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INSURANCE COMPANY CONTROLLER RESPONSIBILITIES IN CASE OF INSURANCE POLICY FAILURE

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Abstract
The ambiguity of norms in Article 15 of Insurance Law Number 40 of 2014 has led to multiple interpretations in practice, especially concerning the scope of responsibility for insurance company controllers when there is a policyholder's default, experienced by insurance policyholders at PT Asuransi Jiwasraya in case 676/PDT/2021/PT DKI. This study aims to analyze and determine the scope of responsibility limits for insurance company controllers regarding policyholders' default. This research is a normative study with a legal approach, conceptual and case approaches, and analyzed using grammatical interpretation and systematic interpretation.

Keywords: Insurance Company, Insurance Policy Failure, Responsibilities

INTRODUCTION

The purpose of the law is to produce orderly rules for society, to establish discipline, balance, and justice. Mochtar Kusumaatmaja said, "By achieving orderliness in society, it is hoped that the interests of humanity will be protected." (Mochtar Kusumaatmadja 2012). According to Sudikno Mertokusumo, in addition to protecting human interests from threats, the principles of law also regulate human relationships. By regulating human relationships, besides establishing order or stability, it is hoped that conflicts or disruptions of those interests can be prevented or resolved (Mochtar Kusumaatmadja 2012), Satjipto Rahardjo further elaborates that the presence of law, among other things, serves to integrate and coordinate conflicting interests between one another (Satjipto Rahardjo 1991).

As time goes by and human civilization advances, human efforts to provide protection for themselves and their property against risks and losses increase. One of the ways to anticipate unforeseen circumstances is through insurance activities (KUHD: Kitab Undang-Undang Hukum Dagang 2014). Normatively, insurance is an agreement between two or more parties, namely the insurer and the insured, in which the first party assumes the responsibility of providing premiums to the second party (insurance company) with the intention of compensating the loss to the party paying the premium if a specified event, also known as an uncertain event (event), occurs. This agreement is based on the principle of risk transfer.

Recorded through the Financial Services Authority (OJK), there are 136 insurance companies in Indonesia, with 71 (seventy-one) being general insurance companies, 7 (seven) being reinsurance companies, 3 (three) being mandatory insurance companies, 2 (two) being social insurance companies, and 53 (fifty-three) being life insurance companies. Some insurance companies in Indonesia are state-owned enterprises (SOEs), one of which is PT. Asuransi Jiwasraya (Persero). Insurance companies have different financial management differentiations from financial institutions, including banking. (Thimann 2014).

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PT. Asuransi Jiwasraya is an insurance company founded in 1859 and is the first insurance company established in Indonesia. The idea behind the establishment of PT. Asuransi Jiwasraya was to educate the public about planning for the future. One of the company's products is a saving plan, which is a life insurance product that provides protection in the form of death or permanent total disability due to an accident, as well as other benefits, such as guaranteed investment returns and principal. However, by the end of 2018, PT. Asuransi Jiwasraya faced problems that caused delays in the settlement of claims for insurance policyholders.

In 2019, the company was reported to have a backlog of 1,286 policyholders' claim payments and outstanding liabilities amounting to IDR 12.4 trillion as of December 2019, while its assets shrank from IDR 25 trillion to IDR 2 trillion. This was due to improper investment placements and the large number of illiquid shares (Thimann 2014). The following is the chronological account of Jiwasraya's problems according to OJK, leading to its failure to fulfill payment obligations: (Athika Rahma n.d.)

a) In 2006, Jiwasraya experienced negative equity of 3.29 trillion Rupiah due to its assets being smaller than its liabilities, and this deficit continued to worsen in 2009, reaching 6.3 trillion Rupiah.
b) In the same year, short-term rescue measures were initiated, which successfully resulted in Jiwasraya's equity value becoming surplus at 1.3 trillion Rupiah by the end of 2011.
c) Jiwasraya obtained approval for its JS Proteksi Plan product from Bapepam-LK in 2012, and in 2013, the company's management revaluated their land and building assets in accordance with International Financial Reporting Standards (IFRS) convergence.
d) In 2017, the premium income from JS saving plan reached 21 trillion Rupiah, but in April 2018, they experienced a decline in premium income due to a decrease in guaranteed returns from JS Saving Plan
e) The Financial Audit Agency (BPK) issued an audit report in 2018 stating that Jiwasraya invested in high-risk assets to pursue high returns.
f) In October 2018, Jiwasraya announced its inability to pay out policies of JS Saving Plan amounting to 802 billion Rupiah.

In this case, it was revealed that PT Jiwasraya was unable to pay its policyholders and had a debt of 50.5 trillion Rupiah that it could not fulfill, as its company assets only amounted to 23.26 trillion Rupiah.

The regulation regarding the delay of insurance claim payments is stipulated in Article 27 of the Minister of Finance Decree No. 422/KMK.06/2003 of 2003 concerning the Conduct of Insurance and Reinsurance Companies, which states: (Keputusan Menteri Keuangan 2003)

“The insurance company must have paid the claim no later than 30 (thirty) days from the agreement between the insured and the insurer or from the certainty regarding the amount of the claim to be paid.”.

Elfie has a Jiwasraya Plan insurance product, which is an insurance product with protection guarantee and investment value with annual interest earned. Elfie, as the Plaintiff, has four policies, each with an investment period of 12 (twelve) months, where all the

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premiums have been paid in FULL by the Plaintiff to PT. Asuransi Jiwasraya, totaling Rp. 11,667,000,000.00 (eleven billion six hundred sixty-seven million Rupiah). The Plaintiff was shocked when, in October 2018, they received information from the mass media that PT. Asuransi Jiwasraya was facing severe financial liquidity issues, leading the insurance company to default on the claims of its policyholders.

Elfie demands the fulfillment of their rights from PT. Asuransi Jiwasraya by filing a lawsuit in the Central Jakarta District Court, with case number 431/Pdt.G/2020/PN.Jkt.Pst. Referring to the verdict with case number 431/Pdt.G/2020/PN.Jkt.Pst, it was revealed that Elfie's lawsuit was dismissed. With the rejection of the verdict, Elfie, as the Plaintiff, filed an appeal to the High Court of Jakarta. Based on the verdict with case number 676/PDT/2021/PT DKI, Elfie's appeal memorandum was granted, and it was stated in the verdict that PT Asuransi Jiwasraya committed unlawful acts and sentenced Defendant I to pay material compensation to the Plaintiff in the amount of Rp. 11,667,000,000.00 (eleven billion six hundred sixty-seven million Rupiah) directly and immediately.

Based on the verdict stating that PT Asuransi Jiwasraya committed unlawful acts and is sentenced to pay material compensation, it indicates that the unlawful actions have caused losses to PT Asuransi Jiwasraya. Referring to Article 15 of the Insurance Law, it has been regulated as follows:

"The Controller is obligated to be responsible for the losses incurred by the Insurance Company, Sharia Insurance Company, Reinsurance Company, or Sharia Reinsurance Company that are caused by parties within its control."

Referring to Financial Services Authority Regulation Number 14/POJK.03/2021 on Amendments to Financial Services Authority Regulation Number 34/POJK.03/2018 concerning Reassessment for Financial Services Institutions' Ultimate Beneficial Owners, in Article 1 number 9, the term "Pengendali Perusahaan Perasuransian" is defined as follows:

"The Controller of the Insurance Company is a party who directly or indirectly has the ability to determine the Board of Directors and/or Board of Commissioners and/or influence the actions of the Board of Directors and/or Board of Commissioners in the Insurance Company.."

Based on the Insurance Law and Financial Services Authority Regulation Number 34/POJK.03/2018 juncto Financial Services Authority Regulation Number 14/POJK.03/2021, there is no clear regulation regarding the scope and/or limitations of the responsibility of the Controller of the Insurance Company for the losses that occur in the Insurance Company. The absence of comprehensive regulations regarding the responsibility of the Controller raises legal uncertainties. Therefore, it is deemed necessary to further study the boundaries and/or scope of the responsibility of the Controller of the Insurance Company, not only to achieve legal certainty but also to clarify whether Article 15 of the Insurance Law provides legal protection for customers who are affected by the Insurance Company's losses.

Therefore, there is a need for more concrete research, especially in the context of insurance, particularly for insurance companies that have defaulted. This issue underpins the research, with a focus on the study of the responsibility of the Controller of the insurance

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company towards policyholders whose insurance claims are unpaid due to insurance company default cases.

LITERATURE REVIEW

This research is supported by in-depth analysis based on the theories of responsibility by Hans Kelsen, justice by Aristotle, and legal certainty by Hans Kelsen. All three theories serve to delve into the issues objectively and support the development of theories in an academic manner.

- *Responsibility Theory (Hans Kelsen)*

  The first theory used in this research is the theory of legal responsibility by Hans Kelsen, which states that: "In the legal context, someone is responsible for a particular action or bears legal responsibility; they are a legal subject. Responsibility is closely related to obligation but not identical. Obligations arise due to legal rules that govern and impose duties on legal subjects, and if these obligations are violated, sanctions will be imposed. These sanctions are coercive actions resulting from the legal rules, and the legal subject subjected to these sanctions is said to be "responsible" or legally accountable for the violation committed." (Hans Kelsen 2007).

- *Justice Theory (Aristoteles)*

  The second theory used is Aristotle's theory of justice, in which justice is closely related to morality and places justice as a part of goodnes. (Lutz-Bachmann 2001). Aristotle, in his work titled "Nicomachean Ethics," explains his thoughts on justice. For Aristotle, virtue, which is obedience to the law (the laws of the polis at that time, both written and unwritten), is justice. In other words, justice is a virtue and is of a general nature.

  Theo Huijbers explains that according to Aristotle, justice is not only a general virtue but also a specific moral virtue related to human attitudes in certain areas, specifically in establishing good relationships between individuals and achieving balance between two parties. The measure of this balance is both numerical equality and proportionality.

- *Legal Certainty Theory*

  According to Hans Kelsen, law is a system of norms, where norms are statements that emphasize the aspect of "ought" or "should," including various regulations about what should be done. Norms are products and actions of human deliberation. (Peter Mahmud Marzuki 2001).

  The Law, which contains general rules, serves as a guide for individuals to behave in society, both in their interactions with others and in their relations with the community. These rules act as limits for society to impose or take actions against individuals. The existence and implementation of these rules create legal certainty.

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METHOD

The type of legal research being conducted is normative/doctrinal legal research, which aims to provide a structured explanation of a specific legal norm governing a particular area of law. It involves examining the correlation between norms or legal provisions, uncovering areas of law facing difficulties (or potential difficulties), and, if possible, making predictions about future legal developments.(Irwansyah 2021). Normative/doctrinal legal research encompasses various aspects related to the system of norms as its object of study. These aspects include ideal legal values, legal theories, legal principles, legal doctrines, court decisions, and legal policies. (Irwansyah 2021). This research also utilizes three approaches, namely, the legislative approach, conceptual approach, and case approach. All three approaches are processed and sourced from primary and secondary legal materials, emphasizing prescriptive analysis.

RESULTS AND DISCUSSION

Contents Results and Discussion

Law Number 40 of 2014 concerning Insurance requires both conventional and sharia insurance and reinsurance companies to appoint at least one controller. Each appointed controller must report it to the Financial Services Authority. In case there is another controller that has not been appointed by the insurance company, sharia insurance company, reinsurance company, or sharia reinsurance company, the Financial Services Authority has the authority to appoint a controller outside of those appointed by the company. (*Undang-Undang Nomor 40 Tahun 2014*, n.d.).

The law states that the Controller is obligated to be responsible for the losses incurred by the insurance company, sharia insurance company, reinsurance company, or sharia reinsurance company that are caused by parties within its control. According to the Law, the definition of Controller is a party who directly or indirectly has the ability to determine the board of directors, board of commissioners, or equivalent to the board of directors or board of commissioners in a legal entity in the form of a cooperative or joint venture and/or influences the actions of the board of directors, board of commissioners, or equivalent to the board of directors or board of commissioners in a legal entity in the form of a cooperative or joint venture. (*Undang-Undang Nomor 40 Tahun 2014*, n.d.). The purpose of having a Controller is to allow the Financial Services Authority to identify other parties, in addition to commissioners and directors, who can be held accountable in case of failure and losses incurred by the insurance company. This is done to ensure that insurance companies fulfill their obligations to policyholders and insured parties. (*Undang-Undang Nomor 40 Tahun 2014*, n.d.).

Article 1 paragraph 3 of the Financial Services Authority Regulation Number 27/POJK.03/2016 concerning Assessment of Capability and Suitability of Financial Services Institutions' Ultimate Beneficial Owners states that Controlling Shareholder refers to a legal entity, individual, or business group that has the ability to control and holds shares or equivalent shares in Financial Services Institutions. (Peraturan Otoritas Jasa Keuangan, n.d.). The term "Pengendalian" (Control) refers to any action taken, whether directly or indirectly,

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with the purpose of influencing the management and/or policies of a company, including Financial Services Institutions. (*Peraturan Otoritas Jasa Keuangan*, n.d.). The criteria for Controlling Shareholders are:

a) Owning directly 25% (twenty-five percent) or more of the issued shares and having voting rights; or
b) Owning directly less than 25% (twenty-five percent) of the issued shares and having voting rights, but can be proven to have control over the Company, either directly or indirectly.

The provision regarding the Controller states that every insurance company, sharia insurance company, reinsurance company, and sharia reinsurance company is required to appoint at least one Controller. The Controller is obligated to be responsible for any losses incurred by the company caused by parties within its control. As for the provision regarding Controlling Shareholders, it stipulates that any party who can become a Controlling Shareholder in one type of insurance company. If a Controlling Shareholder holds shares in more than one insurance company, they must adjust to the provisions in the law within a maximum of three years.

The relationship between Controlling Shareholders and the organs of an insurance company is that Controlling Shareholders have influence or power in determining the policies and management of the company. (*Peraturan Otoritas Jasa Keuangan*, n.d.):

a) According to Article 1 of Regulation No. 73/2016, one of the organs of an insurance company is the General Meeting of Shareholders. Certainly, Controlling Shareholders play a significant role in the conduct of the General Meeting of Shareholders in an insurance company. As per Article 13(3) of Law No. 40 of 2007, the decisions of the General Meeting of Shareholders are valid if the meeting is attended by shareholders representing all voting shares and the decisions are approved unanimously.
b) Controlling Shareholders are one of the parties responsible for appointing and dismissing the board of directors, board of commissioners, and Sharia Supervisory Board, as well as being entitled to hold them accountable for their performance in managing the insurance company during the General Meeting of Shareholders.
c) According to Article 75(2) of Law No. 40 of 2007, during the General Meeting of Shareholders, they have the right to obtain information related to the company from the board of directors and/or board of commissioners, as long as it is related to the meeting agenda and not conflicting with the company's interests.

Shareholders or equivalent parties in an insurance company are prohibited from interfering in the operational activities that are the responsibility of the board of directors. This is in accordance with the provisions of the company's articles of association and the relevant regulations, except when exercising their rights and obligations as the General Meeting of Shareholders. Shareholders or equivalent parties in an insurance company are prohibited from interfering in the operational activities of the company that are the responsibility of the board of directors, in accordance with the provisions of the company's articles of association and the relevant regulations, except when exercising their rights and obligations as the General Meeting of Shareholders. (*Peraturan Otoritas Jasa Keuangan*,

n.d.). The position of the Controller in an insurance company is the same as that of other shareholders. They participate in the highest organ of the company, which is the General Meeting of Shareholders (RUPS), and make decisions related to the management of the company, which is carried out by the board of directors and board of commissioners. (*Peraturan Otoritas Jasa Keuangan*, n.d.).

In essence, shareholders of a company are not personally liable for the obligations made on behalf of the company and are not responsible for the losses of the company beyond the extent of their shareholding. The doctrine of piercing the corporate veil is a legal principle that allows for the limited liability of shareholders and directors to be disregarded in certain circumstances. Through piercing the corporate veil, the limited liability of shareholders and directors can be disregarded to prevent the abuse of the protection provided by the principle of limited liability to shareholders and directors. The limited liability of shareholders and directors can only be disregarded if certain conditions mandated by Article 3(2) are proven in court proceedings that underlie the application of the doctrine of piercing the corporate veil. However, it is important to note that the doctrine of piercing the corporate veil can only be applied to a legally established company. If a company is not legally recognized, then limited liability is not recognized, and the liability of the company's organs extends to the personal wealth of the individuals involved.

Risk management investigation requires precision and caution, especially in determining the level of risk, as mentioned by Paul Hopkin, the determination of the level of risk can be viewed in a hierarchical manner, as follows: (Paul Hopkin 2010):

- Strategy, because the risk associated with different strategic options will be fully analyzed and better strategic decisions will be reached.
- Tactics, because consideration will have been given to selection of the tactic and the risk involved in the alternatives that may be available.
- Operations, because events that can cause disruption will be identified in advance and actions taken to reduce the likelihood of these events occurring, limit the damage caused by these events and contain the cost of the events.
- Compliance will be enhanced because the risk associated with failure to achieve compliance with statutory and customer obligations will be recognized.

Shareholders through the General Meeting of Shareholders (hereinafter abbreviated as GMS) are a corporate tool that represents the highest authority within the company, exercising the ultimate leadership over the company (M.N. Purwosutjipto 2005). The General Meeting of Shareholders is a corporate organ that is not delegated to the Board of Directors or the Board of Commissioners within the limits specified in this Law and/or the Articles of Association. (*Undang-Undang Nomor 40 Tahun 2007*, n.d.).

The delegated authority is essentially what is permanent, such as the management of the company and the representation function (representing the company both inside and outside the court). Meanwhile, the delegation that is temporary can be revoked at any time. This is in line with the opinion of Munir Fuady, that in principle, the company's organ is not its shareholders but rather the General Meeting of Shareholders. Shareholders also tend to act as the company's organ alongside the directors, board of commissioners, and General

Meeting of Shareholders. As the highest corporate organ with the authority to determine the direction and objectives of the company, the General Meeting of Shareholders has the right to obtain all kinds of necessary information related to the interests and operations of the company. This authority is an exclusive power that cannot be delegated to others. (Munir Fuady 2002).

The control by the Controlling Parties in an Insurance Company is associated with their position as shareholders in the General Meeting of Shareholders (GMS) of the Insurance Company. The role of the Controlling Parties is considered crucial because decisions made by them in the GMS regarding the management and policies of the insurance company can also include the appointment and dismissal of directors, the Board of Commissioners, the Sharia Supervisory Board, as well as the selection of public consultants to be used as partners in the insurance company. They also have the right to obtain information and details related to the company from the Board of Directors and/or the Board of Commissioners, as long as it is related to the agenda of the meeting and is not against the interests of the company. (*Peraturan Otoritas Jasa Keuangan*, n.d.).

The General Meeting of Shareholders of the Insurance Company must be held in accordance with the provisions of the laws and regulations and the Articles of Association of the Insurance Company in a transparent and accountable manner. The decisions obtained in the General Meeting of Shareholders (GMS) must maintain a balance of interests for all parties within the insurance company, especially the interests of policyholders, insured parties, customers, and related parties who benefit from and have interests as minority shareholders. The conduct of the General Meeting of Shareholders (GMS) must be documented in the minutes of the General Meeting of Shareholders (GMS) similar to that of a limited liability company, which includes the time, agenda of the meeting, participants, opinions from the participants of the General Meeting of Shareholders (GMS), and the decisions or results obtained from the General Meeting of Shareholders (GMS). (*Peraturan Otoritas Jasa Keuangan*, n.d.).

Article 29 paragraph 2 of the Financial Services Authority Regulation Number 67/POJK.05/2016 regarding Business Licensing and Institutional of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies states that another form of control by the Controller is:

a) Merger of companies under its control.
b) Consolidation of companies under its control.
c) Sale of a portion or all of the ownership of shares of companies under its control.

In general, Indonesian language, "tanggung jawab" means the state of having an obligation to bear or take responsibility for everything, including bearing and taking responsibility, and facing its consequences. In legal terms, "tanggung jawab hukum" refers to the consciousness of intentional or unintentional behavior, which signifies the realization of awareness and obligation. According to Ridwan Halim, "tanggung jawab hukum" is a further consequence of performing a role, whether that role involves rights, obligations, or powers. (Ridwan Halim 1988).

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When a legal entity is considered to be a truly independent entity with its own will and authority to act, it can be concluded that the legal entity should also be regarded as fulfilling the element of fault in committing an unlawful act. Not all actions of an organ can be attributed to the legal entity; there must be a connection between the act and the formal working environment of the organ. The organ must have carried out its actions within the scope of its authority. If the organ of the legal entity acts to fulfill the tasks assigned to it and such action is unlawful, then the unlawful act of the organ is considered an unlawful act of the legal entity. (.A. Moegni Djojodirdjo 1982).

Based on Article 3 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT), it provides a limitation of liability to the owners of the company up to the amount of shares they hold. Thus, the owners of the company will not be liable beyond the number of shares they own for any losses incurred by the company. However, according to Article 3 paragraph (2) of UUPT, there are exceptions to this limited liability. This means that the shareholders of the Limited Liability Company can still be held responsible for the company's liabilities that harm third parties in the following circumstances: [Please note that this is a continuation of the previous paragraph, and the following text provides additional details on the exceptions to the limited liability of shareholders. Unfortunately, the provided text is cut-off and does not include the specific exceptions mentioned in Article 3 paragraph (2) of UUPT. To provide a complete translation, I would need the complete text or specific details regarding the exceptions mentioned in that article. (*Undang-Undang Nomor 40 Tahun 2007*, n.d.):

a) The requirements for the company as a legal entity have not been or are not fulfilled;
b) The relevant shareholder, either directly or indirectly, utilizes the company for personal interests with bad faith;
c) The relevant shareholder is involved in illegal acts committed by the company; or
d) The relevant shareholder, either directly or indirectly, unlawfully uses the company's assets, resulting in the company's wealth being insufficient to cover its debts.

Based on Article 97 paragraph 3, it is stated that the members of the board of directors are personally liable for the losses of the company if they are at fault or negligent in performing their duties. In this context, it can be interpreted that the board of directors must act in good faith in carrying out their functions and authorities. The board of directors can be held personally liable if the company incurs losses due to:

a) Their wrongdoing or negligence in performing their duties,
b) Their actions that lead to the company's losses, and
c) Their failure to fulfill their responsibilities as required by law or the company's articles of association.

The regulation regarding the involvement of the controller in case of losses in an insurance company is stipulated in Article 15 of Law No. 40 of 2014 concerning Insurance, which states that the controller is obliged to be responsible for the losses incurred by the Insurance Company, Sharia Insurance Company, reinsurance company, or Sharia reinsurance company caused by the parties under its control. (*Undang-Undang Nomor 40 Tahun 2014*, n.d.).

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Yes, that's correct. According to the definition in the legal dictionary, responsibility or "tanggung jawab" refers to an obligation for someone to fulfill what has been required or mandated of them. It involves being accountable and answerable for one's actions or duties (Andi Hamzah 2005). Based on the grammatical interpretation of Article 15 of Law Number 40 of 2014, it is understood that the Controller is required to be jointly responsible for the losses incurred by the Insurance Company caused by parties within its control. On the other hand, the systematic interpretation, referring to Article 1 point 17 of Law Number 40 of 2014, clarifies that the term "Pihak" refers to individuals or business entities, whether legal entities or non-legal entities. Therefore, the phrase "oleh Pihak dalam pengendaliannya" can be understood to refer to the organs within the Insurance Company, Sharia Insurance Company, reinsurance company, or Sharia reinsurance company.

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

> “Every person is responsible not only for the damage caused by their actions but also for the damage caused by their negligence or lack of care..”

Based on the formulation of the phrase "shall be responsible" in Article 15 of Law Number 40 of 2014, the concept of "Pengendali" accountability is established. This is in line with the concept of legal responsibility, which is closely related to the concept of legal obligation. According to Hans Kelsen, the concept of legal obligation is the counterpart of the concept of legal norm. Furthermore, according to Hans Kelsen, a legal norm implies a legal obligation because every norm always creates a certain legal obligation (Jimly Asshiddiqie 2006). Therefore, according to Hans Kelsen, having a legal obligation means being "in a state as a subject in a delict" which is referred to as "delinquent" in the book "The Pure Theory." (Jimly Asshiddiqie 2006).

In his theory of responsibility, Hans Kelsen states that "Someone is legally responsible for a specific act or that he assumes legal responsibility. Subject means that he is liable to a sanction in the event of a contrary act.” (Hans Kelsen 2008).

If insolvency occurs in an insurance company, resulting in policy default, the Insurer must still fulfill its obligations as stated in the insurance agreement. In the case of policy default, it may be considered a violation of Article 31 of the Insurance Law, which states that "Insurance companies are prohibited from taking actions that may delay the settlement or payment of claims, or not taking actions that should be taken, resulting in delays in the settlement or payment of claims." If an insurance company engages in actions prohibited by Article 31 of the Insurance Law, the company may be subject to administrative sanctions as determined in Article 71 paragraph (2) of the Insurance Law, in the form of. (*Undang-Undang Nomor 40 Tahun 2014*, n.d.):

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

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e) Cancellation of registration for Insurance Brokers, Reinsurance Brokers, and Insurance Agents;
f) Cancellation of registration for actuarial consultants, public accountants, appraisers, or other parties providing services to insurance companies;
g) Revocation of approval for mediation institutions or associations;
h) Administrative fine;
i) Prohibition from becoming a shareholder, controller, director, board of commissioners, or any equivalent positions in cooperative or joint venture legal entities.

Article 15 of the Insurance Law stipulates that the Controller is responsible for the losses incurred by the insurance company caused by parties under its control. In this case, the Controllers of Jiwasraya Insurance Company are the Ministry of State-Owned Enterprises and the Ministry of Finance. Therefore, the Ministry of State-Owned Enterprises and the Ministry of Finance are liable for the losses suffered by policyholders. The insolvency experienced by Jiwasraya Insurance is due to mismanagement and financial misconduct by the company's directors. The Board of Directors is under the control of the Ministry of State-Owned Enterprises. Accountability can be fulfilled by providing compensation or indemnity for the delayed payment at a rate of 5.7% per annum (net) on the delay payment, which will be paid together with the cash value/basic premium of the insurance policy being withdrawn. (Vera W.S. Soemarwi 2021).

The obligation of the Controller to be responsible for the losses as stated in Article 15 of Law Number 40 of 2014 can be analyzed using Hans Kelsen's theory of responsibility. There is a correspondence with the forms of collective responsibility and absolute responsibility. According to Hans Kelsen, collective responsibility is a liability that arises because sanctions are not only imposed on the perpetrator of a tort but also on individuals who are not actively involved in the tort but have a certain legal relationship with the tortfeasor. In this case, the responsibility for the losses that occur in the Insurance Company is also shared by the Controller due to the "control" relationship between the Controller and the Parties. Building on Hans Kelsen's theory, collective responsibility is always an absolute responsibility. (Vera W.S. Soemarwi 2021). This can be understood by researchers because absolute liability is a form of responsibility held by an individual for a violation committed unintentionally and unforeseeably.

Responsibility of the Insurer's Management for the losses incurred by an insurance company, according to the Financial Services Authority, if there are indications of Other Controllers besides those approved by the insurance company, the Financial Services Authority has the authority to designate controllers outside of those already approved. The parties designated as controllers cannot cease to be controllers without the approval of the Financial Services Authority. This is intended to prevent misuse by companies with different objectives that could harm the insurance company by implementing policies taken outside the General Meeting of Shareholders.

The main factor that causes the emergence of responsibility from the controller of an insurance company is:

a) The existence of a controller who holds a company's capital of 25% (twenty-five percent) or more of the issued shares and has voting rights in the General Meeting of Shareholders.
b) Holding shares or capital less than 25% (twenty-five percent) of the issued shares and 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 the oldest and only life insurance company owned by the Indonesian government. Jiwasraya originated from the Nederlandsch Indiesche Levensverzekering en Liffrente Levensverzekering en Liffrente Maatschappij van 1859 (NILLMIJ). It was established on December 31, 1859, under the notarial deed of 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 indigenization program. On December 17, 1960, NILLMIJ van 1859 was nationalized under Government Regulation Number 23 of 1958, and its name was changed to PT Perusahaan Pertanggungan Djiwa Sedjahtera. Through Law Number 1 of 1995, the company was further amended and changed by Notarial Deed Sri Rahayu H. Prasetyo, S.H, Number 03 on July 14, 2003, becoming PT Asuransi Jiwasraya (Persero) (Jiwasraya 2021). (Jiwasraya 2021).

The problem arose when the insurance company experienced a failure to pay policyholder claims and deviations in managing customer funds of the company, Asuransi Jiwasraya. The issue originated from the collection process of funds for the Jiwasraya Saving Plan (JS) products. The Jiwasraya Saving Plan is a life insurance program designed to provide protection, including death benefits or total permanent disability caused by accidents, as well as investment certainty with a guaranteed principal and investment returns. Asuransi Jiwasraya collaborated with various banks to promote their insurance products known as the Saving Plan. Some of the banks that partnered with Jiwasraya for this insurance product were BRI, BTN, Victoria, QNB, SCB, and KEB Hana. However, due to the failure to fulfill claims on the Saving Plan products, it was revealed that the investment placement of the assets in the form of stocks and mutual funds was suspected of engaging in Unlawful Acts. As a consequence of the failure to pay claims, the total losses reached Rp. 16.81 Trillion, leading to a lack of funds to cover the claims filed by policyholders. (Evelin Wiyasih, n.d.).

Insurance claims are formal requests made by policyholders to the insurance company for payment as agreed upon in the insurance contract. The claims submitted by policyholders will be reviewed by the insurance company for validity and will be paid to the policyholder or the insured party if approved. According to Amrin Abdullah, a claim is the assertion of a right made by the insured party to the insurer to obtain coverage for losses based on the agreement or contract that has been made. Insurance claims must be fulfilled by the insurer to the insured party according to the agreement established by all parties involved in the insurance policy. The insurance policy is a sum of money that must be paid to the insurer or insurance company on a monthly basis, known as premiums. (Ramli 1999):

a. Reasonable Claim

"Reasonable claim" is a claim made by one party asserting their right according to the agreement or what has been agreed upon and stated in the contract or policy.

b. Unreasonable claim

"Unreasonable claim" is a claim that occurs when one party is aware that they have violated what has been mutually agreed upon. The process of submitting a claim to the insurance company must be done correctly if the company is to approve and pay the claim to its policyholder. The procedures that can be followed are: (Handayani 2001):

1) Claim Notification

When an insured event occurs, the involved party must promptly report it to the insurer or insurance company. They can provide the report personally or through authorities such as lawyers, brokers, or agents. The report can initially be in oral form, which will then be confirmed with 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.

2) Proof of Claim

The insurer will request the insured to provide complete facts and evidence for the benefit of the insurer or insurance company. Regarding the required documents, each company has its own specific policies, which are different from others. In this regard, it is crucial for the insured or policyholder who has suffered a loss to submit a written claim by completing the claim application form to ensure that the insurer or insurance company approves the claim being submitted.

3) Investigation

After receiving the report along with supporting documents, the insurer will proceed with administrative analysis. For example, they will check if the premiums have been paid or not. Once this stage is completed, the insurer will decide to conduct a field survey immediately.

4) Claim Settlement

After the agreement is reached regarding the amount of compensation according to the applicable regulations, the claim payment must not exceed 30 days from the date of the agreement.

In this research case, Elfie, residing at P. Matahari VI Blok A7/20 Kel. Kembangan Utara, West Jakarta, has appointed Oerianto Guyandi, residing at Taman Palem Lestari Blok A20 No. 26D, Kelurahan Cengkareng Barat Kecamatan Cengkareng, West Jakarta, as the plaintiff who holds Jiwasraya Proteksi Plan insurance products. The Jiwasraya Proteksi Plan is an insurance product with protection guarantees and investment value with annual interest earned. As the plaintiff, Elfie holds 4 policies, each with an investment period of 12 (twelve) months, where all premiums have been fully paid to Jiwasraya, amounting to a total of Rp. 11,667,000,000.00 (eleven billion six hundred sixty-seven million rupiahs). Elfie was shocked when in October 2018, they received information from the mass media that PT. Asuransi Jiwasraya was facing severe financial liquidity problems, leading to a default on claim payments to its policyholders.

In this case, Elfie demanded the fulfillment of their 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 verdict number 431/Pdt.G/2020/PN.Jkt.Pst, it was known that Elfie's claim was rejected. With the rejection of the decision, Elfie, as the plaintiff, filed an appeal to the High Court of DKI (Special Capital Region). Based on the verdict number 676/PDT/2021/PT DKI, Elfie's appeal was granted, and through the decision, it was declared that PT. Asuransi Jiwasraya committed an unlawful act and was sentenced to pay material compensation directly and all at once to the plaintiff in the amount of Rp. 11,667,000,000.00 (eleven billion six hundred sixty-seven million rupiahs).

In the above case, the plaintiff holds insurance at PT. Asuransi Jiwasraya with the 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 a collaboration between PT. Asuransi Jiwasraya and PT KEB Hana Indonesia. In this case, Defendant V, which is Bank KEB Hana, promised the security guarantee of the insurance and investment because it was issued by PT. Asuransi Jiwasraya, a state-owned insurance company (State-Owned Enterprise) guaranteed by the government.

The plaintiff's perspective is that PT. Asuransi Jiwasraya is unlikely to fulfill its promises because they issued the plaintiff's policy and accepted premium payments while the insurance company was in an insolvent condition. According to the plaintiff, PT. Asuransi Jiwasraya should not have been allowed to sell and offer bancassurance products with promises of high investment returns during its insolvent state. However, the court has a different view from the plaintiff. The court's decision states that they did not find any Unlawful Acts, either active or passive, on the part of PT. Asuransi Jiwasraya, as there is no evidence provided by the plaintiff in the form of documents, testimonies from witnesses, or expert opinions that show PT. Asuransi Jiwasraya's actions resulted in losses for the plaintiff.

The court's opinion contradicts the principle of burden of proof. The announcement made by the PT. Asuransi Jiwasraya's management regarding the default condition and the financial difficulties was widely known. The Supreme Audit Agency and the Attorney General's Office also discovered findings related to the financial problems of PT. Asuransi Jiwasraya caused by corrupt practices by the company's management during the period 2008 - 2018. These two announcements have become public knowledge regarding the insolvent condition of PT. Asuransi Jiwasraya. When examining the written evidence presented by the plaintiff and the expert testimony provided by the plaintiff, certain facts are revealed.:

a) PT. Asuransi Jiwasraya's insolvency in its financial condition.
b) PT. Asuransi Jiwasraya's inability to pay the plaintiff's claims and investment value.
c) The corrupt practices committed by the management (Direksi) of PT. Asuransi Jiwasraya

Correct, according to Article 15 of Law Number 40 of 2014 on Insurance, the controllers are obliged to be held accountable for the losses that occur in an insurance company caused by the controllers. The controllers referred to here are those who directly or indirectly have the competence to determine the directors and board of commissioners in a legal entity in the form of a cooperative or joint venture. In the case of PT. Asuransi

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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 case of the failure to pay by PT. Asuransi Jiwasraya. The government, as the controller, has an obligation to take responsibility for any losses or issues faced by the insurance company.

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

The above description pertains to justice in a general sense. Justice in this context consists of two elements: fairness and accordance with the law, which are not necessarily the same. Being unfair means breaking the law, but not all actions that violate the law are necessarily unfair. Justice in a general sense is closely related to compliance with the law. (Muchamad Ali Safa'at, n.d.).

Based on the interpretation provided, the researcher understands that justice is realized when the law is obeyed as written in the legal regulations. Therefore, if there is an act that contradicts the written law, it is considered an unjust act. 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 individuals' merits and needs. (Zakki Adlhiyati 2019).
b) Corrective Justice: This focuses on rectifying wrongs and restoring balance when an unjust act has occurred. It involves compensating for the harm caused to others and ensuring that wrongdoers face appropriate consequences for their actions.(Darji Darmodiharjo dan Shidarta 2006). In corrective justice, there is a demand for compensation or restoration to the original state as a means to balance the imbalance caused by injustice. Therefore, the concept of corrective justice applies to various aspects, punishment, restitution, recovery of economic (N Fadhilah 2013).

Based on the explanation of justice according to Aristotle, bringing justice to life insurance policyholders whose claims are unpaid due to the insurance company's failure 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. Additionally, remedial or corrective justice can be achieved by providing compensation or restoring the situation to its original state for life insurance policyholders who did not receive their claims due to the insurance company's failure.

The government, in carrying out its administration, must always be based on the General Principles of Good Governance (The General Principles of Good Governance).

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. Benefit;
c. Impartiality;
d. Prudence;
e. Non-abuse of authority
f. Transparency
g. Public Interest;
h. Good Service

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

a. Restrukturisasi;

   According to Article 11 of Law No. 19 of 2003 concerning State-Owned Enterprises (SOEs) Restructuring, restructuring is an effort undertaken to improve the condition of State-Owned Enterprises as a strategic step to address internal issues by improving performance and enhancing the company's value. Based on the definition of restructuring, it means that a company can rearrange its capital composition to make its performance healthier. Financial performance is evaluated based on financial statements, including the balance sheet, cash flow statement, profit/loss statement, and the company's equity position. 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. Privatisasi.

   Article 12 of Law No. 19 of 2003 concerning State-Owned Enterprises explains that privatization is the action of selling a portion or the entire shares of a State-Owned Enterprise (SOE) to other parties in order to improve the company's performance and value, and to increase benefits for the state and society, as well as expand public ownership of shares. In other words, privatization aims to enhance the company's performance 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 enabling business expansion. Based on Article 74 of Law No. 19 of 2003 concerning State-Owned Enterprises, the purpose and objective of privatization are to enhance the role of the SOE in providing general welfare by expanding public ownership of the SOE and supporting national economic stability. Privatization can be conducted while maintaining majority government ownership, which should not be less than 50%. However, as a consequence of privatizing State-Owned Enterprises, it not only reduces government ownership of the SOEs but also leads to the state losing control over state

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assets and raises concerns about the dominance of foreign entities, potentially compromising nationalism.

The government chooses the policy of policy restructuring as an effort to rescue the case of payment default by PT. Asuransi Jiwasraya, as it is seen as the option with the least losses for policyholders. The restructuring program aims to reorganize the insurance company to save policyholders' funds while preserving the continuity of policy benefits. This program was decided upon by the Indonesian government, represented by the Ministry of State-Owned Enterprises, in collaboration with the People's Representative Council (DPR), with the purpose of rescuing all Jiwasraya policies, as opposed to liquidating or dissolving the company. In implementing the restructuring, the government, as the majority shareholder, will provide State Capital Participation (PMN) sourced from the State Budget. The PMN amounting to Rp 22 trillion will be given to PT. Bahana Pembinaan Usaha Indonesia (BPUI). The funds will be disbursed in two stages, Rp 12 trillion in 2021 and Rp 10 trillion in 2022. The policy restructuring program is carried out by the government, represented by the Ministry of State-Owned Enterprises (BUMN), and the Ministry of Finance (Kemenkeu) as shareholders of Asuransi Jiwasraya, to resolve the problems that have occurred in Jiwasraya over the past decade. To rescue all Jiwasraya policies and migrate to IFG Life, the government has prepared funds of Rp 22 trillion from State Capital Participation (PMN) and Rp 4.7 trillion from fundraising efforts by IFG as the parent company of IFG Life. (Vera W.S. Soemarwi 2021).

By implementing the program to rescue PT. Asuransi Jiwasraya (Persero) policies, the government is perceived to fulfill its responsibility to provide benefits to the state-owned enterprise (BUMN) and demonstrate its commitment as a shareholder. This program aims to provide certainty in fulfilling the obligations to Jiwasraya's policyholders, whose rights have not been fulfilled since 2018. The government's efforts have been made to maintain trust, especially from policyholders and the general public, in state-owned enterprises, the government, and the insurance industry as a whole.

CLOSING

Conclusion

Normatively, the control of insurance companies over life insurance policyholders is based on the principles of ethics, professionalism, and fairness in the insurance industry. This is essential to ensure that the relationship between the insurance company and life insurance policyholders continues to function well and remains trustworthy. In cases where life insurance policyholders do not receive claim payments due to the insurance company's failure to pay, the responsibility of the company's controller is limited to the extent of their shareholding.

Suggestions and Acknowledgments

Insurance service providers, which offer guarantees and should protect policyholders, are expected to build trust in society. To achieve this, insurance companies are encouraged to implement mitigation efforts through mechanisms such as the potential transmission

channels of risk for insurers to the real economy and financial stability. These mechanisms address risks to both the real economy and the financial system.

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