



To cite this article: Paulus Jimmytheja Ng, Anis Mashdurohatun and Ramon Novrial (2023). LEGAL PROTECTION FOR INSURANCE POLICYHOLDERS, International Journal of Research in Commerce and Management Studies (IJRCMS) 5 (2): 82-117

LEGAL PROTECTION FOR INSURANCE POLICYHOLDERS

Paulus Jimmytheja Ng¹, Anis Mashdurohatun² and Ramon Novrial³

^{1,2,3}Sultan Agung Islamic University, Semarang, Indonesia

DOI: <https://doi.org/10.38193/IJRCMS.2023.5207>

ABSTRACT

The purpose of this research is to analyze and find legal protection for insurance policy holders. The results of the study found that legal protection for insurance policy holders (consumers) has not been based on the value of justice due to non-fulfillment of consumer rights by insurance business actors due to default by insurance companies. In this case the Financial Services Authority does not carry out its duties, functions, responsibilities and authorities in providing protection to insurance (consumer) policyholders, especially related to the large authority it has to defend consumer and public protection, and the absence of an Independent Supervisory Board, with integrity and competent authority overseeing the duties, functions, responsibilities and authorities of the Commissioner of the Financial Services Authority in providing legal protection to insurance (consumer) policyholders as appropriate based on the applicable laws and regulations, especially related to the authority to defend consumer and public protection.

KEYWORDS: Protection; law; holder; policy; insurance;

A. INTRODUCTION

Human life planning cannot be separated from insurance or coverage which is a translation of inkriesurance or assurance, arising from human needs.¹ Insurance as an act of future life planning is preventive. Insurance is a growing industry in society. Public awareness of the importance of protection against various kinds of risks that may occur at any time is one of the reasons for the high number of people using insurance products.

Basically, insurance or coverage is a contract or agreement called (policy) and states that one party, called the insurer agrees, as remuneration, for a compensation or known as a premium, will pay an amount of money that has been agreed, to another party (which is insured; insured) to replace a loss, damage, or injury, on something of value in it.²

¹ Suparman Sastrawidjaja, *Aspek Hukum Asuransi dan Surat Berharga*, Alumni, Bandung, 2007, page 1.

² Mulhadi, *Dasar-Dasar Hukum Asuransi*, Raja Grafindo Persada, Jakarta, 2017, page 2.



An insurance company is a company that acts as a risk bearer which in carrying out its business is related to the insured or through insurance brokers.³ Insurance companies are non-bank financial institutions in the field of financial services to the public in overcoming risks that occur in the future.

For the general public, in addition to avoiding risks, preventing risks and withholding risks faced in the present and in the future, insurance is a form of spreading risk, although it is more accurately called risk transfer. The use of insurance for companies is that a company transferring its risk through an insurance agreement will be able to increase its business and dare to set bigger goals. For the development of the country, premiums collected in an insurance company can be exploited and used as funds for development efforts. The results will be enjoyed by the community.⁴

Article 1 point 1 Law Number 40 of 2014 concerning Insurance states that, Insurance is an agreement between two parties, namely the insurance company and the policy holder, which forms the basis for receiving premiums by the insurance company in return for:

1. Provide compensation to the insured or policyholder due to loss, damage, costs incurred, loss of profit, or third-party legal liability that may be suffered by the insured or policyholder due to an uncertain event; or
2. Provide payments based on the death of the insured or payments based on the life of the insured with benefits of a predetermined amount and/or based on the results of fund management.

Regarding the responsibilities of business actors, in this case Insurance Companies, it has been regulated in Article 31 of Law Number 40 of 2014 concerning Insurance Business which states:

- (1) Insurance Agents, Insurance Brokers, Reinsurance Brokers and Insurance Companies must apply all expertise, attention and accuracy in serving or transacting with Policyholders, Insured or Participants.
- (2) Insurance Agents, Insurance Brokers, Reinsurance Brokers and Insurance Companies are required to provide correct, not false and/or misleading information to Policy Holders, Insured or Participants regarding the risks, benefits, obligations and charges associated with insurance products or sharia insurance products offered.
- (3) Insurance Companies, Sharia Insurance Companies, reinsurance companies, Sharia reinsurance companies, insurance brokerage companies and reinsurance brokerage companies are required to handle claims and complaints through a process that is fast, simple, easy to access, and fair.
- (4) Insurance companies, sharia insurance companies, reinsurance companies and sharia reinsurance companies are prohibited from taking actions that could delay settlement or payment of claims,

³ A. Junaedy Ganie, *Hukum Asuransi Indonesia*, Sinar Grafika, Jakarta, 2013, page 44.

⁴ Eman Suparman dan Endang, *Hukum Asuransi : Perlindungan Tertanggung Asuransi Deposito Usaha Perasuransian*, Alumni, Bandung, 2007, page 1.



or failing to take actions that should have been taken resulting in delays in settlement or payment of claims.

- (5) Further provisions regarding the handling of claims and complaints through a fast, simple, easily accessible and fair process as referred to in paragraph (3) are regulated in the Financial Services Authority Regulation.

Basically, law functions to protect human interests. This is because in every life and every legal relationship, the parties have their own interests.⁵ To protect economic stability and protect consumers, the Financial Services Authority was formed based on Law Number 21 of 2011 concerning the Financial Services Authority as a supervisory and regulatory agency for banking and other financial institutions, as well as protection for customers of insurance companies.

The establishment of the Financial Services Authority marked the start of a new era of supervisory systems for the financial services sector. Law Number 21 of 2011 rearranged the supervisory system for the financial services sector by establishing several fundamental changes to the supervisory system. First, implementing an integrated supervisory system. Second, separating microprudential supervision from macroprudential supervision. Third, establish a Financial System Stability Coordination Forum and appoint the Minister of Finance as the Coordinator. Fourth, increasing financial education and consumer protection for financial services. Fifth, sharpening the role of the Deposit Insurance Corporation and strengthening law enforcement.⁶

The role of the Financial Services Authority is basically as a supervisor and regulator of the microprudential sector, namely regulation of supervision, risk management and enforcement (administrative) of the activities of banking, capital markets and non-bank financial institutions, with the function of regulating and supervising the financial services sector, namely independence, integrated, and avoid conflicts of interest. Including the purpose of establishing the Financial Services Authority is the protection of consumers/customers.

The Financial Services Authority as an institution that was formed with the aim of protecting the interests of consumers and the public has a role in preventing and overcoming illegal fundraising with an investment modus operandi. The Financial Services Authority was formed so that all activities in the financial services sector can be carried out in an orderly, fair, transparent and accountable manner, able to create a financial system that grows in a sustainable and stable manner, and is able to protect

⁵ Suparman. Sastrawidjaja, *Hukum Kepailitan dan Penundaan Pembayaran Utang*, Alumni, Bandung, 2010, page 71.

⁶ Zulkarnain Sitompul, *Fungsi dan Tugas Otoritas Jasa Keuangan Dalam menjaga Stabilitas Sistem Keuangan*, Makalah pada Seminar tentang Keberadaan Otoritas Jasa Keuangan Mewujudkan Perkonomian Nasional Berkelanjutan dan Stabil, Medan, 25 November 2014, page 1.



the interests of consumers and society, through an integrated system of regulation and supervision of all activities in the financial services sector.⁷

Law Number 21 of 2011 regulates matters: duties and authorities, organizational structure, protection of the public, confidentiality of information, work plans and budgets, reporting and accountability, institutional relations, investigations and sanctions.

The Financial Services Authority carries out the task of regulating and supervising financial service activities in the banking, capital market, insurance, pension funds, financing institutions and other financial service institutions sectors, including conducting supervision, inspection, investigation, consumer protection, and other actions against financial service institutions, actors, and/or supporting financial services activities as referred to in laws and regulations in the financial services sector, including licensing authority to financial service institutions. In carrying out its duties and authorities, the Financial Services Authority is based on the principles of independence, legal certainty, public interest, transparency, professionalism, integrity and accountability.⁸

Various insurance problems triggered the birth of Law Number 40 of 2014 concerning Insurance as an answer to the complexity of the insurance regulatory system in Indonesia. The Insurance Law has integrated insurance arrangements through the Financial Services Authority.

B. RESEARCH METHOD

The research method used constructivism paradigm, sociological juridical research approach⁹, descriptive juridical research type, primary and secondary data types, library data collection methods, observations and interviews¹⁰. Qualitative data analysis methods.¹¹

C. RESEARCH RESULTS AND DISCUSSION

⁷ Adrian Sutedi, *Aspek Hukum Otoritas Jasa Keuangan*, Raih Asa Sukses, Jakarta, 2014, page 57.

⁸ *Ibid*, page 55.

⁹ Mahyuni, Land Acquisition of Toll Roads for Public Interest in The Kendal District, *Jurnal Akta*, Volume 6 Issue 1, March 2019, pp. 153-158, Anis Mashdurohatun, Zaenal Arifin, The Inconsistency of Parate Execution Object Warranty of Rights in Banking Credit Agreement in Indonesia, *International Journal of Applied Business and Economic Research*, Vol.15 Issue.20. 2017, see too Sukarmi et.al, Impact of Traffic Congestion on Economic Welfare of Semarang City Community, *Journal of Xidian University*, Volume 16, ISSUE 2, 2022.

¹⁰ Wawan Setiawan and Anis Mashdurohatun, The Reforming of Money Politics Cases In Election Law As Corruption Crime. *Law Development Journal*, Volume 3 Issue 3, September 2021, pp.621 – 629. See too Carto Nuryanto, Gunarto, Anis Mashdurohatun, Reconstruction Of Criminal Sanction And Rehabilitation Combating On Narcotic's Victims Based On Religious Justice, The 5th International Conference and Call for Paper Faculty of Law 2019, Sultan Agung Islamic University, 2019, pp.91-95.

¹¹ Yeltriana, Ideal Reconstruction Of Protection For Layoff Victim At The Industrial Relations Court Based On Justice, *International Journal of Law, Government and Communication*, Volume: 4 Issues: 14 [March, 2019]. pp.32-49. Irwansyah, Ahsan Yunus, *Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel*, Mirra Buana Media, Yogyakarta. 2020.



C. 1 Implementation of Legal Protection for Insurance Policyholders

Insurance companies make various innovations to insurance products to attract customers. People's mindset is antipathy to buy insurance products because they feel it is a loss to pay insurance premiums. Therefore, insurance companies in Indonesia create insurance products that are combined with investment products.

The existence of insurance products accompanied by investments can attract people to buy insurance policies. This is because it provides investment returns to the public as tax-free customers. This product provides a change in people's mindset. People who buy insurance products think that it will not be in vain to pay insurance premiums, if the insurance policy holder does not get sick or suffer a disaster.

The competing insurance companies offer high investment returns. This is to increase the quantity of customers who buy insurance policies. PT. Bakrie Life Insurance offers life insurance products with high investment returns to the public. One of the insurance products offered is diamond invest. The policyholders of the diamond investa insurance product stated that the investment profit offer was provided by PT. Bakrie Life Insurance for this insurance product is 13% - 14% per year. The value of this advantage certainly attracts customers to buy this insurance product policy. The combined product of investment and life insurance prioritizes investment profits. The profit value provided by PT. Bakrie Life Insurance on deposit interest.

There is a problem with the diamond investa insurance product as a reflection of the mindset of the Indonesian people who prioritize profit. This is a shift in the philosophy of insurance benefits. Insurance should be used mainly to prevent risk (protection) in the event of death, critical illness and or accident and not prioritize the return on investment. This shift has occurred towards risk prevention into investment benefits that can be offered to customers. This of course makes insurance companies not focus on the importance of protection for customers against risk¹².

This diamond investa life insurance product provides investment benefits derived from investment placements made by PT. Bakrie Life Insurance. Insurance companies arrange their own investment placements. This aims to return the promised investment profits to customers. The diamond investa life insurance product also does not provide an opportunity for the insured to place an investment in the investment portfolio. Based on the customer's statement, in the initial agreement between the customer and PT. Bakrie Life Insurance, the policyholders' funds should be consistently invested with the investment portfolio:¹³

¹² Anis Mashdurohatun, [Hukum Perlindungan Konsumen \(Kajian Teori dan Praktik\)](#), SA Press, Unissula, Semarang, 2019.

¹³ Interview with Agus Winata, Customer Representative (Policy Holder of Diamond Investa Insurance Products).



- a. Customer funds invested in bonds amounting to 90% (ninety percent);
- b. Customer funds invested in shares of 5% (five percent);
- c. Customer funds invested in deposits of 5% (five percent)

Investment placement made by PT. Bakrie Life Insurance certainly makes customers feel safe. This is because customer funds are invested in low-risk investment products whose profit and loss presentations are not too volatile (safe). The return on investment is fixed and the presentation is small. However, placing an investment reduces the risk that the insurance company suffers a loss, so that the customer will avoid default.

Investment placement made by PT. The Bakrie Life Insurance did not comply with the investment placement as promised in the prospectus/marketing brochure to customers. The investment placement will not provide large profits to customers. Whereas the investment made is not possible to get a profit of 13% - 14%, if the investment is made only from:

- a. Deposit;
- b. Bonds that can only provide a profit of at most 10%, and
- c. Other fixed income.

That investment that can provide a profit of 13-14% only through high-risk stock investments. Investment placement of customer funds by PT. Bakrie Life Insurance is placed mostly on stock investment, of course, the aim is to achieve maximum profit, but the risk of investing in shares is also large. The value of shares traded on the capital market tends to be unstable. Customer funds can have a big chance of experiencing losses, if the value of shares in the capital market decreases.

Details of the investment placement made by PT. Bakrie Life Insurance is not in accordance with the investment placement as promised to the customers. PT. Bakrie Life Insurance is strongly suspected of having committed irregularities in the investment portfolio with details of 70% of the insured's funds being placed in stocks, 10% in bonds, and the remainder in deposits. Based on the details of the investment placement, PT. Bakrie Life Insurance has strong indications of placing the majority of customer funds in stock investments in the capital market by placing shares, most of which are invested in PT. Bumi Resources Tbk.¹⁴

The investment placement of customer funds which are mostly placed in stocks is very high risk.¹⁵ Even though insurance companies managing funds must pay attention to the elements of the company's financial health. The financial health of insurance companies plays an important role in

¹⁴ Bumi Resources Tbk adalah perusahaan yang bergerak di bidang tambang batubara di Indonesia.

¹⁵ Efri Ritonga dan Alwan Ridha, *Nasabah Bakrie Life Mengadu ke Istana*, Koran Tempo, 9 Oktober 2009, page 15.



public trust in the performance of insurance companies. With healthy finances from insurance companies, insurance companies can carry out insurance business operations, especially with regard to insurance claim settlement issues.

Insurance company finances must be sound and liquid. The level of liquidity of the insurance company's finances must be considered in carrying out the insurance business. Insurance companies must prepare funds that can be used at any time for the purposes of conducting an insurance business, especially for the rights of customers as insurance policy holders. The life insurance company is obliged to cover the cost of each risk that occurs as agreed in the insurance policy.

The insurance business is almost the same as the banking business. This is because the two businesses must pay attention to the liquidity of the company's funds. The bank collects funds from the public in the form of savings. The process of collecting funds from the public is also carried out by the insurance company. Insurance companies collect funds from the public through insurance policies. With regard to disbursing funds to service users, banks and insurance companies must be able to prepare funds that can be withdrawn by customers at any time. This also happens to insurance companies; they must prepare funds at any time when there is an insurance claim against risks that occur.

PT. Bakrie Life Insurance as a life insurance company collects funds from the public through the diamond investa insurance product. PT. Bakrie Life Insurance is obliged to return customer funds, in the event of an insurance claim (death benefit) from the policyholder and the investment value based on the agreement in the insurance policy. Therefore, PT. Bakrie Life Insurance is obliged to maintain the level of financial soundness in conducting insurance business.

There was a case of default by PT. Bakrie Life Insurance in October 2008 showed PT. Bakrie Life Insurance cannot maintain financial soundness. PT. Bakrie Life Insurance violated the maintenance of the insurance company's level of financial soundness, especially with regard to the solvency level limit.

The solvency level limit is included in the part of the insurance company's financial health which must be maintained at all times. However, PT. Bakrie Life Insurance is unable to maintain the level of solvency of the life insurance company. This means PT. Bakrie Life Insurance failed to maintain a balance between the level of wealth owned by life insurance companies with the obligations that must be borne or paid.

PT. Bakrie Life Insurance violated the solvency level of the insurance company, which can be seen from the inability to pay insurance claims and investment benefits to customers of diamond investa



insurance products. PT. Bakrie Life Insurance in making an investment, of course, must take into account the level of risk of loss as a result of investment failure.

The risk of loss of this investment affects the level of solvency of a life insurance company. If the greater the level of loss experienced, then the life insurance company will experience capital difficulties to pay insurance claims and the insurance company's obligations to customers. The elements of the risk of loss that must be taken into account in the solvency level limit by this insurance company are: the difference between the amount of assets allowed and liabilities must be at least as large as sufficient funds to cover the risk of losses that may arise as a result of deviations in the management of assets and liabilities.

PT. Bakrie Life Insurance does not take into account losses as a result of wealth management through investment. This of course disrupts the wealth and obligations of PT. Bakrie Life Insurance for customers. Negligence of PT. Bakrie Life Insurance has hampered the level of liquidity of its assets and even defaulted on obligations. PT. Bakrie Life Insurance should anticipate the occurrence of situations where there is a risk of loss due to investment failure, so that customers are not harmed as a result of the wealth management actions carried out by PT. Bakrie Life Insurance which has violated the solvency level limit as a result of negligence does not take into account the losses arising from the investment failure.

Investment failure by PT. Bakrie Life Insurance is caused by the centralization of investment placements in the form of shares in the capital market. In terms of the investment portfolio, the investment percentage details are 70% invested in stocks and 10% invested in bonds. Meanwhile, the remaining insurance funds are not invested in the capital market. PT. Bakrie Life Insurance manages the remaining funds by investing funds in banks as deposits.

PT. Bakrie Life Insurance is too focused on the shares of PT. Bumi Resources Tbk. PT. Bakrie Life Insurance due to the fall in the value of investment shares in the capital market in 2008, especially in shares of PT. Bumi Resources Tbk.¹⁶ Investment value in shares of PT. Bumi Resources Tbk experienced a drastic decline. This can be seen from the share price of PT. Bumi Resources Tbk experienced a sharp decline since the first trading session on October 7 2009. The share price of Indonesia's largest coal mining company fell by 225 points.¹⁷ As a result of this corporate action, the value of shares in PT. Bumi Resources Tbk fell, because many people were selling back the shares of the mining company and other investors were not interested. This of course makes the value of the share price of PT. Bumi Resources Tbk. The decline in the value of these shares also affected the

¹⁶ *Ibid*

¹⁷ Famega Syavira, *Saham Bumi Terpengaruh Pencalonan Aburizal*, Koran Tempo, 8 Oktober 2009, page 15.



investment made by PT. Bakrie Life Insurance.

Centralization of investment placement by PT. This Bakrie Life Insurance also violates the provisions, because insurance companies must invest in safe and profitable types of investments and have a level of liquidity in accordance with the obligations that must be fulfilled. In connection with the case of stock investment failure by PT. Bakrie Life Insurance for not making a safe investment effort.

The concentration of stock investment can actually bring a lot of profit, but the level of security in investing in stocks is very doubtful. This is because investing in the stock market is an act of high speculation. The movement of stock values is very fast and can change at any time. Investors have the opportunity to get large profits in a short time, also have the opportunity to get large losses in a short time.

PT. Bakrie Life Insurance has an obligation to return high investment benefits to customers, so PT. Bakrie Life Insurance makes investment actions that can provide many benefits, namely investing in stocks in the capital market. However, PT. Bakrie Life Insurance does not pay attention to the security level of stock investment in the capital market, which has a very good level of stability. In fact, PT. Asuransi Jiwa Bakrie makes placements centrally on investment in the capital market, especially in shares of PT. Bumi Resources Tbk. Therefore, the concentration of investment placements in stocks in the capital market is not an act of investment of a safe type.

PT. Bakrie Life Insurance is not the first case in the world of insurance in Indonesia. Bakrie Life has maturing obligations to 600 customers of diamond investment insurance products, totaling IDR 350 billion.¹⁸ Investment interest payments are starting to drag. In fact, it finally stopped altogether in the first quarter of 2009.¹⁹ The customers were angry and demanded that PT. Bakrie Life Insurance according to the promise stated in the insurance policy.

PT. Bakrie Life Insurance to customers is a legal event in the form of an act of breaking a promise to pay investment benefits to customers on time, even PT. Bakrie Life Insurance does not pay insurance claims with investments. The insurance company has committed an act of negligence against its customers, so that the consumer's right to receive payment has been hampered. Therefore, it can be concluded that PT. Bakrie Life Insurance has defaulted on its customers.

¹⁸ Lampung Post, *Kasus Gagal Bayar. Nasabah Bias Tuntut Asuransi Bakrie Life*, <http://www.lampungpost.com/cetak/berita.php?id=2009092805573542>

¹⁹ *Ibid.*



C. 2 Factors Affecting Legal Protection of Insurance Policyholders

1. The absence of good faith PT. Bakrie Life Insurance (Business Actors) for Accountability to Policyholders (Consumers)

Good faith is one of the principles in the basic concept of contract law. In every negotiation and agreement, the two parties will face each other in a special legal relationship that is controlled by good faith. This special relationship has the consequence that the parties must act by considering the reasonable interests of the other party. the parties must also carry out the agreement in good faith.²⁰ In its development, the principle of good faith is placed as the most important principle (super eminent principle) in contracts.²¹ It becomes a fundamental or fundamental provision in contract law. Then it also binds the parties to the contract.²²

In the contract, people are required not to leave the norms of justice and decency.²³ Good faith must also be reflected in every implementation of the agreement, starting from the formation, implementation, to termination.²⁴ Standards or benchmarks of good faith in contract execution are objective standards. The standard here refers to an objective norm.²⁵ These norms can be said to be objective because behavior is not based on the parties' own assumptions, but must be in accordance with the general assumption of good faith.²⁶ With this standard, the behavior of the parties in executing the contract and the evaluation of the contents of the contract must be based on the principles of decency and appropriateness. Then the contract is not only seen from what was expressly agreed upon. But also, must pay attention to external factors that can affect the implementation of the contract. This understanding is meant in the provisions of Article 1338 paragraph (3) of the Civil Code.²⁷

Insurance as a non-bank financial institution is regulated in the Commercial Code and Law Number

²⁰ Ahmadi Miru, *Contracts and Contract Design*, Raja Grafindo Persada, Jakarta, 2008, p. 5. Good faith in Indonesian civil law is regulated in Article 1338 paragraph (3) of the Civil Code which reads: Agreements (agreement) must be carried out in good faith. The good faith referred to in Article 1338 paragraph (3) of the Civil Code is that the implementation of the agreement must proceed in accordance with the norms of decency and decency. Then it is divided into two meanings, namely subjective good faith and objective good faith. R. Subekti, *Law of Agreement*, Intermasa, Jakarta, 2002, page 41.

²¹ Ridwan Khairandy, *Hukum Kontrak Indonesia Dalam Prespektif Perbandingan*, Universitas Islam Indonesia Press, Yogyakarta, 2014, page 123. See too Jamal Wibowo, Anis Mashdurohaturun, *Hukum Kontrak, Ekonomi Syariah dan Etika Bisnis*, Undip Press, Semarang, 2017. Mawardi Muzamil, Anis Mashdurohaturun, *Comparison of Legal Systems (Western, Customary and Islamic Law)*, Madina Semarang, 2014, p.88.

²² *Ibid.*

²³ Ahmadi Miru, *Op, Cit*, page 5.

²⁴ Arkie V. Y. Tumbelaka, *Kajian Kontrak Baku Dalam Prespektif iktikad baik (Kasus Rumah Susun Permata Gandaria Antara Nyonya x Dengan PT. Surya Putra Perkasa)*, Tesis, Magister Hukum Ekonomi Universitas Indonesia, 2012, page 65.

²⁵ Ridwan Khairandy, *Kebebasan Berkontrak dan Pacta Sunt Servanda Versus Iktikad Baik: Sikap Yang Harus Diambil Pengadilan*, Universitas Islam Indonesia Press, Yogyakarta, 2015, page 56.

²⁶ Ridwan Khairandy, *Hukum Kontrak Indonesia Dalam Prespektif Perbandingan, Op, Cit*, page 136.

²⁷ Ridwan Khairandy, *Kebebasan Berkontrak dan Pacta Sunt Servanda Versus Iktikad Baik: Sikap Yang Harus Diambil Pengadilan, Op, Cit*, page 75.



40 of 2014 concerning Insurance. Insurance arrangements in the Criminal Code prioritize the civil side which is based on an agreement between the insured and the insurer.²⁸ If the Criminal Code puts forward insurance arrangements from a civil perspective, Law Number 40 of 2014 concerning Insurance prioritizes insurance arrangements from a business and administrative perspective, which if violated will result in the imposition of administrative sanctions and criminal sanctions.

The business side tie, means that insurance companies in carrying out their insurance business must comply with the legal regulations regarding insurance. From an administrative perspective, it means that the interests of society and the state should not be harmed. If violated, it will result in the imposition of criminal sanctions and administrative sanctions according to Law Number 40 of 2014 concerning Insurance.²⁹

PT. Bakrie Life Insurance in running the insurance business must meet the standards of business conduct regulated in Article 26 paragraph (1) of Law Number 40 of 2014 concerning Insurance. Insurance Companies are required to comply with standards of business conduct which include provisions concerning:

1. Insurance policy;
2. Premium or contribution;
3. Underwriting and identification of Policyholders, Insured or Participants;
4. Settlement of claims;
5. Expertise in insurance;
6. Product distribution or marketing;
7. Handling of complaints by Policyholders, Insured or Participants; and
8. Other standards related to business operations.

Referring to the above, PT. Bakrie Life Insurance does not meet points 4 and 7. The company does not settle claims and handle complaints from policyholders, the insured or participants. The intended claim is in the form of investment returns to customers, namely 13% per year. The company guarantees the provision of a maximum and definite return on investment (fix rate). This agreement is stated in the insurance policy which must have been agreed upon by the parties. The handling of complaints by policyholders or the insured has not been resolved so far. The only efforts were in the form of demonstrations held in front of the Financial Services Authority and Wisma Bakrie offices.

As an effort to fulfill the obligations of PT. Bakrie Life Insurance, the Financial Services Authority

²⁸ The agreement creates reciprocal obligations and rights of the insured. As a special agreement, insurance is made in writing and stated in the form of an insurance policy. Insurance arrangements according to the Criminal Code include substance: Insurance principles; Insurance agreement; Insurance elements; and Types of insurance.

²⁹ *Ibid*, page 19.



has given several administrative sanctions until in the end the Financial Services Authority made efforts in the form of revoking the business license of PT. Bakrie Life Insurance. Revocation of PT. Bakrie Life Insurance as stated in the Decree of the Board of Commissioners of the Financial Services Authority Number KEP-76/D.05/2016.

Based on the Supervisory Letter of the Board of Commissioners of the Financial Services Authority, PT. Bakrie Life Insurance as a form of legal responsibility of the insurance company for the revocation of its business license. Some of the obligations that must be carried out by PT. Bakrie Life Insurance, among others:

1. Removing nameplates, both at the head office and at other offices outside the head office;
2. Prepare and submit a closing balance sheet to the Financial Services Authority no later than 15 (fifteen) days from the date of revocation of the business license; And
3. Holding a general meeting of shareholders no later than 30 (thirty) days from the date the business license was revoked to decide on the dissolution of the legal entity PT Asuransi Jiwa Bakrie and form a Liquidation Team;
4. Settle all debts and obligations;
5. Dissolving and liquidating the company in accordance with the provisions of the laws and regulations; And
6. Report the implementation results as referred to in letter a to letter e above to the Financial Services Authority.

With the revocation of PT. Bakrie Life Insurance, this company is prohibited from conducting business activities in the life insurance sector. In addition to the impact of the revocation of business licenses, shareholders, directors, commissioners and employees of PT. Bakrie Life Insurance is prohibited from transferring, guaranteeing, glorifying or using wealth, or taking other actions that can reduce assets or reduce the value of PT. Bakrie Life Insurance.

Regarding the closing balance sheet which requires PT. Bakrie Life Insurance compiled and submitted this to the Financial Services Authority by PT. Bakrie Life Insurance with a statement that the management of PT. Bakrie Life Insurance has prepared several company and group assets to be offered to insurance policy holders, the management settlement scheme of PT. Bakrie Life Insurance is just waiting for a response from the Financial Services Authority. However, until now there has been no further information regarding the settlement scheme proposed by PT. Bakrie Life Insurance to the Financial Services Authority.

Furthermore PT. Asuransi Jiwa Bakrie is required to hold a general meeting of shareholders which aims to decide on the dissolution of the company accompanied by the formation of a liquidation team.



The liquidation team is a team tasked with carrying out liquidation, which is formed by the general meeting of shareholders or the financial services authority. Before the liquidation team carries out the liquidation process, it must first obtain approval from the Financial Services Authority. The liquidation team as the party responsible for carrying out the liquidation process has several obligations, including:

1. Carry out liquidation;
2. Establish a liquidation temporary balance sheet;
3. Forming the final liquidation balance; And
4. Responsible for the liquidation process to the General Meeting of Shareholders.

To obtain approval from the Financial Services Authority, members of the liquidation team must submit documents through the directors, these documents are in the form of:

1. Photocopy of proof of identity of the candidate member of the liquidation team;
2. Curriculum vitae list of prospective members of the liquidation team; and
3. A statement from the candidate member of the liquidation team that the person concerned is willing to carry out liquidation in accordance with the provisions of the laws and regulations.

Submission of documents for prospective members of the liquidation team through the directors, the Financial Services Authority will approve or reject the prospective members of the liquidation team, in the case of rejection of the proposal for prospective members of the liquidation team, the directors are required to submit a proposal for new candidates for the liquidation team members and submit the documents referred to above at most within 5 (five) days after receiving notification from the Financial Services Authority to the directors.

In terms of holding a general meeting of shareholders regarding the dissolution of the insurance company and forming a liquidation team, that PT. Bakrie Life Insurance has not carried out its obligations as stated in the Decree of the Board of Commissioners of the Financial Services Authority on this third point.

The dissolution of the insurance company and the formation of a liquidation team is an obligation and responsibility of the insurance company whose business license has been revoked by the Financial Services Authority, but PT. Bakrie Life Insurance has not made any obligations. Directors of PT. Bakrie Life Insurance in its statement said PT. Asuransi Jiwa Bakrie will not form a liquidation team, because the board of directors, commissioners and administrative staff will immediately settle the matter.

For the dissolution of the company it has been decided and appointed a liquidator by the general



meeting of shareholders or the court, then the responsibility and management of the company in liquidation is carried out by the liquidator. In this case PT. Asuransi Jiwa Bakrie has not yet dissolved the company through a general meeting of shareholders. Since the formation of the liquidation team, the directors and the board of commissioners have become inactive and at any time are obliged to assist with all data and information needed by the liquidation team and are also prohibited from taking actions that hinder the liquidation process.

The legal consequence of the dissolution of the company is that it must be followed by liquidation carried out by the liquidator or curator, and the company cannot take legal action, unless it is necessary to settle all the company's affairs in the context of liquidation.

The liquidator's obligation to settle the company's assets in the liquidation process includes implementing:³⁰

1. Recording and collection of company assets and debts;
2. Announcements in newspapers and the State Gazette of the Republic of Indonesia;
3. Payments to creditors;
4. Payment of remaining assets resulting from liquidation to shareholders; And
5. Other actions that need to be taken in implementing the settlement of assets.

The liquidator is obligated to carry out settlement actions in the form of settling all of the company's assets and liabilities (company assets and liabilities) as a result of the dissolution of the company. In that case, the liquidator is obliged to take inventory and the company's obligations are in liquidation. After the liquidator has succeeded in carrying out an inventory of the company's assets and liabilities in the liquidation process, the liquidator will also prepare a plan for disbursing the company's assets in the context of the company's obligations. Liquidation of the company is carried out by disbursing assets and/or collecting receivables from debtors, followed by payments to creditors from the results of the disbursement or collection.

The parties entitled to the settlement of assets resulting from the liquidation of the insurance company are as follows:

1. Tax debt as a state right

Article 1137 of the Civil Code states that rights from the state treasury, auction offices, and other public bodies formed by the government, to take precedence, orderly exercise of these rights, from the time period these rights last, are regulated in various special laws regarding this matter.

2. Policy holders

The policyholder in an insurance company that is in the process of liquidation that in the event

³⁰ Ridwan Khairandy, *Hukum Perseroan Terbatas*, Universitas Islam Indonesia Press, Yogyakarta, 2014, page 603.

that the insurance company is bankrupt or liquidated, the rights of the policyholder, the insured or the participants over the distribution of assets have a higher position than other parties.

3. Creditors

There are 2 (two) creditor groups, namely:

- a. Preferred creditors are privileged creditors. There are 2 (two) types of privileges, namely special privileges and general privileges. Payment of creditors for special privileges must take precedence over creditors for general privileges, this general privilege is regulated in Article 1139 of the Civil Code. Meanwhile, general privileges are regulated in Article 1149 of the Civil Code.
- b. Concurrent creditors are all creditors based on certain unsecured receivables. Obtain payment of receivables according to Articles 1131 and 1132 of the Civil Code.

Policyholders are preferred creditors who have special rights. The position of the Policyholder in the liquidation process is regulated in Article 52 paragraph (1) of Law Number 40 of 2014 concerning Insurance.

4. Laborer or Worker

In the event that a company is declared bankrupt or liquidated based on applicable laws and regulations, the wages of laborers or workers and other rights are debts that take priority over payments.

5. Shareholders

Shareholders receive payment after the liquidator has paid all of the insurance company's obligations, but if there is a conflict of interest between the shareholder and the policyholder, then the party that takes precedence over payment is the policyholder.

From the description above, regarding the order of payment for the settlement of assets due to liquidation as follows:

1. Tax debt as a state right;
2. Policy holders;
3. Creditors holding material guarantees;
4. Laborers or workers;
5. Shareholders.

Regarding the dissolution and formation of a liquidation team at an insurance company, that in the context of dissolution, a liquidation team formed by a general meeting of shareholders is required to register and notify the dissolution to the competent authority, as well as make an announcement in the State Gazette of the Republic of Indonesia and 2 (two) newspapers newspapers with wide circulation.



For case settlement, if PT. Bakrie Life Insurance wants to settle with their own management, referring to Article 142 paragraph (3) of Law Number 40 of 2007 concerning Limited Liability Companies, this can be justified. There are several requirements that must be met before acting in solving this case. In the event that the company is dissolved by decision of the general meeting of shareholders, then the general meeting of shareholders does not appoint a liquidator, the directors act as liquidator.

Before PT. Bakrie Life Insurance resolved this case through their own management, there are several obligations that must be carried out by PT. Bakrie Life Insurance, namely:

1. PT. Bakrie Life Insurance conducts a general meeting of shareholders in order to disband the insurance company and form a liquidation team or appoint a liquidator;
2. If the general meeting of shareholders cannot appoint a liquidator, then the directors act as liquidator in the liquidation process.

Seeing the terms of the dissolution and liquidation of insurance companies, PT. Bakrie Life Insurance has not complied with statutory provisions. The revocation of the business license intended to make payment of all debts in the form of liquidation has not yet been carried out by PT. Bakrie Life Insurance.

Provisions for forming a liquidation team for an insurance company if the general meeting of shareholders cannot form a liquidation team, the Financial Services Authority as the authorized institution can form a liquidation team for an insurance company. Based on what has been explained above, the legal responsibility of PT. Bakrie Life Insurance is dissolving the company and forming a liquidation team.

In the event that laws and regulations conflict with each other, to determine the law regarding the appointment of a liquidator or liquidation team, legal principles can be used as a reference. The principle referred to as *lex specialist derogat legi generalis* is that laws and regulations that are specific in nature override general laws and regulations.

Based on the *lex specialist derogat legi generalis* principle, if there is a conflict of interest regarding the formation of a liquidation team as stipulated in Law Number 40 of 2014 concerning Special Insurance with the appointment of a liquidator stipulated in Law Number 40 of 2007 concerning Limited Liability Companies, then if PT. Bakrie Life Insurance in the general meeting of shareholders cannot form a liquidation team, so the financial services authority will form a liquidation team to carry out the liquidation process for PT. Bakrie Life Insurance.

In 2013 PT. Bakrie Life Insurance carries out good faith in terms of the obligation to pay dependents



to customers, by being willing to take responsibility and carry out obligations by paying in stages. The first phase payment plan is Rp. 62.5 billion made in July. After that, in August and so on, PT. Bakrie Life Insurance to customers. However, until the revocation of PT. Bakrie Life Insurance in 2017, PT. Bakrie Life Insurance still has dependents of Rp. 260 billion.

In 2017 PT. Bakrie Life Insurance has again issued a payment settlement scheme for dependents to customers, by preparing the company's assets to pay and as collateral for those obligations. The first is a deposit of Rp. 25 billion which can immediately be cash payments. Until now there has been no official statement from the Financial Services Authority regarding the settlement scheme proposed by PT. Bakrie Life Insurance. The promise of heaven's wind from PT. Bakrie Life Insurance to buy time and if possible do not have to return the rights of the policyholders. PT. Bakrie Life Insurance demonstrated the lack of goodwill which was the main obstacle in resolving the victims of PT. Bakrie Life Insurance, which until now the fate of the policyholders (victims of PT. Bakrie Life Insurance) has been suspended and neglected for 12 (twelve) years.

Peace as the final step of the dispute between the parties. This of course requires a conformity of opinion between the rights and obligations of the parties. Regarding the problems of PT. Bakrie Life Insurance, disagreement between policyholders and PT. Bakrie Life Insurance is difficult to find a way out. This is an obstacle to resolving the dispute.

Policyholders assess the offer by PT. Bakrie Life Insurance to pay the value of the benefits of the investment is detrimental to policyholders and it is not clear. This is due to the offer by PT. Bakrie Life Insurance does not match the obligations in the insurance policy, even the offer is smaller. However, default does not have to occur in 2008 if PT. Bakrie Life Insurance has good faith.³¹

There are diamond investa insurance policy holders who accept the offer, but some refuse the offer from PT. Bakrie Life Insurance. Another reason for the policyholder's rejection of the offer from PT. Bakrie Life Insurance is the policyholder's distrust of the performance of PT. Bakrie Life Insurance will be able to fulfill its obligations. This is a form of delaying legal obligations by PT. Bakrie Life Insurance against its obligations.³²

Policyholders do not believe in the performance of PT. Bakrie Life Insurance because the default in 2008 should not have happened and PT. Bakrie Life Insurance can return customer funds, but so far due to the lack of goodwill from PT. Bakrie Life Insurance only makes promises without any real

³¹ Interview with Agus Winata, Customer Representative (Policy Holder of Diamond Investa Insurance Products).

³² *Ibid*



steps to take responsibility for their actions.³³ and buying time until now the fate of the policyholder has been neglected so that once again the lack of good will is the main obstacle in resolving the victims of PT. Bakrie Life Insurance.

3. Indecisiveness of Law Enforcement (Financial Services Authority)

Article 5 of Law Number 21 of 2011 stipulates that the Financial Services Authority functions to organize an integrated regulatory and supervisory system for all activities in the financial services sector. However, in practice the integrated supervision carried out by the Financial Services Authority has not been carried out effectively. The failure to explain the purpose and mechanism for integrated regulation and supervision in the Elucidation of Article 5 of Law Number 21 of 2011 is considered to have implications for the ineffective supervision of the financial services sector carried out by the Financial Services Authority.

There are 3 elements that affect the smooth running of the legal system which must run on an ongoing basis. According to Lawrence W. Friedman, the legal system consists of legal substance, legal structure, and legal culture.

That in order to realize legal certainty in a system of government based on law, at least it must be supported by three things that are integrated with one another, including legal substance, legal structure, and legal culture. One element alone cannot be fulfilled, legal certainty will only become a discourse and a dream in broad daylight.

Supporting elements in the legal system must be integrated in order to be implemented effectively in society. There is a firm legal substance for regulating the interaction of people's lives, but without a firm performance by law enforcement officials.

Law enforcement officials are part of the elements of the legal system. Legal apparatus is part of the legal structure that can influence the smooth and running of the legal system based on legal certainty. Law enforcement officials must act responsively and decisively in supporting the implementation of an effective legal system.

Regarding the problems of PT. Bakrie Life Insurance, the role of law enforcement officials certainly plays an important role in law enforcement to achieve justice for diamond investa insurance policy holders.

The indecisiveness of law enforcement officials in handling default cases by PT. Bakrie Life

³³ *Ibid*



Insurance. The role of law enforcement officials should lie with the government through the Financial Services Authority, which should function as a supervisory agency for the activities of the financial services sector.

Based on Article 30 of Law Number 21 of 2011, that:

- (1) For consumer and public protection, the Financial Services Authority has the authority to defend the law, including:
 - a. Order or take certain actions against financial service institutions to resolve consumer complaints that have been harmed by the said financial service institution;
 - b. File a lawsuit:
 1. To recover the assets belonging to the aggrieved party from the party causing the loss, whether under the control of the party causing the said loss or under the control of another party in bad faith; and/or
 2. To obtain compensation from parties causing losses to consumers and/or financial service institutions as a result of violations of laws and regulations in the financial services sector.
- (2) Compensation as referred to in paragraph (1) letter b number 2 is only used for payment of compensation to the injured party.

Based on the applicable laws and regulations in Elucidation 30 paragraph (1) of Law Number 21 of 2022, in this case the phrase the authority of the Financial Services Authority to conduct legal defense which is considered to have the potential to cause legal uncertainty if the Financial Services Authority does not exercise its authority and/or act discriminatory. Therefore, in order to realize fair legal certainty to policyholders (consumers) this authority must be exercised optimally, but in this case the authority is not exercised optimally and decisively. The existence of firm action from the Financial Services Authority against the corporate action of PT. Bakrie Life Insurance can be an early preventive measure. The Financial Services Authority has also been given Investigative Authorities and taken countermeasures against all actions and transactions from financial institutions that could harm policyholders, but the performance of the Financial Services Authority can be considered late and repressive. This is because the functions and authorities of the Financial Services Authority are not implemented properly.

The presence of the Financial Services Authority is expected to create stability in the national economic system through financial institutions, including insurance companies. In connection with the default case of PT. Bakrie Life Insurance, the Financial Services Authority can be declared unresponsive to forms of action by insurance companies that could threaten the financial health of insurance companies as stipulated in the Decree of the Minister of Finance Number 158/PMK.010/2008 concerning the Financial Health of Insurance Companies and Reinsurance Companies. The unresponsiveness of the Financial Services Authority as a legal apparatus hampers



the continuity of the legal system relating to financial institutions and the economy.

The indecisiveness of the role of the Financial Services Authority is also evident from the weak repressive measures against the settlement of the PT. Bakrie Life Insurance. The Financial Services Authority as the authority in the field of financial institutions should be able to encourage the disputing parties to settle the problem. In this case, the Financial Services Authority must play a role in encouraging PT. Bakrie Life Insurance to carry out its obligations to diamond investa insurance policy holders, namely to pay the investment benefit value.

This can be seen from the absence of firm action from the Financial Services Authority against PT. Bakrie Life Insurance to fulfill the rights of policyholders (consumers). The Financial Services Authority only tends to allow defaults that harm diamond investa insurance policyholders. The Financial Services Authority as an institution that has this authority should be able to take an action that can encourage PT. Bakrie Life Insurance to carry out its obligations to policyholders as soon as possible.

The Indonesian Life Insurance Association as an association that oversees life insurance companies in Indonesia cannot do more to help the problems of diamond investa insurance policy holders because the Indonesian Life Insurance Association does not have the power to intervene in the PT. Bakrie Life Insurance. This is because there are no legal regulations that give authority to the Indonesian Life Insurance Association in resolving PT. Bakrie Life Insurance. Very large authority is only given to the Financial Services Authority.

The limited role of the Indonesian Life Insurance Association can also be one of the inhibiting factors in resolving disputes between PT. Bakrie Life Insurance and policyholders. This is because the Indonesian Life Insurance Association can only function as a non-governmental organization that can support the smooth running of the legal system in the field of life insurance. The Indonesian Life Insurance Association is one of the references and forums for life insurance companies in Indonesia in conducting business activities in Indonesia.

Regarding the indecisiveness of the Financial Services Authority, the efforts made by the Customer through its representatives are to report it/make a complaint to the Ombudsman of the Republic of Indonesia as a state institution overseeing public services.³⁴

The Ombudsman of the Republic of Indonesia is a state institution that has the authority to oversee the implementation of public services both organized by state administrators and government

³⁴ Interview with Agus Winata, Customer Representative (Policy Holder of Diamond Investa Insurance Products)..



including those held by State-Owned Enterprises, Regional-Owned Enterprises, and State-Owned Legal Entities as well as private bodies or individuals who are tasked with providing services certain public whose part or all of the funds come from the state revenue and expenditure budget and/or regional expenditure revenue budget.

The objective of establishing the Ombudsman of the Republic of Indonesia is to create a democratic, just and prosperous rule of law state; encourage the administration of the state and government which are effective and efficient, honest, open, clean and free from corruption, collusion and nepotism; improve the quality of state services in all fields so that every citizen and resident obtains justice, a sense of security, and better welfare; assist in creating and enhancing efforts to eradicate and prevent practices of maladministration, discrimination, collusion, corruption, and nepotism; enhancing national legal culture, public legal awareness, and legal supremacy with the core of truth and justice.

Based on the authority granted by Law Number 40 of 2014 to the Financial Services Authority to regulate and supervise insurance activities, the Financial Services Authority is classified as a public service provider to carry out its duties and authorities in accordance with statutory provisions. As a public service provider, the Financial Services Authority is the object of supervision of the state agency overseeing public services, the Ombudsman of the Republic of Indonesia. The Ombudsman's supervisory position on the Financial Services Authority is carried out based on complaints/reports submitted by the public regarding alleged maladministration of the Financial Services Authority for not exercising their authority in accordance with the law. Until last January 2020, Ombudsman throughout Indonesia had received 74 reports of complaints concerning the Financial Services Authority regarding insurance. Of course this is inseparable from the weakness of the supervisory system of the Financial Services Authority in carrying out its duties and functions, as a financial supervisory institution, the Financial Services Authority has an early detection system, moreover every 3 months the Financial Services Authority receives reports from banks, insurance and financial institutions.³⁵

In accordance with the Republic of Indonesia Ombudsman regulation Number 26 of 2017 concerning Procedures for Receiving, Examining and Completing Reports, each report submitted by the complainant to the Riau Archipelago Ombudsman by coming in person or by letter (including electronic) will be carried out in several stages.

The first stage will be an examination of the completeness of the formal and material reports which will then be submitted in a plenary meeting for approval of receipt of the report. The second stage is the report inspection stage by the Riksa team and the third stage is the delivery of the results of the

³⁵ Interview with the Head of the Republic of Indonesia Ombudsman Representative for the Riau Archipelago Province, Lagat Parroha Patar Siadari..



examination to the complainant and the reported party.

In general, based on the results of an examination by the Ombudsman, if there is a finding of maladministration of public service delivery on reports from the public, then corrective action will be given which needs to be taken by the Reported Party, this is stated in the Final Examination Results Report (LAHP). The reported party is obliged to take corrective action (take the Ombudsman's suggestion) within 30 working days. If within 30 days it is not implemented, then the status of the report will be upgraded to a resolution process at the central level.

The Ombudsman of the Republic of Indonesia will again invite agency leaders (reported leaders) through conciliation/mediation to carry out these corrective actions. If the reported voluntarily still does not want to take corrective action, it will be followed by giving recommendations and suggestions. In Article 38 paragraph (1) and paragraph (2) of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, that the Reported Party and the Reported's Superiors are required to implement the Ombudsman Recommendations and submit a report regarding the implementation of the Ombudsman Recommendations within 60 (sixty) days.³⁶

3. Customers' Efforts to Submit Bankruptcy Applications are Obstructed, and Other Legal Remedies are Ineffective

The insurance business has been present in the Indonesian economy for quite a long time and has played a role in the course of the nation's history side by side with other sectors of activity. The insurance business is a business that promises protection to the insured and at the same time a business involving public funds. With increasing economic development, there is an increasing need for a strong and reliable insurance industry through continuous guidance and supervision from the Government in order to safeguard the interests of society.

The transfer of the insured's risk to the insurance company is made in a contract called a policy. With this contract, the insured has positioned himself as the insured against possible financial losses that may occur in the future. In order for the protection that is the right of the insured to be fulfilled, the insurance company needs to be ensured that it can operate sustainably. On the other hand, the transfer of financial risk to the insurance company can be sustainable only if it is supported by public trust. This means that the sustainable operation of an insurance company and public trust are two sides of a coin that cannot be separated or decided.

The implementation of insurance business activities in a healthy and responsible manner in accordance with the rules and mechanisms commonly applicable in the administration of insurance business

³⁶ *Ibid*



enables the protection desired by consumers to be achieved. Conducting a business that protects the interests of the policyholder community (owners of most insurance company funds) is proven to be the main thing that causes a sustainable insurance business.

As a business that promises legal protection to the insured and also funds from the public. Insurance companies are required to maintain a healthy business. However, in its development, insurance companies cannot carry out their business and obligations as stipulated in the law, including the problem of company assets that do not support the growth of insurance companies. Thus of course the insurance company can be declared bankrupt.

Etymologically, bankruptcy comes from the word bankrupt, found in Dutch, French, Latin and English, with different terms. In Dutch, bankruptcy comes from the term failliet which has a double meaning, as a noun and an adjective. In French, bankruptcy comes from the word faillite which means strike or payment jam, while people who strike or stop paying in French are called lefaili. The verb failit means to fail. In English, the word to fail is known with the same meaning; in Latin it is called failure. In English speaking countries, the notion of bankruptcy and ruptcy.³⁷

In this regard, Article 1131 of the Civil Code states that all the Debtor's assets, both movable and immovable, both those that already exist and those that will exist in the future, are the responsibility of all his individual engagements. Based on Article 1131 of the Civil Code, all of the Debtor's assets without exception will become a general guarantee for the settlement of his debts, regardless of whether this has been previously agreed upon or not. This guarantee is general in nature, born by law, so there is no need for a prior (general) guarantee agreement.

Bankruptcy is a general confiscation of all the assets of a Bankrupt Debtor whose management and settlement are carried out by the Curator under the supervision of the Supervisory Judge as regulated in this law.³⁸ Article 2 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debts is declared a debtor who has two or more creditors and does not pay at least one debt that is due and payable, is declared bankrupt by a court decision, either on own application or at the request of one or more creditors.

A debtor who only has 1 (one) creditor cannot be declared bankrupt because this is contrary to the principle of general confiscation. This happens because if there is only 1 (one) Creditor, then what applies is an individual confiscation, where an individual confiscation is not a confiscation referred to

³⁷ Viktor M Situmorang dan Hendry Handoko, *Pengantar Hukum Kepailitan Indonesia*, Rineka Cipta, Jakarta, 1998, page 26.

³⁸ Pasal 1 angka 1 Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang



in Bankruptcy.

Whereas the definition of bankruptcy or bankruptcy is a situation where a debtor is unable to pay off his debts when they are due. This bankruptcy statement may not be decided casually, but must be preceded by a bankruptcy declaration by the Court, either at his own request voluntarily or at the request of one or more third parties (as creditors).³⁹

As long as the debtor has not been declared bankrupt by the court, during that time the person concerned is still considered capable of paying his debts when they are due. This bankruptcy declaration is intended to avoid confiscation and individual execution of the assets of debtors who are no longer able to pay their debts. With the existence of a bankruptcy statement here, the confiscation and execution of the debtor's assets is generally carried out for the benefit of its creditors. All creditors have the same right to repay the debts of debtors, the assets that have been confiscated and executed must be divided equally according to the size of each debt.

In the general confiscation itself, all of the Debtor's assets will be under the control and management of the Curator to then be settled and distributed to all Creditors on a *pari passu pro rata* basis.⁴⁰ In this case, it can be said that during the period of filing a bankruptcy application until a bankruptcy decision is issued, the debtor does not have the right to manage and control his assets.

Various legal efforts were implemented and pursued by policyholders to resolve disputes between PT. Bakrie Life Insurance with policyholders. However, the solution to this dispute was not successful in overcoming the problem of default. The various available legal remedies cannot accommodate the policyholder's desire to get their funds back.

One of the inhibiting factors for dispute resolution is the substance regarding legal remedies regulated in laws and regulations that are not in favor of policyholders. The existence of an ineffective legal substance is certainly a barrier for policyholders to settle disputes between PT. Bakrie Life Insurance with policyholders.

This can be seen from Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt, especially bankruptcy remedies in the insurance sector. The legal substance of Article 2 paragraph (5) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, namely: an application for a declaration of bankruptcy can only be submitted

³⁹ Rahmadi Usman, *Dimensi Hukum Kepailitan di Indonesia*, Gramedia Pustaka Utama, Jakarta, 2004, page 12.

⁴⁰ *Pari Passu* means that the Debtor's assets are distributed jointly among the Creditors, while *Prorata* means that the amount of the distribution is in accordance with the balance of each Creditor's receivables against the Debtor's debt as a whole.



by the Minister of Finance.

This provision is necessary to build a level of public trust in Insurance Companies or Reinsurance Companies as public fund management institutions that have a strategic position in development and economic life.

Because Insurance is included in the field of civil law, parties who have an interest in the injury to an agreement can pursue civil law processes in fighting for their rights, for example through the process of filing for bankruptcy of an insurance company in court. Of course, before filing a legal process, the parties can take efforts to settle out of court, for example, negotiation, mediation and arbitration.⁴¹

This substance is an obstacle for policyholders to make legal settlement efforts against insurance companies. This is because the authority to apply for bankruptcy does not lie with the policyholder as the aggrieved party, but rather, this authority lies with the Minister of Finance. Regarding the default case of PT. Bakrie Life Insurance, policyholders as the aggrieved party find it difficult to get access in filing for bankruptcy for the settlement of defaults from PT. Bakrie Life Insurance.

There is a dilemma of legal regulation of legal substance in Article 2 paragraph (5) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt. The existence of the authority of the Minister of Finance to apply for bankruptcy is one of the efforts to prevent the national economy. This is because insurance companies are financial institutions that store public funds through insurance policies. The government's role in this matter is aimed at maintaining the security of public funds. The existence of a bankruptcy process can certainly disrupt the performance of insurance companies, so that the safety of policyholder funds can be disrupted. This can result in national economic instability.

There are weaknesses in the authority to file bankruptcy applications against legal remedies taken by policyholders. This is because policyholders will find it difficult to resolve disputes through bankruptcy. Procedures submitted by policyholders will be more complicated and take a longer period of time. Of course, policyholders must try to find ways to move or encourage the Minister of Finance to file bankruptcy proceedings.

The bankruptcy process based on Article 2 paragraph (5) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt does not reflect the principle of justice. Based on the Explanation of Law Number 37 of 2004 concerning Bankruptcy and Suspension

⁴¹ Interview with the Head of the Republic of Indonesia Ombudsman Representative for the Riau Archipelago Province, Lagat Parroha Patar Siadari.



of Obligations for Payment of Debt states that this law is implemented based on the principle of justice.

In connection with the default case of PT. Bakrie Life Insurance, bankruptcy efforts certainly do not reflect the principle of fairness to policyholders in obtaining funds. The policyholder has no control over this legal remedy. Of course, this bankruptcy remedy should also be the right of the policyholder. The existence of a legal arrangement in Article 2 paragraph (5) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Debt Payment is a limitation for the insured to obtain justice for his funds stored in PT. Bakrie Life Insurance. Therefore, the existence of Article 2 paragraph (5) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations does not provide justice for the insureds, because the insureds are limited in getting justice for the default actions of PT. Bakrie Life Insurance.

Restrictions on efforts to resolve disputes between PT. Bakrie Life Insurance is also found in settlement efforts through the Indonesian Insurance Mediation Agency. The Indonesian Insurance Mediation Agency as a dispute resolution facility in the insurance sector should accommodate problems that occur in the insurance sector. However, the Indonesian Insurance Mediation Agency cannot handle all disputes in the insurance sector.

The limitation of disputes at the Indonesian Insurance Mediation Agency is not caused by a legal substance made by the government, but the limitation is made by the internal regulations of the Indonesian Insurance Mediation Agency. Regarding the problems of PT. Bakrie Life Insurance, diamond investa policy holders are of course limited to filing dispute resolution through the Indonesian Insurance Mediation Agency. The insured should have the opportunity to get dispute resolution through the Indonesian Insurance Mediation Agency without being hindered by the requirement for the amount of the guaranteed value.

The limitation of policyholders to obtain services in an effort to resolve disputes is not in accordance with the spirit of consumer protection. Diamond investa insurance policy holders who are domiciled as consumers in the insurance sector certainly have rights as consumers that must be respected. Based on Article 4 letter e of Law Number 8 of 1999 concerning Consumer Protection, that consumers have the right to obtain appropriate legal settlement efforts. However, the rights of diamond investa insurance policyholders are not fully realized in accordance with Article 4 letter e of Law Number 8 of 1999. There are limitations to diamond investa policyholders in taking legal action through bankruptcy and the Indonesian Insurance Mediation Agency as a form of non-fulfillment of the insured's right to obtain justice through legal remedies.



C.3 Legal Protection by the Financial Services Authority to Realize Legal Certainty for Settlement of Customer Funds

PT. Bakrie Life Insurance obtained its first business license in 1990 through the decision of the Minister of Finance Number KEP-342/KM.13/1990 dated July 14, 1990. In carrying out its business PT Asuransi Jiwa Bakrie has a product that is marketed to the public in the form of diamond investa which is a life insurance investment dissertation.

This diamond investment insurance product is a combination of investment and life insurance with more focus on providing a maximum and definite return on investment (fix rate). PT. Bakrie Life Insurance sets an interest rate of 12-13% on diamond investa insurance products. In selling the investment diamond insurance product, PT. Bakrie Life Insurance is quite bold because the interest rates offered on similar products are only around 7-8%.

Investment diamond insurance products have been circulating since 2005 ago. The global crisis in 2008 resulted in the fall of PT. Bakrie Life Insurance as a company engaged in the insurance industry, especially life insurance. PT. Bakrie Life Insurance has experienced default cases since 2009 and has a customer refund obligation of around Rp. 400 Billion.⁴²

The high interest rate on diamond investa insurance products coupled with the global economic crisis has caused default cases. PT. Bakrie Life Insurance can no longer return customer funds and interest on investment returns. The settlement of the default case was initially marked by a promise that PT. Bakrie Life Insurance will immediately return obligations to customers accompanied by a Joint Decree between PT. Bakrie Life Insurance with customers.

Joint Agreement Letter (SKB) between PT. Bakrie Life Insurance and its customers contain a settlement scheme for default cases which contains that PT. Bakrie Life Insurance will pay a principal refund of 25% in 2010, 25% in 2011, and the remaining 50% in 2012.⁴³ Since October 2012, PT. Bakrie Life Insurance has just paid the principal amount of 16%, in the Joint Decree it is explained that no later than January 31, 2012 debt payments and interest installments must be paid by PT. Bakrie Life Insurance.⁴⁴ However, this promise was not kept by PT. Bakrie Life Insurance.

In the diamond investa insurance product, the prospectus explains that customer funds will be placed in 90% bonds, 5% deposits and 5% shares, but in practice the customer funds are placed in 70% Bakrie

⁴² Erlangga Jumena dalam [tps://ekonomi.kompas.com/read/2014/01/27/0716280/Bakrie.Life.KesulitanMenjual](https://ekonomi.kompas.com/read/2014/01/27/0716280/Bakrie.Life.KesulitanMenjual).

⁴³ Maikel Jefriando dalam https://ekbis.sindonews.com/read/680603/34/kasus-bakrie-life-aib-industri-asuran_si-1350465262

⁴⁴ *Ibid.*



shares and 30% investment placement is not clear.⁴⁵

Joint Agreement Letter (SKB) which is the step of PT. Bakrie Life Insurance to settle its obligations to its customers could not lead to the realization of the contents of the Joint Decree, and until 2014 finally PT. Bakrie Life Insurance with its customers has a new agreement. The agreement that arose was PT. Bakrie Life Insurance asks for relief from its customers for the total liabilities that must be paid by PT. Bakrie Life Insurance. The relief is in the form of a 30% discount from the total remaining dependents from PT. Bakrie Life Insurance for its customers.⁴⁶

PT. Bakrie Life Insurance has been subject to the sanction of limiting business activities No. S-902/MK.10/2009 dated 8 June 2009. Prior to being subject to the sanction of limiting business activities as referred to, PT. Bakrie Life Insurance has been subject to the First Warning Sanction Number S-1477/MK.10/2008 dated 22 October 2008, the Second Warning Sanction Number S-289/MK.10/2009 dated 16 February 2009, the Third Warning Sanction Number S-628/MK .102009 April 20, 2009.⁴⁷ Until the expiry of the period allotted to address the cause of imposition of the sanction of limiting business activities as referred to, PT. Bakrie Life Insurance was unable to address the reasons for the imposition of sanctions.

Based on the above considerations, the Decision of the Board of Commissioners of the Financial Services Authority determines the revocation of the business license in the life insurance sector for PT. Bakrie Life Insurance based on Decision Number of the Board of Commissioners KEP-76/D.05/2016 dated 15 September 2016 which was stipulated on 17 April 2017.⁴⁸ Revocation of PT. Bakrie Life Insurance experienced a new chapter in the case of PT. Bakrie Life Insurance. The Financial Services Authority as the institution authorized to handle this case is expected to be able to provide legal certainty for the parties through the Decree of the Board of Commissioners of the Financial Services Authority on the revocation of the business license of PT. Bakrie Life Insurance.

Non-bank financial institutions, one of which is an insurance institution, are supervised by the Financial Services Authority as a state institution established under a law whose function is to organize an integrated regulatory and supervisory system for all activities within the financial services sector, both in the banking sector, capital markets and the financial services sector. non-banks such as insurance, pension funds, financing institutions, and other financial service institutions.

The Financial Services Authority is an independent institution free from interference from other

⁴⁵ Erlangga Jumena, *Op.Cit.*

⁴⁶ *Ibid.*

⁴⁷ Keputusan Dewan Komisiner Otoritas Jasa Keuangan, *Op.Cit.*

⁴⁸ *Ibid.*



parties that has the duties, functions and authority to regulate, supervise and examine the financial services sector, in this case the insurance sector. The Financial Services Authority was born as a supervisory institution which aims to create legal certainty in the practice of financial services. Rules regarding the duties, functions and powers of the financial services authority are regulated in Law Number 21 of 2011 concerning the Financial Services Authority.

Legal protection is an illustration of the functioning of the legal function to realize legal objectives, namely regarding justice, benefits and legal certainty. Legal protection is a protection given to legal subjects in accordance with the rule of law, both written and unwritten in order to enforce legal regulations. Legal protection arising⁴⁹ from the implementation of an insurance agreement, wherein the insurance agreement gives birth to rights and obligations for the parties. In terms of the rights of the policyholder as a result of the insurance agreement are:⁵⁰

- a. Accept the insurance policy as an insurance document;
- b. The insured is entitled to compensation for losses if an unspecified event occurs as agreed in the insurance agreement; And
- c. Other rights in return for the obligations of the insurer

One of the legal protections for insurance policy holders is contained in Article 52 paragraph (2) of Law Number 40 of 2014 concerning Insurance Business, namely: policy, the insured, or other parties entitled to insurance benefits. The guarantee fund is the insurance company's wealth which is the final guarantee in order to protect the interests of the policyholder, the insured, or participants in the event that the insurance company is liquidated. Guarantee funds must exist in every insurance company where the amount has been determined by the Financial Services Authority, where guarantee funds are prohibited from being collateralized or burdened with any rights. This guarantee fund has been further regulated in the Financial Services Authority Regulation Number 71/POJK.05/2016 concerning the Financial Health of Insurance Companies and Reinsurance Companies.

The policy guarantee institution as mandated by Law Number 40 of 2014 concerning Insurance can be used as an explanation regarding the form of legal protection for insurance policy holders. The mandate is contained in Article 53 of Law Number 40 of 2014 concerning Insurance which states:

- (1) Insurance Companies and Sharia Insurance Companies are required to become participants in the policy guarantee program;
- (2) The implementation of the policy guarantee program as referred to in paragraph (1) is regulated by law;

⁴⁹ Whereas legal protection is an illustration of the functioning of the legal function to realize legal objectives, namely regarding justice, benefit and legal certainty. Legal protection is a protection given to legal subjects in accordance with the rule of law, both written and unwritten in order to enforce legal regulations.

⁵⁰ Suparman Sastrawidjaja, *Op, Cit*, page 73.



-
- (3) When the policy guarantee program comes into effect based on the law as referred to in paragraph (2), the provisions regarding the guarantee fund as referred to in Article 8 paragraph (2) letter d and Article 20 are declared invalid for Insurance Companies and Sharia Insurance Companies;
And
 - (4) The law referred to in paragraph (2) is formed no later than 3 (three) years after this law is promulgated.

Ideally, the Law on Policy Guarantee Institutions existed in 2017, but until now it has not been realized as mandated in Law Number 40 of 2014 concerning Insurance. The realization of the law on policy guarantee institutions to maintain the trust of policyholders in insurance companies, besides that it is also a form of legal protection for insurance policyholders. With the existence of a law on policy guarantee institutions, it is hoped that it will become a strong form of legal protection so that cases similar to those experienced by insurance policy holders of PT. Bakrie Life Insurance.

In Law Number 40 of 2014 concerning Insurance, it is stated that insurance companies whose business licenses are revoked no later than 30 days after the date of revocation of business licenses must carry out dissolution accompanied by the formation of a liquidation team.⁵¹ Regarding the procedures for dissolution and liquidation, it is further regulated in the Financial Services Authority Regulation, insurance companies are contained in 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 Company.

Dissolution is an action that causes the company to cease its existence and can no longer carry out business activities forever. Then followed by the administrative process in the form of notifications, announcements, and termination of employment with employees. Based on the provisions of Law Number 40 of 2014 concerning Insurance, there are 2 (two) causes for the dissolution of an insurance company, namely the company stopping its business activities as regulated in Article 42 of Law Number 40 of 2014 and the insurance company having its business license revoked as regulated in Article 43 of the Law. -Law Number 40 of 2014 concerning Insurance.

The first reason is stopping its business activities carried out on its own conscience or internal in nature, while the second reason is revoking its business license externally which is forced at the will of the government, in this case the Financial Services Authority. The business license of PT. Bakrie Life Insurance because the company returned its business license to the Financial Services Authority so that the Financial Services Authority took action to revoke the business license of PT. Bakrie Life Insurance. However, the dissolution of the company has not been carried out by PT. Bakrie Life

⁵¹ Pasal 44 Undang-Undang Nomor 40 Tahun 2014 tentang Perasuransian



Insurance.

Two reasons for the dissolution of the insurance company have different impacts, the dissolution of the insurance company due to internal reasons must first report the plan to the Financial Services Authority. Next, the insurance company first completes all of its obligations, then the Financial Services Authority revokes the business license of the insurance company in question. As a legal consequence, the revocation of a business license requires insurance companies to stop their business activities.⁵²

Insurance companies whose business licenses are revoked due to external reasons are forced at the will of the Financial Services Authority after first imposing sanctions in the form of warning sanctions and administrative sanctions 3 (three) times before imposing sanctions on limiting business activities. If until the end of the period given to overcome the causes of the imposition of sanctions limiting business activities. If the insurance company is unable to resolve the reasons for imposing sanctions, the Financial Services Authority may take action to revoke the business license of the insurance company concerned.

Revocation of business license for PT. Bakrie Life Insurance by the Financial Services Authority is in accordance with the authority of the Financial Services Authority based on Article 6 paragraph (1) of the Financial Services Authority Regulation Number 17/POJK.05/2017 concerning Procedures and Procedures for Imposing Administrative Sanctions in the Field of Insurance and Blocking of Insurance Company Assets, Sharia Insurance Company, Reinsurance Company, Sharia Reinsurance Company. Before the business license of PT. Bakrie Life Insurance was revoked by the Financial Services Authority, PT. Bakrie Life Insurance returned its business license to the Financial Services Authority and the Financial Services Authority's considerations in revoking the business license of PT. Bakrie Life Insurance is PT. Bakrie Life Insurance has been subject to business activity restriction sanctions and administrative sanctions 3 (three) times. Until the expiry of the period that has been given to overcome the problem that causes the imposition of sanctions on business activity restrictions, PT. Bakrie Life Insurance was unable to address the reasons for the imposition of sanctions. Therefore, the Financial Services Authority revoked the business license of PT. Bakrie Life Insurance.

In the revocation of PT. This Bakrie Life Insurance was initiated by returning the company's business license PT. Bakrie Life Insurance to the Financial Services Authority. As explained above, before the business license of PT. This Bakrie Life Insurance was revoked by the Financial Services Authority, so PT. Bakrie Life Insurance must first settle all of its obligations. After that, then the business license of PT. Bakrie Life Insurance can be revoked by the Financial Services Authority. However, in practice

⁵² Mulhadi, *Op, Cit*, page 147.



before PT. Bakrie Life Insurance completed all of its obligations for PT. This Bakrie Life Insurance has been revoked by the Financial Services Authority on the basis of the rules contained in the Financial Services Authority Regulation Number 17/POJK.05/2017 concerning Procedures and Procedures for Imposing Administrative Sanctions in the Insurance Sector and Blocking the Wealth of Insurance Companies, Sharia Insurance Companies, Companies Reinsurance, Sharia Reinsurance Company.

In the position of this case there is a difference between the rules contained in the legislation and practice. The law stipulates that dissolution and the formation of a liquidation team must be carried out, whereas in practice PT. Asuransi Jiwa Bakrie does not want to form a liquidation team. PT. Bakrie Life Insurance prefers to resolve this case by their own management.

The gap between rules and practice can be found in Article 6 of 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, which states that when the general meeting shareholders cannot be held, or GMS can be held but cannot dissolve the company and cannot form a liquidation team, the Financial Services Authority has several authorities to resolve the issue. These powers are:

- a. Decide the dissolution and form a liquidation team;
- b. Register and make notifications in the form of an announcement on the dissolution of the company to the competent authority, and announce it in the State Gazette of the Republic of Indonesia and 2 (two) daily newspapers with wide circulation;
- c. Instruct the liquidation team to carry out the liquidation process in accordance with the provisions of Law Number 40 of 2014 concerning Insurance and Financial Services Authority Regulations;
And
- d. Instruct the liquidation team to report the results of implementing the liquidation process to the Financial Services Authority.

In the provisions of Article 6 of 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, one can find a bright spot regarding the position of the case of PT. Bakrie Life Insurance, the difference between rules and practices can be resolved by the Financial Services Authority which acts as a supervisory institution in the financial sector. However, the authority of the Financial Services Authority has not been exercised by the Financial Services Authority. Thus, the Financial Services Authority has not been able to provide legal certainty for the parties.



The view of real legal certainty actually includes a juridical understanding, but more broadly as stated by Jan Michael Otto as the possibility that in certain situations, namely:⁵³

- a. There are rules that are clear, consistent and easy to obtain, issued by and recognized by the state;
- b. Government agencies apply these legal rules consistently and obey and obey them;
- c. Citizens principally adapt their behavior to these rules;
- d. Independent and impartial judges (judiciary) apply these legal rules consistently when they resolve legal disputes, and;
- e. The court decision is concretely implemented.

In addition, the notion of the importance of legal certainty was put forward by Sudikno Mertokusumo, as follows:

The community expects legal certainty, because with legal certainty the community will be more orderly. The law is tasked with creating legal certainty because it aims at public order. Without legal certainty, people don't know what to do, so unrest arises. However, if there is too much emphasis on legal certainty and strict adherence to legal regulations, the consequences will be rigid and will create a sense of injustice. Whatever happens, the rules will remain the same, so they must be obeyed and implemented. These laws often seem cruel when strictly enforced. *Lex dura, sed tamen scripta* (the laws are cruel, but that's what it sounds like).

The expected legal certainty in the Decree of the Board of Commissioners of the Financial Services Authority cannot be fulfilled, through the Decree of the Board of Commissioners of the Financial Services Authority it has not been a solution for the settlement of the case of PT. Bakrie Life Insurance. This is marked by the Financial Services Authority's Decree on the revocation of the business license of PT. Bakrie Life Insurance is not fully implemented by the insurance company concerned, and the authority that can be exercised by the Financial Services Authority is not exercised by the authorized institution.

For this reason, as stated by legal experts regarding the importance of legal certainty, the law enforced by law enforcement agencies must guarantee legal certainty. This is for the sake of upholding order and justice in people's lives. Legal uncertainty will cause chaos in people's lives.

D. CONCLUSION

Legal protection for insurance policy holders (consumers) does not guarantee legal certainty due to non-fulfillment of consumer rights by insurance business actors due to default by insurance companies. In this case the Financial Services Authority does not carry out its duties, functions,

⁵³ Jan Michael Otto, *Moralitas Profesi Hukum Suatu Tawaran Kerangka Berfikir*, terjemahan Tristan Moeliono dalam Shidarta, Revika Aditama, Bandung, 2006, page 85.



responsibilities and authorities in providing protection to insurance (consumer) policyholders, especially related to the large authority it has to defend consumer and public protection, and the absence of an Independent Supervisory Board, with integrity and competent authority overseeing the duties, functions, responsibilities and authorities of the Commissioner of the Financial Services Authority in providing legal protection to insurance (consumer) policyholders as appropriate based on the applicable laws and regulations, especially related to the authority to defend consumer and public protection.

REFERENCES

- A. Junaedy Ganie, *Hukum Asuransi Indonesia*, Sinar Grafika, Jakarta, 2013.
- Adrian Sutedi, *Aspek Hukum Otoritas Jasa Keuangan*, Raih Asa Sukses, Jakarta, 2014.
- Ahmadi Miru, *Contracts and Contract Design*, Raja Grafindo Persada, Jakarta, 2008.
- R. Subekti, *Law of Agreement*, Intermasa, Jakarta, 2002.
- Anis Mashdurohatun, Zaenal Arifin, The Inconsistency of Parate Execution Object Warranty of Rights in Banking Credit Agreement in Indonesia, *International Journal of Applied Business and Economic Research*, Vol.15 Issue.20. 2017
- Anis Mashdurohatun, [Hukum Perlindungan Konsumen \(Kajian Teori dan Praktik\)](#), SA Press, Unissula, Semarang, 2019
- Arkie V. Y. Tumbelaka, *Kajian Kontrak Baku Dalam Prespektif iktikad baik (Kasus Rumah Susun Permata Gandaria Antara Nyonya x Dengan PT. Surya Putra Perkasa)*, Tesis, Magister Hukum Ekonomi Universitas Indonesia, 2012.
- Bumi Resources Tbk adalah perusahaan yang bergerak di bidang tambang batubara di Indonesia.
- Carto Nuryanto, Gunarto, Anis Mashdurohatun, Reconstruction of Criminal Sanction and Rehabilitation Combating on Narcotic's Victims Based on Religious Justice, The 5th International Conference and Call for Paper Faculty of Law 2019, Sultan Agung Islamic University, 2019
- Efri Ritonga dan Alwan Ridha, *Nasabah Bakrie Life Mengadu ke Istana*, Koran Tempo, 9 Oktober 2009.
- Eman Suparman dan Endang, *Hukum Asuransi : Perlindungan Tertanggung Asuransi Deposito Usaha Perasuransian*, Alumni, Bandung, 2007.
- Erlangga Jumena dalam <https://ekonomi.kompas.com/read/2014/01/27/0716280/Bakrie.Life.KesulitanMenjual>.
- Famega Syavira, *Saham Bumi Terpengaruh Pencalonan Aburizal*, Koran Tempo, 8 Oktober 2009..
- Irwansyah, Ahsan Yunus, *Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel*, Mirra Buana Media, Yogyakarta. 2020.
- Jan Michael Otto, *Moralitas Profesi Hukum Suatu Tawaran Kerangka Berfikir*, terjemahan Tristan Moeliono dalam Shidarta, Revika Aditama, Bandung, 2006.



- Jamal Wibowo, Anis Mashdurohatun, Hukum Kontrak, Ekonomi Syariah dan Etika Bisnis, Undip Press, Semarang, 2017.
- Keputusan Dewan Komisiner Otoritas Jasa Keuangan.
Lampung Post, *Kasus Gagal Bayar. Nasabah Bias Tuntut Asuransi Bakri Life*,
<http://www.lampungpost.com/cetak/berita.php?id=2009092805573542>
- Mahyuni, Land Acquisition of Toll Roads for Public Interest in The Kendal District, Jurnal Akta, Volume 6 Issue 1, March 2019
- Mawardi Muzamil, Anis Mashdurohatun, Comparison of Legal Systems (Western, Customary and Islamic Law), Madina Semarang.
- Maikel Jefriando dalam <https://ekbis.sindonews.com/read/680603/34/kasus-bakrie-life-aib-industri-asuran-si-1350465262>
- Mulhadi, *Dasar-Dasar Hukum Asuransi*, Raja Grafindo Persada, Jakarta, 2017.
- Pari Passu means that the Debtor's assets are distributed jointly among the Creditors, while Prorata means that the amount of the distribution is in accordance with the balance of each Creditor's receivables against the Debtor's debt as a whole.
- Pasal 1 angka 1 Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang
- Pasal 44 Undang-Undang Nomor 40 Tahun 2014 tentang Perasuransian
- Rahmadi Usman, *Dimensi Hukum Kepailitan di Indonesia*, Gramedia Pustaka Utama, Jakarta, 2004, page 12.
- Ridwan Khairandy, *Hukum Kontrak Indonesia Dalam Prespektif Perbandingan*, Universitas Islam Indonesia Press, Yogyakarta, 2014.
- Ridwan Khairandy, *Hukum Perseroan Terbatas*, Universitas Islam Indonesia Press, Yogyakarta, 2014.
- Ridwan Khairandy, *Kebebasan Berkontrak dan Pacta Sunt Servanda Versus Iktikad Baik: Sikap Yang Harus Diambil Pengadilan*, Universitas Islam Indonesia Press, Yogyakarta, 2015.
- Ridwan Khairandy, *Kebebasan Berkontrak dan Pacta Sunt Servanda Versus Iktikad Baik: Sikap Yang Harus Diambil Pengadilan*.
- Sukarmi et.al, Impact of Traffic Congestion on Economic Welfare of Semarang City Community, Journal of Xidian University, Volume 16, ISSUE 2, 2022.
- Suparman Sastrawidjaja, *Aspek Hukum Asuransi dan Surat Berharga*, Alumni, Bandung, 2007.
- Suparman. Sastrawidjaja, *Hukum Kepailitan dan Penundaan Pembayaran Utang*, Alumni, Bandung, 2010.
- Viktor M Situmorang dan Hendry Handoko, *Pengantar Hukum Kepailitan Indonesia*, Rineka Cipta, Jakarta, 1998.
- Wawan Setiyawan and Anis Mashdurohatun, The Reforming Of Money Politics Cases In Election Law As Corruption Crime. Law Development Journal, Volume 3 Issue 3, September 2021



Interview with Agus Winata, Customer Representative (Policy Holder of Diamond Investa Insurance Products).

Interview with the Head of the Republic of Indonesia Ombudsman Representative for the Riau Archipelago Province, Lagat Parroha Patar Siadari.

Yeltriana, Ideal Reconstruction of Protection for Layoff Victim at The Industrial Relations Court Based on Justice, International Journal of Law, Government and Communication, Volume: 4 Issues: 14 [March, 2019]

Zulkarnain Sitompul, *Fungsi dan Tugas Otoritas Jasa Keuangan Dalam menjaga Stabilitas Sistem Keuangan*, Makalah pada Seminar tentang Keberadaan Otoritas Jasa Keuangan Mewujudkan Perkonomian Nasional Berkelanjutan dan Stabil, Medan, 25 November 2014.