejarah-jiwasraya - Penelusuran Google," 2021, https://www.jiwasraya.co.id/sejarah-jiwasraya.

[17] Vera WS Soemarwi dan Evelin Wiyasih, "Perlindungan Hukum Pemegang Polis Terhadap Gagal Bayar Perusahaan Asuransi Jiwasraya (Studi Kasus: Putusan 589/PDT. G/2019/PN. JKT. PST)," *Jurnal Hukum Adigama* 5, no. 1 (2022): 122.

[18] Rasmita Ramli, *Manajemen klaim* (Jakarta: Rineka Cipta, 1999), 26.

A "reasonable claim" is a claim made by one of the parties claiming its rights in accordance with the agreement or what has been agreed and stated in the contract or policy.

b. Unreasonable claims

"Unreasonable claims" are claims that occur when one party realizes that they have violated what was agreed upon.

The process of submitting a claim to an insurance company must be done correctly so that the company can approve and pay claims to policyholders. The procedures that can be followed are:[19]

a. Notice of Claim

When an insured event occurs, the party involved must immediately report it to the insurer or insurance company. They can make the report personally or through an authorized party such as a lawyer, broker, or agent. The report may initially be made verbally, which will then be confirmed by a written report. The insured party will receive further instructions regarding the necessary steps, required documents, and preparations when filing a claim with the insurer.

b. Proof of Claim

The insurer will ask the insured to provide complete facts and evidence for the benefit of the insurer or insurance company. Regarding the required documents, each company has a specific policy that is different from other companies. In this case, it is very important for the insured or policyholder who has suffered a loss to submit a claim in writing by filling out a claim submission form to ensure that the insurer or insurance company approves the claim submitted.

c. Investigation

After receiving the report along with supporting documents, the insurance company will proceed with administrative analysis. For example, they will check whether the premium has been paid or not. Once this stage is complete, the insurer will decide to conduct a field survey immediately.

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[19] Handayani, *Pengertian Premi Asuransi, Polis Asuransi, Klaim Asuransi Underwriting Tertanggung* (2001: Djambatan, 2001), 31.

d. Claims Settlement

After reaching an agreement on the amount of compensation in accordance with the applicable provisions, the payment of the claim must not exceed 30 days from the date of agreement.

In this research case, Elfie, whose address is P. Matahari VI Blok A7/20 Kel. Kembangan Utara, West Jakarta, has appointed Oerianto Guyandi, whose address is Taman Palem Lestari Blok A20 No. 26D, Cengkareng Barat Urban Village, Cengkareng District, West Jakarta, as the plaintiff who owns the Jiwasraya Proteksi Plan insurance product. Jiwasraya Proteksi Plan is an insurance product with guaranteed protection and investment value with interest earned annually. As a plaintiff, Elfie holds 4 policies, each with an investment period of 12 (twelve) months, where all premiums have been paid in full to Jiwasraya totaling Rp. 11,667,000,000.00 (eleven billion six hundred sixty seven million rupiah). Elfie was surprised when in October 2018, they received information from the mass media that PT Asuransi Jiwasraya was facing severe financial liquidity problems, leading to failed claims to policyholders.

In this case, Elfie demanded the fulfillment of her rights from PT Asuransi Jiwasraya by filing a lawsuit at the Central Jakarta District Court, with case number 431/Pdt.G/2020/PN.Jkt.Pst. Referring to decision number 431/Pdt.G/2020/PN.Jkt.Pst, it is known that Elfie's lawsuit was rejected. With the rejection of the decision, Elfie as the plaintiff appealed to the DKI High Court. Based on decision number 676/PDT/2021/PT DKI, Elfie's appeal was granted, and through this decision it was stated that PT Asuransi Jiwasraya committed an unlawful act and was ordered to pay material damages directly and at once to the plaintiff in the amount of Rp. 11,667,000,000.00 (eleven billion six hundred sixty seven million rupiah).

In the above case, the Plaintiff had insurance with PT Asuransi Jiwasraya with a type of insurance called Jiwasraya Proteksi Plan or commonly known as JS Proteksi Plan. The insurance was obtained by the Plaintiff through an offer from PT Bank KEB Hana Indonesia (Bank KEB Hana) which is a bancassurance product resulting from cooperation between PT Asuransi Jiwasraya and PT KEB Hana Indonesia. In this case, Defendant V, namely Bank KEB Hana, promised insurance and investment security because it was issued by PT. Asuransi Jiwasraya, a state-owned insurance company guaranteed by the government.

The plaintiff was of the view that PT Asuransi Jiwasraya could not have fulfilled its promise because they issued the plaintiff's policy and received premium payments when the insurance company was insolvent. According to the plaintiff, PT Asuransi Jiwasraya should not have been allowed to sell and offer bancassurance products with the promise of high investment returns when the insurance company was insolvent. However, the court had a different view to the plaintiff. The court's decision stated that they did not find any unlawful act, either active or passive, on the part of PT Asuransi Jiwasraya, because there was no evidence submitted by the plaintiff in the form of documents, witness testimonies, or expert opinions that showed any unlawful act from PT Asuransi Jiwasraya that resulted in harm to the plaintiff.

The court's opinion is contrary to the principle of burden of proof. The announcement made by the management of PT Asuransi Jiwasraya regarding the condition of default and financial difficulties has been widely known. The Supreme Audit Agency and the Attorney General's Office also found findings related to PT Asuransi Jiwasraya's financial problems caused by corrupt practices committed by the company's management during the period 2008 - 2018. Both announcements have become public knowledge regarding the bankrupt condition of PT Asuransi Jiwasraya.

When examining the written evidence submitted by the plaintiff and the expert testimony submitted by the plaintiff, several facts are revealed:

a) PT Asuransi Jiwasraya in its financial condition.
b) PT Asuransi Jiwasraya is unable to pay the claim and the value of the Plaintiff's investment
c) Corrupt practices committed by the management (Board of Directors) of PT Asuransi Jiwasraya

True, according to Article 15 of Law No. 40/2014 on Insurance, the controller must be responsible for losses incurred by the insurance company caused by the controller. The controller referred to here is a party that directly or indirectly has the competence to determine the board of directors and board of commissioners in a legal entity in the form of a cooperative or joint venture. In the case of PT Asuransi Jiwasraya, the controller is the State, where the State-Owned Enterprise (BUMN) is the largest shareholder of the insurance company. As a result, the government cannot escape responsibility in the event of a default by PT Asuransi Jiwasraya. The government as the

control holder has an obligation to take responsibility for any losses or problems faced by the insurance company.

Basically, the study conducted in this thesis focuses on the scope of loss and the limits of the insurer's responsibility based on Article 15 of Law Number 40 Year 2014. The main objective is to understand the concept of justice for life insurance policyholders who have not received their claims due to payment failure by the insurance company. Regarding justice, the researcher bases the study on the theory of justice expressed by Aristotle. According to Aristotle, legal justice is synonymous with public justice. Referring to the interpretation of general justice by Muchamad Ali Safa'at, it is stated as follows: [The rest may explain Muchamad Ali Safa'at's interpretation of general justice,

The above description relates to justice in a general sense. Justice in this context consists of two elements: fair and in accordance with the law, which are not necessarily the same. To be unjust is to break the law, but not all actions that break the law are necessarily unjust. Justice in a general sense is closely related to compliance with the law.[20]

Based on the interpretation given, researchers understand that justice is realized when the law is obeyed as written in legal regulations. Therefore, if there is an action that goes against the written law, then it is considered an unjust action. Furthermore, legal justice by Aristotle is divided into two parts:

a) Distributive Justice: This refers to the fair distribution of benefits and burdens in society. It involves the allocation of resources, rewards, and opportunities based on individual abilities and needs.[21]
b) Corrective Justice: This justice focuses on righting wrongs and restoring balance when unjust actions occur. It involves compensating for the harm caused to others and ensuring that wrongdoers face appropriate consequences for their actions.[22] In corrective justice, there is a demand for compensation or restoration to the original state as a means of balancing the imbalance caused

[20] Muchamad Ali Safa'at, "Pemikiran Keadilan (Plato, Aristoteles, dan John Rawls)," *Dikutip http://safaat. lecture. ub. ac. id/files/2011* 1 (2011): 1, http://www.safaat.lecture.ub.ac.id/files/2011/12/keadilan.pdf.
[21] Zakki Adlhiyati dan Achmad Achmad, "Melacak Keadilan Dalam Regulasi Poligami: Kajian Filsafat Keadilan Aristoteles, Thomas Aquinas, Dan John Rawls," *Undang: Jurnal Hukum* 2, no. 2 (2019): 412, https://doi.org/10.22437/ujh.2.2.409-431.
[22] Darji Darmodiharjo dan Shidarta, *Pokok-pokok filsafat hukum: apa dan bagaimana filsafat hukum Indonesia* (Jakarta: Gramedia Pustaka Utama, 2006), 101.

by the injustice. Therefore, the concept of corrective justice applies to various aspects, punishment, restitution, remedy.[23]

Based on the explanation of justice according to Aristotle, realizing justice for life insurance policyholders whose claims are not paid due to the failure of the insurance company can be achieved through efforts to fulfill general justice, namely adherence to written legal provisions, one of which is Article 15 of Law Number 40 of 2014. In addition, remedial or corrective justice can be achieved by providing compensation or restoring the situation to its original state for life insurance policyholders whose claims are not paid due to the failure of the insurance company.

The government in running the wheels of government must always be based on the General Principles of Good Government (AUPB). Article 10 of Law Number 30 of 2014 concerning Government Administration states that the general principles of good governance or abbreviated as AUPB consist of:

a. Legal Certainty;
b. Benefits;
c. Impartiality;
d. Prudence;
e. Not abusing authority
f. Transparency
g. Public Interest;
h. Good service

In resolving the Jiwasraya insurance company default case, the government must adhere to the principle and act with prudence. Prudence is defined as making decisions or actions based on complete and legally supported information, ensuring careful consideration before implementing the decision. The government can take various steps to handle the case of PT Asuransi Jiwasraya, including:

a. Restructuring

   According to Article 11 of Law No. 19 of 2003 concerning Restructuring of State-Owned Enterprises (SOEs), restructuring is an effort made to improve the condition of State-Owned Enterprises (SOEs) as a strategic step to overcome internal problems through improved performance and increased corporate

[23] Nur Fadhilah, "Keadilan: Dari Plato Hingga Hukum Progresif," *Jurnal Cita Hukum* 5, no. 1 (2013): 15.

value. Based on the definition of restructuring, it means that the company can rearrange the composition of capital so that its performance becomes healthier. Financial performance is evaluated based on financial statements, including the balance sheet, cash flow statement, profit/loss statement, and equity position of the company. By analyzing the data contained in the company's financial statements, the company's health level can be determined. The health of the company can be assessed through health ratios, which include efficiency, effectiveness, profitability, liquidity level, asset turnover, leverage ratio, and market ratio.

b. Privatization.

Article 12 of Law No. 19 of 2003 on State-Owned Enterprises explains that privatization is the act of selling part or all of the shares of a State-Owned Enterprise (BUMN) to other parties in order to improve the performance and value of the company, and increase benefits for the state and society, as well as expand share ownership by the public. In other words, privatization aims to improve company performance in order to provide services and benefits to the state and society. Privatization is carried out by selling a certain number of shares to the public with the intention of expanding the business. Based on Article 74 of Law No. 19 of 2003 concerning State-Owned Enterprises, the purpose and objective of privatization is to increase the role of SOEs in providing for the livelihood of many people through expanding public ownership in SOEs and supporting national economic stability. Privatization can be carried out while maintaining majority government ownership, which cannot be less than 50%. However, as a consequence of privatization of SOEs, it not only reduces government ownership of SOEs, but also causes the state to lose control over state assets and raises concerns about the dominance of foreign entities that could potentially endanger nationalism.

The government chose the policy restructuring policy as an effort to rescue the default case of PT Asuransi Jiwasraya, because it is seen as the least harmful option for policyholders. The restructuring program aims to reorganize insurance companies to save policyholder funds while maintaining the continuity of policy benefits. The program was decided by the Indonesian government, represented by the Ministry of State-Owned Enterprises (SOEs), in collaboration with the House of Representatives

(DPR), with the aim of saving all Jiwasraya policies, and not to liquidate or dissolve the company. In implementing the restructuring, the government as the majority shareholder will provide State Capital Injection (PMN) sourced from the State Budget (APBN). PMN of IDR 22 trillion will be given to PT Bahana Pembinaan Usaha Indonesia (BPUI). The funds will be disbursed in two stages, namely IDR 12 trillion in 2021 and IDR 10 trillion in 2022. This policy restructuring program was carried out by the government, represented by the Ministry of State-Owned Enterprises (BUMN) and the Ministry of Finance (Kemenkeu) as shareholders of Jiwasraya Insurance, to resolve the problems that have occurred in Jiwasraya over the past decade. To save all Jiwasraya policies and migrate to IFG Life, the government has prepared funds of Rp 22 trillion from the State Capital Injection (PMN) and Rp 4.7 trillion from fundraising efforts made by IFG as the parent company of IFG Life.[24]

By implementing the PT Asuransi Jiwasraya (Persero) rescue program, the government is considered to be fulfilling its responsibility to provide benefits to State-Owned Enterprises (SOEs) and demonstrate its commitment as a shareholder. This program aims to provide certainty of fulfilling obligations to Jiwasraya policyholders whose rights have not been fulfilled since 2018. This effort is made to maintain trust, especially from policyholders and the wider community, towards SOEs, the government, and the insurance industry as a whole.

Conclusion

Legal uncertainty regarding the scope of responsibility of the controller of an insurance company, as stipulated in Article 15 of Law Number 40 Year 2014 on Insurance, creates ambiguity in its application. This study shows that the existing norms have not provided optimal legal protection for policyholders, especially in cases of default by insurance companies, as happened in the case of PT Asuransi Jiwasraya. The research findings confirm that although the controller of an insurance company has a strategic role in the General Meeting of Shareholders (GMS) and company policy, its legal responsibility in a default situation is still not clearly defined in the existing regulations. Case verdict 676/PDT/2021/PT DKI highlights the weak liability mechanism of controllers, resulting in legal uncertainty for policyholders. From a legal theory perspective, the principle of piercing the corporate veil should be applicable to override

[24] Vera W.S. Soemarwi, *Berhukum Di Masa Pandemi Covid-19*, 31.

the limited liability of shareholders and hold controllers accountable in cases of default that harm policyholders. However, in the context of insurance law in Indonesia, this mechanism has not been fully accommodated in the applicable regulations. Based on the research results, a revision of the existing regulations is needed to clarify the scope and limits of the responsibility of the controller of an insurance company. More explicit regulations and stricter supervision mechanisms from the Financial Services Authority (OJK) are needed to ensure better protection for policyholders and prevent the recurrence of similar cases in the future. Thus, strengthening regulations and increasing transparency in insurance company governance are crucial steps to increase public trust in the insurance industry and guarantee policyholders' rights more effectively.

Bibliography

Adlhiyati, Zakki, dan Achmad Achmad. "Melacak Keadilan Dalam Regulasi Poligami: Kajian Filsafat Keadilan Aristoteles, Thomas Aquinas, Dan John Rawls." *Undang: Jurnal Hukum* 2, no. 2 (2019): 409–31. https://doi.org/10.22437/ujh.2.2.409-431.

Andi Hamzah. *Kamus Hukum*. Bogor: Ghalia Indonesia, 2005.

Darmodiharjo, Darji, dan Shidarta. *Pokok-pokok filsafat hukum: apa dan bagaimana filsafat hukum Indonesia*. Jakarta: Gramedia Pustaka Utama, 2006.

Fadhilah, Nur. "Keadilan: Dari Plato Hingga Hukum Progresif." *Jurnal Cita Hukum* 5, no. 1 (2013): 1–21.

Handayani. *Pengertian Premi Asuransi, Polis Asuransi, Klaim Asuransi Underwriting Tertanggung*. 2001: Djambatan, 2001.

Hopkin, Paul. *Fundamentals of Risk Management: Understanding, Evaluating and Implementing Effective Risk Management*. London: Kogan Page Publishers, 2018.

Indonesia, Otoritas Jasa Keuangan. "Peraturan Otoritas Jasa Keuangan Nomor 27/POJK.03/2016 Tahun 2016 tentang Penilaian Kemampuan dan Kepatutan bagi Pihak Utama Lembaga Jasa Keuangan," 2016.

Indonesia, Pemerintah Pusat. "Undang-undang (UU) Nomor 40 Tahun 2014 tentang Perasuransian," 2014.

Irwansyah. *Penelitian Hukum : Pilihan Metode & Praktik Penulisan Artikel*. Mirra Buana Media, 2020.

Jimly Asshiddiqie dan M. Ali Safa'at. *Teori Hans Kelsen Tentang Hukum*. Jakarta: Konstitusi Press, 2006. https://simpus.mkri.id/opac/detail-opac?id=563.

Jiwasraya. "https://www.jiwasraya.co.id/sejarah-jiwasraya - Penelusuran Google," 2021. https://www.jiwasraya.co.id/sejarah-jiwasraya.

Kelsen, Hans. *General Theory of Law and State*. USA: The Lawbook Exchange, Ltd., 1999.

Mochtar Kusumaatdmaja. *Teori Hukum Pembangunan*. Jakarta: Epistema Institute dan Huma, 2012.

Munir Fuady. *Hukum Perusahaan dalam Paradigma Hukum Bisnis (Berdasarkan UU Nomor 40 Tahun 2007)*. Bandung: Citra Aditya Bakti, 2009.

Rahardjo, Satjipto. *Ilmu hukum*. Bandung: Citra Aditya Bakti, 1991.

Ramli, Rasmita. *Manajemen klaim*. Jakarta: Rineka Cipta, 1999.

Safa'at, Muchamad Ali. "Pemikiran Keadilan (Plato, Aristoteles, dan John Rawls)." *Dikutip http://safaat. lecture. ub. ac. id/files/2011* 1 (2011). http://www.safaat.lecture.ub.ac.id/files/2011/12/keadilan.pdf.

Soemarwi, Vera WS, dan Evelin Wiyasih. "Perlindungan Hukum Pemegang Polis Terhadap Gagal Bayar Perusahaan Asuransi Jiwasraya (Studi Kasus: Putusan 589/PDT. G/2019/PN. JKT. PST)." *Jurnal Hukum Adigama* 5, no. 1 (2022): 121–43.

Thimann, Christian. "How Insurers Differ from Banks: A Primer in Systemic Regulation." SSRN Scholarly Paper. Rochester, NY: Social Science Research Network, 27 Juli 2014. https://doi.org/10.2139/ssrn.2502458.

Vera W.S. Soemarwi. *Berhukum Di Masa Pandemi Covid-19*. Jakarta: Lembaga Penelitian dan Publikasi Ilmiah Universitas Taruma Negara, 2021.