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Health of Insurance Companies in Indonesia from a Legal Objective Perspective

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ABSTRACT: Legal facts in Indonesia stipulate that there are preventive and repressive legal protection arrangements for insurance company customers. This paper aims to find and analyze whether the arrangement for handling insurance companies experiencing problems as a form of preventive legal protection for policyholders has realized the legal objectives for legal certainty. The purpose of the Law is to obtain legal certainty, which is the basis for theoretical thinking to analyze the expected findings. This research is a type of normative legal research. The data used are secondary. Data analysis uses qualitative data analysis techniques. Drawing conclusions using deductive techniques. The study results indicate that there are arrangements for handling insurance companies that are experiencing problems as a form of preventive legal protection for policyholders. These arrangements are intended so that insurance companies avoid being unable to pay the Public as insurance customers. The arrangement containing a health plan aims to restore the insurance company's health so that it can guarantee good solvency. It is by what Hans Kelsen said that the Law determines specific regulations and lays down norms for actions that people must follow. The purpose of the Law is to provide legal certainty for insurance companies to carry out their activities.

KEYWORDS: Deductive; holder; Insurance; planning; Law.

I. INTRODUCTION

Financial institutions in Indonesia include banking, capital markets, derivative finance, carbon exchanges, Insurance, guarantees, pension funds, financing institutions, venture capital companies, microfinance institutions, and other financial services institutions. Insurance companies are one of the financial institutions in Indonesia. Insurance is one of the mechanisms provided to manage the risks the Community faces. The role of insurance companies is very significant in ensuring the quality of life. Insurance companies in Indonesia are distinguished from the component aspects of commercial and non-commercial Insurance. Commercial Insurance consists of Insurance that operates conventionally and according to Sharia. Commercial Insurance that operates conventionally consists of 127 insurance companies, 48 life insurance companies, 71 general insurance companies, and eight reinsurance insurance companies. Commercial Insurance that operates according to Sharia (full pledge) consists of 10 life insurance companies, six general insurance companies, and one reinsurance insurance company. Non-commercial Insurance consists of insurance companies that operate conventionally. ASN, TNI/POLRI, General Passenger Accident and Road Traffic Insurance, as many as 2 Insurance Companies, and Social Insurance Companies consisting of 2 Insurance Companies, and there is no Non-commercial Insurance operating by Sharia. The total number of Insurance Companies ((commercial and non-commercial) operating conventionally and non-conventionally in Indonesia is 148 Insurance Companies (OJK.2025). This number is minimal compared to the number of Banks comprising 106 Commercial Banks (consisting of approximately 24.3 thousand bank offices). And the number of Rural Credit Banks as many as 1,369 Rural Credit Banks). The difference in the number of banks and the number of Insurance Companies is one of the indications that Insurance Companies are Financial Institutions that have not gained much trust from the Public. Public Trust in Insurance Institutions is greatly influenced by the role of the State in resolving Insurance Company problems if the Insurance Company experiences problems in implementing the obligations stated in the policy. Conceptually, legal protection can be divided into preventive and repressive legal protection. Legal facts in Indonesia stipulate that there are preventive and repressive legal protection arrangements for insurance company customers. This article aims to find and analyse whether the arrangement for handling insurance companies experiencing problems as a form of preventive legal protection for policyholders has been able to realize the legal objective of legal certainty. The legal objective of obtaining legal certainty is the basis for theoretical thinking to analyse the expected findings.

II. METHODS OF RESEARCH

This type of research is Normative legal research (State, T. A. S, 2023) (Brander, M., 2022) (Lisa et al., 2019). Research that focuses on laws and regulations. The data used is secondary data. The secondary data used are primary legal materials and secondary legal materials. Primary legal materials include: Law Number 40 of 2014 concerning Insurance as amended by Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector, Regulation Of Financial Services Authority No. 71 / POJK.05 / 2016 concerning the Financial Health of Insurance Companies and Reinsurance Companies. Financial Services Authority Regulation Number 71 of 2016 concerning the Financial Health of Insurance Companies and Reinsurance Companies as amended by Regulation of the Financial Services Authority of the Republic of Indonesia Number 27 /POJK.05/2018 concerning Amendments to Regulation of the Financial Services Authority Number 71/POJK .05/2016 concerning the Financial Health of Insurance Companies and Reinsurance Companies, and Regulation of the Financial Services Authority of the Republic of Indonesia Number 5/POJK/2023 concerning the Second Amendment to Regulation of the Financial Services Authority Number 71/POJK.05/2016 concerning the Financial Health of Insurance Companies and Reinsurance Companies. Regulation of the Financial Services Authority Number 28 / POJK.05 / 2015 Concerning Dissolution, Liquidation, and Bankruptcy of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies. Regulation of the Financial Services Authority of the Republic of Indonesia Number 38 of 2024 Concerning Amendments to the Regulation of the Financial Services Authority Number 28 / POJK 05/2015 Concerning Dissolution, Liquidation, and Bankruptcy of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies. Secondary legal materials are journals and books from various international and national sources. The research approach used is the statute approach (Achmad, 2024) and the conceptual approach. Data collection techniques use literature studies. Data analysis uses qualitative techniques by describing and providing views on related legal facts. The conclusion-drawing technique used is deductive conclusion-drawing.

III. RESULT OF DISCUSSION

A. Regulations for Handling Troubled Insurance Companies

The definition of handling troubled Insurance in this article contains the meaning of how the State plays a role in the form of regulation if an insurance company experiences problems. The fundamental problem in an insurance company is the difficulty in meeting solvency requirements. There are regulations related to the handling of regulations for handling insurance companies that are experiencing solvency difficulties that can provide legal certainty to the Public, especially insurance customers. There are Law Number 40 of 2014 concerning Insurance as amended by Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector, Regulation Of Financial Services Authority No. 71 / POJK.05 / 2016 concerning the Financial Health of Insurance Companies and Reinsurance Companies. Financial Services Authority Regulation Number 71 of 2016 concerning the Financial Health of Insurance Companies and Reinsurance Companies as amended by Regulation of the Financial Services Authority of the Republic of Indonesia Number 27 /POJK.05/2018 concerning Amendments to Regulation of the Financial Services Authority Number 71/POJK .05/2016 concerning the Financial Health of Insurance Companies and Reinsurance Companies, and Regulation of the Financial Services Authority of the Republic of Indonesia Number 5/POJK/2023 concerning the Second Amendment to Regulation of the Financial Services Authority Number 71/POJK.05/2016 concerning the Financial Health of Insurance Companies and Reinsurance Companies. Regulation of the Financial Services Authority Number 28 / POJK.05 / 2015 Concerning Dissolution, Liquidation, and Bankruptcy of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies. Regulation of the Financial Services Authority of the Republic of Indonesia Number 38 of 2024 Concerning Amendments to the Regulation of the Financial Services Authority Number 28 / POJK 05/2015 Concerning Dissolution, Liquidation, and Bankruptcy of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies.

B. Preventive legal protection arrangements if the insurance company is in the perspective of legal objectives

Legal facts in Indonesia stipulate that there are preventive and repressive legal protection arrangements for insurance company customers. These arrangements are contained in the highest hierarchy of legal regulations, namely in the form of Laws to the Financial Services Authority Regulations (POJK). Legal protection guarantees the fulfillment of the rights of the Community, which is the State's obligation. Legal protection can be divided into preventive and repressive legal protection. Preventive Legal Protection is the availability of arrangements to guarantee the rights of insurance customers to obtain their rights before a conflict occurs. Repressive Legal Protection is the availability of arrangements to guarantee the rights of insurance customers to obtain their rights after a conflict or the inability of the insurance company to carry out its obligations. Preventive Legal Protection arrangements in Indonesia are based on the provisions of Law Number 40 of 2014 concerning Insurance as amended by Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector. Based on this Law, POJK No. 71 /

POJK.05 / 2016 concerning the Financial Health of Insurance Companies and Reinsurance Companies. Regulation of the Financial Services Authority of the Republic of Indonesia Number 27 / POJK.05 / 2018 Concerning Amendments to the Financial Services Authority Regulation Number 71 / POJK.05 / 2016 Concerning the Financial Health of Insurance Companies and Reinsurance Companies, Regulation of the Financial Services Authority of the Republic of Indonesia Number 5/POJK/2023 concerning the Second Amendment to Regulation of the Financial Services Authority Number 71/POJK.05/2016 concerning the Financial Health of Insurance Companies and Reinsurance Companies . Based on the provisions above, companies that do not meet the internal Solvency Level target (as stated in Article 3 paragraph (3) and paragraph (4): have an obligation to submit a financial recovery plan; and are prohibited from distributing dividends or providing compensation in any form to shareholders. The financial recovery plan must be submitted to the Financial Services Authority no later than 1 (one) month after it is known that the internal Solvency Target has not been met. The financial recovery plan must at least contain financial recovery steps accompanied by a certain period required to meet the provisions of the internal Solvency Level target. All directors and board of commissioners or equivalent must sign the financial recovery plan. The financial recovery plan must first be approved by a general meeting of shareholders or equivalent if the said recovery plan contains a plan for additional paid-in capital or a plan for merging business entities. The financial recovery steps include the following plan steps: restructuring of assets and/or liabilities; additional paid-in capital; provision of subordinated loans; increase in premium rates; transfer of part or all of the insurance portfolio; merger of business entities; and/or other actions. Financial Services Authority is required to provide a statement of no objection to the financial recovery plan by considering the problem conditions faced by the Company no later than 14 (fourteen) working days from receipt of the complete financial recovery plan. If, within the period as referred to in paragraph (8), Financial Services Authority does not provide a statement of no objection or response, the Company may implement the proposed financial recovery plan. The Company is required to submit a report on the implementation of the financial recovery plan to Financial Services Authority. The report on the implementation of the financial recovery plan must at least include monthly financial reports and the realization of the action plan (financial recovery plans that have been implemented by the set time target and financial recovery plans that the set time target cannot implement), the reasons for the failure to implement the recovery plan by the set time target; and supporting documents proving that financial recovery actions have been implemented. Suppose the Company estimates that the Company's Solvency Level will not be met within the time as stipulated in the financial recovery plan. In that case, the Company may change the financial recovery plan. If there is a change to the financial recovery plan, approval must first be obtained from the Financial Services Authority. The Financial Services Authority must provide a statement of no objection to the change to the financial recovery plan submitted by the Company no later than 14 (fourteen) working days from receipt of the complete change to the financial recovery plan. If, within the specified time, the Financial Services Authority does not provide a statement of no objection or response, the Company may implement the changes to the originally submitted financial recovery plan. If the Company cannot meet the Solvency Level and/or is being subject to sanctions in the form of restrictions on business activities. Financial Services Authority can order the Company to transfer part or all of the insurance portfolio to another Company. Financial Services authority can impose sanctions (articles 55-57) on the Insurance Company's obligations, including fulfilling solvency obligations. The sanctions may be administrative sanctions (written warnings, restrictions on business activities for some or all business activities, and/or c. revocation of business licenses. As referred to in paragraph (1), administrative sanctions are carried out in stages. In addition to administrative sanctions, the Financial Services Authority may add additional sanctions in the form of a prohibition on marketing insurance products for certain business lines; reassessment of the ability and propriety of controllers, directors, or boards of commissioners, or equivalent in the Company; a prohibition on the Company to become shareholders or equivalent to shareholders, and/or controllers in legal entities in the form of cooperatives or joint ventures, in insurance companies; and/or a prohibition on shareholders, controllers, directors, and/or boards of commissioners, or equivalent to shareholders, directors, and/or boards of commissioners of the Company to become shareholders, controllers, directors, and/or boards of commissioners, or equivalent to shareholders, directors, and/or boards of commissioners in legal entities in the form of cooperatives or joint ventures, in insurance companies. It is further explained (Article 50) that the sanction of revocation of business licenses without being preceded by the imposition of other administrative sanctions or without prior imposition of administrative sanctions in stages. In the case of a company with a Solvency Level of less than 40% (forty percent) and based on the results of Financial Services Authority supervision, it is considered dangerous for policyholders or insured. Companies that experience delays in reporting obligations can (Article 57) be subject to additional sanctions in the form of an administrative fine of IDR 1,000,000.00 (one million rupiahs) per day of delay and a maximum of IDR 360,000,000.00 (three hundred and sixty million rupiahs) for each report. Companies that violate the provisions of Article 48 paragraph (1) are subject to additional sanctions in the form of an administrative fine of IDR 2,500,000.00 (two million five hundred thousand rupiah) per day and a maximum of IDR 50,000,000.00 (fifty million rupiah).

Health of Insurance Companies in Indonesia from a Legal Objective Perspective

From the explanation above, problems in fulfilling solvency obligations are an indicator of serious problems in every insurance company. If this continues, the insurance company cannot fulfill its obligations to the Public as policyholders. The regulation in the form of POJK is formed to provide guidelines for each Insurance Company. The obligation to make a recovery plan by a troubled Insurance Company is a form of state intervention through the Financial Services Authority, which has duties and authority over Insurance Companies. Hans Kelsen said that the definition of legal rights as interests protected by Law (Jimly Asshiddiqie and M. Ali Safa'at, 2006) or desires recognized by Law is doubted by the fact that there will be no legal rights before there is a law. As long as the rule of Law has not guaranteed a right or has not become a legal right, the Law precedes or coincides with the right. Hans Kelsen is famous for the theory known as pure legal theory, namely a general legal theory, not a presentation or interpretation of special legal regulations.

Hans Kelsen compared all phenomena that are in the name of Law, he tried to reveal the nature of the Law itself, determine its structure and the characteristics of its forms, independent of the content of the changes it undergoes at different times and among different people. Hans Kelsen used this method to obtain fundamental principles by which each legal rule can be understood. As a theory, its sole purpose is to know its subject. It answers the question of what Law is, not what it should be. It is said to be pure because it tries to avoid the recognition of the positive Law of all foreign elements there (Hanz Kelsen, 2008). This is the methodological basis of this theory. The pure legal theory tries to limit understanding to these areas, not because it ignores or denies the relationship, but because it wants to avoid mixing various disciplines with different methodologies (methodological syncretism), which obscures the essence of legal science and eliminates the limits imposed on it by the nature of its subject matter, (Hans Kelsen, 2007). Hans Kelsen conceptualized Law as regulations made and recognized by the State and wanted to cleanse legal science from non-legal elements, such as history, morals, sociology, politics, etc. Kelsen firmly stated that Law is a system of human actions. "Order" is a system of rules, and Law is understood as a set of rules that contain a kind of unity through the legal system (Hans Kelsen, 1995). Kelsen refused to define Law as an order because such a definition uses subjective and political considerations, while his science is truly objective. (Khudzaifah Dimyati, 2004) Kelsen's opinion states that Law does not try to describe what happened; instead, it emphasizes determining specific regulations and laying down norms for actions people must follow. (George Whitecross Paton). The purpose of the Law is to ensure legal certainty. From the perspective of this legal objective, Insurance Companies that experience solvency problems have been given steps set by the State through the Financial Services Authority Regulation. The regulation is intended to prevent insurance companies from being unable to pay the Public as insurance customers. The regulation containing the health plan aims to restore the health of the insurance company so that it can guarantee good solvency. It is by what Hans Kelsen said that the Law determines specific regulations and lays down norms for actions that people must follow. The purpose of the Law is to provide legal certainty for insurance companies to implement.

Suppose the banking health plan is a form of legal protection. Suppose preventive cannot be carried out correctly. In that case, the Financial Services Authority can provide administrative sanctions through written warnings, restrictions on business activities for some or all business activities, and/or revocation of business licenses. Suppose the Company is given a sanction for revocation of business. In that case, the regulations that can be used as a guideline are as follows: Financial Services Authority Regulation Number 28 / POJK.05 / 2015 Concerning Dissolution, Liquidation, and Bankruptcy of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies. Regulation of the Financial Services Authority of the Republic of Indonesia Number 38 of 2024 concerning Amendments to the Financial Services Authority Regulation Number 28/POJK 05/2015 concerning Dissolution, Liquidation, and Bankruptcy of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies (hereinafter referred to as POJK Number 28/POJK.05/2015 as amended by POJK Number 38 of 2024). It is following Article 142 Paragraph (1) letter f of Law Number 40 of 2007 concerning Limited Liability Companies as amended by the Job Creation Law (PT Law), which explains that due to the revocation of the Company's business, the Company is required to carry out liquidation by the provisions of the laws and regulations. These provisions stipulate the existence of a company dissolution meeting and the formation of a liquidation team. The legal consequences for policyholders are waiting for the liquidation process, and customers' rights will significantly depend on the liquidation process of the liquidation team formed. The Financial Services Authority revokes liquidation steps.

IV. CONCLUSIONS

There are regulations for handling insurance companies experiencing problems as a form of preventive legal protection for policyholders. These regulations are in the form of laws and regulations of the Financial Services Authority as preventive legal protection. Regulations relating to preventive legal protection for insurance companies are contained in , Regulation Of Financial Services Authority No. 71 / POJK.05 / 2016 concerning the Financial Health of Insurance Companies and Reinsurance Companies. Financial Services Authority Regulation Number 71 of 2016 concerning the Financial Health of Insurance Companies and Reinsurance Companies as amended by Regulation of the Financial Services Authority of the Republic of Indonesia Number 27

/POJK.05/2018 concerning Amendments to Regulation of the Financial Services Authority Number 71/POJK .05/2016 concerning the Financial Health of Insurance Companies and Reinsurance Companies, and Regulation of the Financial Services Authority of the Republic of Indonesia Number 5/POJK/2023 concerning the Second Amendment to Regulation of the Financial Services Authority Number 71/POJK.05/2016 concerning the Financial Health of Insurance Companies and Reinsurance Companies . The purpose of the Law is for legal certainty. From the perspective of this legal objective, insurance companies that experience solvency problems have been given steps determined by the State through the Financial Services Authority Regulation. These regulations are intended to prevent insurance companies from being unable to pay the Public as insurance customers. Regulations containing a health plan aim to restore the health of insurance companies so that they can guarantee good solvency. It follows what Hans Kelsen said: The Law determines specific regulations and establishes norms for people's actions. The purpose of the Law is to legal certainty for insurance companies to be able to be implemented.

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