

Controller Responsibility of the Insurance Company in the Event of Failure to Pay the Insurance Policy of PT Jiwasraya Insurance Company

Soca Daru Indraswari

Fakultas Hukum, Universitas Brawijaya, Malang

Corresponding Author: Soca Daru Indraswari socadaruindraswari@gmail.com

ARTICLE INFO

Keywords: Insurance Company, Law

Received : 05, March

Revised : 10, April

Accepted: 15, May

©2023 Indraswari: This is an open-access article distributed under the terms of the [Creative Commons Atribusi 4.0 Internasional](https://creativecommons.org/licenses/by/4.0/).



ABSTRACT

Law has the goal of producing orderly social rules, producing discipline, balance and justice. Mochtar Kusumaatmaja said "By achieving order in society, it is hoped that human interests will be protected". According to Sudikno Mertokusumo, the rule of law, in addition to protecting human interests against the dangers that threaten them, also regulates the relationship between humans. By regulating relations between human beings, in addition to creating order or stability, it is hoped that conflicts or disturbances of these interests can be prevented or resolved. Satjipto Rahardjo explained more clearly, according to him, the presence of law among others functions to integrate and coordinate interests that can conflict between one interest and another

INTRODUCTION

As time goes by and the development of human civilization, human efforts also increase to protect human beings and human property in the face of risky and detrimental things. One way to anticipate things that occur unexpectedly is by having insurance activities. Normatively, insurance is an agreement between two or more parties between the insurer and the insured, where the responsibility of the first party provide a premium to a second party (insurance company) with the intention of compensating the party paying the premium if an agreed event occurs or is also called an uncertain event (evenement), this agreement is based on the principle of risk transfer.

It is recorded through the Otoritas Jasa Keuangan (OJK) that there are 136 units of insurance companies in Indonesia, 71 (seventy one) companies are general insurance, 7 (seven) companies are reinsurance, 3 (three) companies are compulsory insurance, 2 (two) companies are social insurance and 53 (fifty three) companies including life insurance companies. Several insurance companies in Badan Usaha Milik negara (BUMN), one of which is PT. Jiwasraya Insurance (Persero).

PT. Asuransi Jiwasraya is an insurance company founded in 1859 and is the first insurance company in Indonesia. The idea of establishing PT. Asuransi Jiwasraya is educating people to plan for the future. Products from PT. One of the Jiwasraya insurances is the saving plan, which is a life insurance product with the function of providing protection in the form of protection against death or total permanent disability due to an accident, as well as providing other benefits, namely investment certainty in the amount of principal returns and guaranteed investment returns. However, at the end of 2018 PT. Asuransi Jiwasraya faced problems that caused delays in the value of disbursement of claims against insurance policy holders. In 2019, it was recorded that the company bore arrears in payment of claims due by 1,286 policyholders and payment obligations of up to Rp. 12.4 trillion as of December 2019, while the assets of PT. Jiwasraya insurance has shrunk from Rp. 25 trillion, to Rp. 2 trillion, this was caused by the wrong investment placement and the number of illiquid shares.

THEORETICAL REVIEW

In connection with the research and writing of this thesis, previously the same research has been carried out relating to the role of a notary in making Islamic banking financing agreements and from this research there are several similarities, differences, contributions and novelty values when compared to the existence of this research.

Table 1. Originality of Writing

No.	NAME/TITLE OF THE RESEARCH/ORIGINAL INSTINCT/YEAR OF RESEARCH	FORMULATION OF THE PROBLEM	SIMILARITIES AND DIFFERENCES
1.	Widya Sofyanto / Settlement of Health Insurance Claims at PT Askes (Persero) Semarang Main Branch / Diponegoro University Semarang / 2009	1.How is the settlement of Health Insurance Claim Payments at PT. Askes (Persero) Semarang Main Branch? 2.What obstacles and what efforts have been made by PT. Askes to overcome obstacles if the claim is not fulfilled?	The similarities with the author's research are discussing and studying insurance, while the difference is the type of research object, in previous studies the object was focused on health insurance, while in this study life insurance was used.
2.	Vivien Andriani / Implementation of Settlement of Life Insurance Claims with Bumiputera 1912 Semarang Branch / Diponegoro University Semarang/ 2008	1.How is the implementation of the settlement of Ajb Bumiputera 1912 Semarang life insurance claims? 2.What are the obstacles faced by life insurance policyholders and insurers in the claim settlement process at Ajb Bumiputera 1912? 2.What efforts have been made by Ajb Bumiputera 1912 to overcome these obstacles?	The similarities with the author's research are discussing and studying life insurance, while the difference is in the companies studied, in this study the object of this research is the insurance company PT. Bumi Putera 1912 Semarang branch, while in this study the researchers discussed the insurance company PT. Jiwasraya Insurance.
3.	Widya Astuti/ Riau Islamic University Pekanbaru/ Legal Protection of the Insured in Rejecting Insurance Claims submitted to the Pekanbaru City Financial Services Authority/ 2019	1.What is the authority of the Financial Services Authority in legal protection of the insured in rejecting insurance claims in Pekanbaru City? 2.What are the efforts and obstacles of the Financial Services Authority towards resolving disputes over rejection of insurance policy claims in Pekanbaru City?	The equation with the author's research is to discuss legal protection for the insured in insurance. While the difference is the guarantor, in previous studies namely the Financial Services Authority, while the author's research is the insurance company, PT Jiwasraya.

METHODOLOGY

Type of Research

In this study, the type of research that the authors used was normative, namely a study conducted by examining library materials or secondary data. Peter Mahmud Marzuki stated that normative legal research is a process to find a rule of law, legal principles, or legal doctrine to answer the legal issues at hand. This type of research is used in examining legal protection for credit agreement customers who also use life insurance as coverage but default occurs from the insurance company's default.

Thus, normative legal research is no longer synonymous with statutory regulations alone. But more than that, it covers various matters related to the system of norms as the object of study, such as ideal legal values, legal theories, legal principles, legal principles, legal teachings, court decisions, and legal policies.

Research Approach

In this writing, the author uses 3 (three) approaches, namely as follows:

- a. The statutory approach (statute approach), carried out by examining all laws and regulations that are related to the issue law being handled. This statutory approach will open up opportunities for researchers to study whether there is consistency and suitability⁹ between one law and another.
- b. The conceptual approach is an approach that departs from the views and doctrines that have developed in the science of law, in order to find ideas that give rise to relevant legal understandings, concepts and principles, as a basis in building a legal argument in solving legal issues that arise. faced. This approach departs from the views and doctrines that have developed in the science of law.
- c. The case approach is carried out by examining cases related to the issues at hand, which can be cases that occur in Indonesia or other countries, this case approach is different from case studies. In the case approach several cases are examined for reference to a legal issue, while a case study is a study of a particular case from various legal aspects.

Types and Sources of Legal Materials

There are three types of legal materials, namely primary legal materials, tertiary legal materials and tertiary legal materials.

a. Primary Legal Materials

Primary legal materials are binding legal materials, usually in the form of laws, official records or treatises making laws and decisions of judges. The primary legal materials in this study include:

- The 1945 Constitution of the Republic of Indonesia
- Code of Civil law
- The Commercial Law Code
- Law Number 40 of 2014 concerning Insurance
- Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking

- Article 27 Decree of the Minister of Finance Number 422/KMK.06/2003 of 2003 concerning Business Conduct of Insurance Companies and Reinsurance Companies

b. Secondary Legal Materials

Secondary legal materials are legal materials that provide further explanation regarding primary legal materials. This secondary legal material is obtained from literature studies in the form of literature that is still related to the research theme.

c. Tertiary Legal Materials

Tertiary legal materials are legal materials that provide an explanation of primary and secondary legal materials and are related to research. The tertiary legal materials in this study include the Indonesian Language Dictionary, the English Dictionary, the Law Dictionary and the Internet.

Techniques for Tracing Legal Materials

The technique of tracing legal materials in this research is library research (Library Research). Legal material obtained through library research is first carried out by understanding and studying its contents in depth to then make notes according to the problems studied either directly or indirectly.

Legal Material Analysis Techniques

The legal material analysis technique in this study uses grammatical interpretation techniques and systematic interpretation. According to Achamad Ali, grammatical interpretation is interpreting the words in the law according to the rules of language and grammar laws. The grammatical interpretation method includes the simplest interpretation or explanation of laws compared to other methods of interpretation. While systematic interpretation is a method that interprets laws as part of the entire statutory system, in this interpretation the law is seen by judges as a unit as a regulatory system, this method is used to interpret statutory regulations by linking them with other legal regulations, or with the entire legal system, systematic interpretation is also referred to as a logical interpretation, namely interpretation that interprets the provisions of laws and regulations connected with legal regulations or laws. other law or with these the entire legal system.

Systematic Writing

In order for the preparation of this thesis to be directed and systematic, a good systematic discussion is needed. Discussion and preparation of this thesis is divided into four chapters and each consists of sub-chapters.

RESULTS AND DISCUSSION

Scope of Losses that can be borne by the Controlling Party

1. Interpretation of Losses in the Provisions of Article 15 of Law Number 40 of 2014 concerning Insurance Article 15 of Law Number 40 of 2014 concerning Insurance reads "Controllers are obliged to take responsibility for the losses of insurance companies, sharia insurance companies, reinsurance companies or sharia reinsurance companies caused by parties under their control". From this article, it can be formulated that there is an obligation of accountability by the controller, with the existence of two conditions that must be met; there is a loss of money suffered by the insurance companies, and that the loss was caused by a party under their control.

The controller in article 15 of this law refers to article 1 number 19 of Law Number 40 of 2014 concerning Insurance "A controller is a party that directly or indirectly has the ability to determine directors, board of commissioners, or the equivalent of directors or board of commissioners in a legal entity in the form of a cooperative or joint venture and/or influence the actions of the board of directors, board of commissioners or the equivalent of the board of directors or board of commissioners in a legal entity in the form of a cooperative or joint venture". Law Number 40 of 2014 does not provide an explanation regarding the type of loss, or the limits of liability that must be carried out.

In Law Number 40 of 2014, the meaning of loss is not defined. In the Big Indonesian Dictionary what is meant by loss is a condition in which someone does not benefit from what they have spent (capital). In law, losses can be classified into two, namely material losses and immaterial losses. Material loss is a loss that is real, or the impact is felt immediately. While immaterial losses are the loss of benefits or gains on something that is likely to be received in the future.

Losses in law also refer to the Civil Code Article 1238 Juncto Article 1243 concerning Default and Unlawful Acts as regulated in Article 1365

In default, losses occur as a result of one of the parties not carrying out achievements, either not fulfilling achievements fully, fulfilling achievements but not as they should, fulfilling achievements but not on time, or fulfilling achievements but doing things that are prohibited in the agreement. Based on article 1246 of the Civil Code, "Costs, compensation and interest, which may be claimed by creditors, consist of losses that have been suffered and profits that could have been obtained, without prejudice to the exceptions and changes referred to below", losses due to defaults can be held accountable which has three elements, namely: costs, losses, and interest. Costs are expenses, or capital issued in real terms by the parties. Losses are reduced wealth/value/assets due to damage/loss of goods and/or property belonging to one party caused by the negligence of the other party. Meanwhile, interest is the profit that is estimated/planned and obtained if the other party succeeds in fulfilling the achievement. Whereas in an unlawful act, a loss is the result of someone's actions against the law, which harms other parties. Losses resulting from unlawful acts can be demanded for compensation, in accordance with what is implied in article 1371 paragraph (2) of the Civil Code, "Also this compensation is assessed

according to the position and ability of both parties, and according to the circumstances.

CONCLUSIONS

Based on the discussion as described above, in this study it can be concluded as follows:

- a. The position of a controller in an insurance company is the same as a shareholder as referred to in Law Number 40 of 2007 concerning Limited Liability Companies, the controller can determine the Board of Directors and the Board of Commissioners in terms of accountability in the event of a loss suffered by the company.
- b. The role of the Controller in an insurance company is a party that directly or indirectly has the ability to determine the directors, board of commissioners in the insurance company. Control here is defined as actions that have the aim of influencing the management and/or company policies, and can carry out insurance can do the following things:
 - merger of companies under one control;
 - amalgamation of companies under their control;
 - sale of part or all of the company's shares under its control;
- c. In Law Number 40 of 2014 concerning insurance, apart from directors and commissioners, a party named 'Controller' is also responsible for losses in the insurance business as stipulated in Article 15. In this case the controller of PT. Jiwasraya Insurance is the State. The state represented by the government acts as a controller because PT. Asuransi Jiwasraya is a BUMN whose largest shareholder is the government. So that the government cannot get away from it and must carry out rescue efforts. The government can rescue customer funds through several solutions, namely restructuring and privatization. Of these options, the government chose policy restructuring as an effort to save customer funds that had failed to pay by PT. Jiwasraya Insurance. Running the PT. Asuransi Jiwasraya is a form of government responsibility and also proof of the government's commitment as a shareholder to provide certainty for the fulfillment of Jiwasraya's obligations for its customers.

There was an error in managing customer funds, starting from collecting JS Product funds. The Saving Plan and irregularities in the asset investment process that were suspected of being unlawful, ultimately resulted in Jiwasraya defaulting on customer policies that were past due. As a party that is harmed, the customer is very crucial to get legal protection. In connection with the case of PT. Asuransi Jiwasraya (Persero), it needs repressive legal protection because there has been a violation. The form of legal protection that can be carried out for disadvantaged customers is through legal protection from both criminal and civil aspects.

RECOMMENDATIONS

In the context of providing advice to the government, judges, legal practitioners, academics, especially in the interest of science, the results of this study suggest the following:

- a. In this case, the state which has a role related to the settlement of the PT. Asuransi Jiwasraya, so that similar cases do not occur again, the government must play a more active role in taking preventive steps, in this regard, through institutions that have regulatory and supervisory functions in the financial services sector, namely the Financial Services Authority, it is hoped that there will be more enforcement of their supervisory functions, especially for every product offered by insurance companies, as well as oversight of the company's financial reports, so that all activities in the financial services sector can be carried out in an orderly, fair, transparent and accountable manner. The Financial Services Authority as an institution that regulates and supervises insurance business activities remains consistent in carrying out the mandate of the Law in insurance companies, especially in assessing the fit and properness of the directors and board of commissioners and in approving and or determining controlling shareholders in insurance companies.
- b. Insurance service providers who provide guarantees and should protect customers, to gain public trust, it is hoped that insurance companies can make efforts to overcome obstacles in providing legal protection for their customers by improving the quality of evaluation and identification of any problems that occur.

ACKNOWLEDGMENT

Praise the researchers say to God Almighty who has given His favor, grace, gift, and guidance so that researchers are given convenience and smoothness in carrying out this research. Do not forget the blessings and greetings of the researchers uphold the Muhammad SAW who has shown the way of truth and has become a role model for researchers. This thesis has been completed by the researcher in order to fulfill some of the requirements to obtain the title of Magister of Notary. This thesis is entitled "RESPONSIBILITY OF THE INSURANCE COMPANY CONTROLLER IN THE CASE OF FAILURE TO PAY THE INSURANCE POLICY OF THE PT JIWASRAYA INSURANCE COMPANY (Case Study: Decision 676/PDT/2021/PT DKI)" With the completion of this thesis, the researcher would like to express respect and gratitude to on :

1. Beloved parents and family and friends who always pray, support, motivate and entertain researchers both materially and immaterially so they can finish their thesis immediately;
2. Mr Dr. Muchamad Ali Safa'at, S.H., M.H. as Dean of the Faculty of Law, University of Brawijaya;
3. Mrs. Dr. Hanif Nur Widhiyanti, S.H., M.Hum. as Head of the Notary Masters Study Program, Faculty of Law, University of Brawijaya;
4. Mrs. Dr. Nur Chanifah, S.Pd.I., M.Pd.I as the Main Lecturer and Mrs. Dr. Endang Sri Kawuryan., S.H., M.H as the Assisting Lecturer. I would like

to thank you very much for the guidance, direction, support, motivation, knowledge, and time that has been given to me both in working on this thesis and for listening to my complaints;

5. Mr. and Mrs. Lecturer and Practitioner Master of Notarial Law, Faculty of Law, University of Brawijaya, as well as all research teaching lecturers while at the Faculty of Law, University of Brawijaya, who have provided useful knowledge and knowledge for researchers;
6. Colleagues at the Faculty of Law, Brawijaya, in studying and who always give encouragement to researchers.

REFERENCES

- Abdul Kadir Muhammad, Hukum Perikatan. Bandung: Alumni, 1982
- Abdul Kadir Muhammad, Pengantar Hukum Pertanggung, Citra Aditya Bakti, Bandung, 1994
- Amiruddin dan H. Zainal Asikin, Pengantar Metode Penelitian Hukum, PT. RajaGrafindo Persada, Jakarta, 2004
- Dessy Danarti, Jurus Pintar Asuransi- Agar Anda Tenang, Aman dan Nyaman, Yogyakarta, Gramedia, 2011
- Dr. Rudyanti Dorotea Tobing, SH.,M.Hum, Hukum Perjanjian kredit, Konsep Perjanjian Kredit Sindikasi yang Berasaskan Demokrasi Ekonomi, Yogyakarta, Laksbang Grafika, 2014,
- Hans Kelsen, sebagaimana diterjemahkan oleh Raidul Mutaqien, Teori Hukum Murni, Bandung, Nuansa dan Nusa Meia, 2006
- Hans Kelsen, sebagaimana diterjemahkan oleh Somardi, General Theory Of Law and State Teori Umum Hukum dan Negara, Dasar-Dasar Ilmu Hukum Normatif sebagai Ilmu Hukum Deskriptif Empirik, Jakarta, BEE Media Indonesia, 2007
- Harjono, Konstitusi Sebagai Rumah Bangsa, Jakarta, Penerbit Sekretariat Jendral dan Kepaniteraan Mahkamah Konstitusi, 2008
- Harjono, Konstitusi sebagai Rumah Bangsa, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konsistensi, 2008
- Kasmir, Bank dan Lembaga Keuangan Lainnya, Jakarta, Raja Grafindo Persada, 2005
- Mariam Darus Badruzaman, Perjanjian Kredit Bank, Bandung, Alumni, 1989
Mariam Darus Badzuzaman, Kompilasi Hukum Perikatan, Bandung, Aditya Bakti, 2001
- Mochtar Kusumaatdmaja, Teori Hukum Pembangunan, Epistema Institute dan Huma, Jakarta, 2012 Muchsin, Perlindungan dan Kepastian Hukum bagi Investor di Indonesia, Surakarta, Univesitas Sebelas Maret, 2003
- Mulhadi, Dasar-Dasar Hukum Asuransi, Depok, Rajawali Pers, 2017 Munir Fuady, Hukum Perkreditan Konteporer, Bandung, PT. Citra Aditya Bakti, 1996

- Nurul Huda dan Muhammad Haykal, Lembaga Keuangan Islam: Tinjauan Teoritis dan Praktis, Jakarta: Kencana Prenada Media Group, 2010
- Pearturan Otoritas Jasa Keuangan (PJOK) Nomor 71 Tahun 2016 tentang Kesehatan Keuangan Perusahaan Asuransi dan Perusahaan Reasuransi. Peter Mahmud Marzuki, Penelitian Hukum, Jakarta, Kencana Prenada, 2003
- Philipus M. Hadjon, Perlindungan Hukum Bagi Rakyat di Indonesia, Sebuah Studi tentang Prinsip-Prinsipnya, Penanganan oleh Pengadilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi Negara, Surabaya, PT Bina Ilmu, 1997
- Prof. Dr. H. Zainal Asikin, SH.,SU, Hukum Dagang Edisi Kedua, Depok, PT Raja Grafindo Persada, 2013
- Prof.Dr.Peter Mahmud Marzuki,SH.,MH.,LLM, Penelitian Hukum Edisi Revisi, Jakarta, Prenada Media Group, 2005
- Prof.Drs.C.S.T. Kansil, SH, Pokok-Pokok Pengetahuan Hukum Dagang Indonesia Edisi kedua, Jakarta, Sinar Grafika, 2002
- Purwahid Patrik, Dasar-dasar Hukum Perikatan, cetakan 1. Mandar Maju, 1994
Putu Eka Trisna Dewi, Sengkarut Kepailitan Perusahaan Perasuransian di Indonesia: Perlindungan Hukum Pemegang Polis Asuransi dalam Kepailitan Perusahaan Asuransi Jiwa, Vol, 14 No. 1, 2020, Jurnal Yustitia Athika Rahma, "Kronologi Masalah Jiwasraya Versi OJK", www.liputan6.com, diakses 27 juli 2022. Ihya Ulum Aldin, "Jiwasraya Kantongi Persetujuan Restrukturisasi 40 Nasabah Korporasi" diakses pada tanggal 27 Juli 2022
- Satjipto Rahardjo, Ilmu Hukum, PT. Citra Aditya Bakti, Bandung, 1991
- Setiono, *Rule of Law* (Supremasi Hukum), Tesis Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret, Surakarta, 2004
- Soerjono Soekanto dan Sri Mamudji, Penelitian Hukum Normatif: Suatu Tinjauan Singkat, Jakarta, Raja Grafindo, 2003
- Sri Redjeki Hartono, Hukum Asuransi dan Perusahaan Asuransi, Jakarta, Sinar Grafika, 1995
- Subekti , Hukum Perjanjian, Cetakan 19, Jakarta: Intermedia
- Subekti, Hukum Perjanjian, Cetakan 19, Jakarta: Intermedia, 2002
- Sudikno Mertokusumo dan A. Pitlo, Penemuan Hukum, Citra Aditya Bakti, Bandung, 1993

Sudikno Mertokusumo, *Mengenal Hukum*, Yogyakarta : Liberty, 1986
Sudikno Mertokusumo, *Teori Hukum*, Yogyakarta, Maha Karya Pustaka, 2019

Thomas Suyatno, *Dasar-Dasar Perkreditan*, Jakarta, Gramedia, 1990
Kitab Undang-Undang Hukum Perdata Undang-Undang Nomor 40 Tahun 2014 tentang Perasuransian
Kitab Undang-Undang Hukum Dagang. Undang-Undang nomor 10 Tahun 1998 tentang perubahan atas Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan.