

ANALYSIS OF LEGAL CERTAINTY AND CHALLENGES IN THE ESTABLISHMENT OF POLICY GUARANTEE INSTITUTIONS IN INDONESIA

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Abstract

Insurance is a financial services business that collects public funds and provides protection against losses due to an uncertain event. For supervision, the government has formed an Insurance Supervisory Agency, namely the OJK (Financial Services Authority) which functions to encourage the progress of the financial services industry and protect insurance customers. Indonesia has Law Number 40 of 2014 concerning Insurance. This study aims to provide legal protection for insurance customers in overcoming the risk of default and awaiting the formation of the Policy Guarantor Institution. Cases of unit link insurance defaults and governance violations have also occurred in several insurance companies. Such as Bakrie Insurance, Asuransi Jiwasraya, Bumiputera Insurance and Kresna Insurance. The Financial Services Authority imposes sanctions on defaulted insurance companies, including: written warnings, revoking business licenses and bankruptcy. This research is of a normative juridical nature that is qualitative descriptive. This study shows how the insurance industry in Indonesia provides protection for customer funds in resolving defaults to realize legal certainty by forming a policy guarantor program. In conclusion, although OJK imposes sanctions in cases of default, it does not appear that policyholders are protected, especially in the disbursement of claims. Therefore, a Policy Guarantor Institution needs to be formed as soon as possible to realize legal certainty.

Keywords: default, legal certainty, policy guarantor institution, insurance policyholders

INTRODUCTION

The role of the insurance industry in the Indonesian economy is very large and broad. The development of insurance industry service products is relatively slow because consumers are less interested in buying (un-sought goods). However, the reality shows that a number of industrial and trade activities cannot take place without the support of insurance service products. Insurance is regulated in Book Three of the Civil Code (KUHPdata) concerning Contracts, Book One Chapter X Articles 302 to 308 of the Commercial Code (KUHD), and Law Number 40 of 2014 concerning Insurance. (Man Suparman, 2013). Law No. 40 of 2014 concerning insurance replaces Law No. 2 of 1992. The law is to follow the development of the insurance industry and provide protection to the public who use insurance services. Some insurance products in the community are health insurance, life insurance, education insurance, vehicle insurance and others. Then in 1998 the Unit Link insurance product appeared. Unit link combines insurance with investment. Many people are interested in this insurance product.

OThe Financial Services Authority (OJK) as a regulator and supervisor in the insurance sector itself is considered less firm in resolving the default problem, this is evident in the resolution of the AJB Bumiputera problem, where the OJK had appointed a Statutory Manager who carried out the authority of the OJK but the solution provided by the Statutory Manager failed midway, so the OJK returned the management of AJB Bumiputera to the policyholders who are still in the process of selling assets to return the policyholders' funds. The Financial Services Authority has also issued Financial Services Authority Regulation Number 28/POJK.05/2015 concerning the Dissolution, Liquidation, and Bankruptcy of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies. This regulation substantially regulates how the

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Financial Services Authority as the sole institution responsible if an insurance company does not have a healthy balance sheet and reserves. Through Financial Services Authority Regulation Number 28/POJK.05/2015 Article 1 paragraph 10 and 11, which regulates that the revocation of a company's business license can only be carried out by the OJK, and is delegated to the court to be declared bankrupt. In the POJK as regulated in Article 24 paragraph (1) of POJK No. 28/POJK.05/2015 concerning the Dissolution, Liquidation, and Bankruptcy of Insurance Companies, Sharia Insurance Companies, Insurance Companies, and Sharia Reinsurance Companies, the position of the policyholder is the highest position compared to the rights of other parties. Settlement of this insolvency insurance case, if we look at the regulation, it can be concluded that it can only be resolved through bankruptcy litigation. Referring also to Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Article 2 paragraph (5) states that a bankruptcy statement application for insurance companies, reinsurance companies can be submitted by the Minister of Finance.

This provision is needed to build public trust in Insurance Companies or Reinsurance Companies as risk management institutions and at the same time as public fund management institutions that have a strategic position in development and economic life. Reflecting on the cases faced, such as Jiwasraya and Bumi Asih Jaya insurance. The court decision has determined that these large insurance companies are declared bankrupt. The curator is appointed directly by the court for each insurance, in order to be able to disburse claims from policyholders. However, this does not solve the problem, but instead creates problems. The appointment of a curator by a judge in an insurance case has experienced corruption cases and court decisions have not been implemented because nothing has been paid at all to the policyholders. This shows that the fulfillment of policy returns is hampered because in bankruptcy law, insurance customers occupy the position of concurrent creditors.

Settlement of bankruptcy insurance cases in Indonesia is limited to court decisions. This has various shortcomings, namely the court has a low execution rate, the asset recovery rate for the settlement of bankruptcy cases is very low. In fact, asset recovery is a basic indicator of the success or failure of bankruptcy law in a country. Curators appointed by the court cannot resolve systemic economic problems such as the bankruptcy of an insurance company. Some of the problems if this is handed over to the curator include the lack of transparency and accountability in the bankruptcy process, lack of professionalism, understanding and cooperation from parties between sectors, difficulty in tracking and controlling problem assets in the allocation and distribution of insurance assets.

The legal aspects mentioned have not been able to protect thousands of policyholders whose claims have not been paid. The management mandated by law only focuses on the financial services authority and the bankruptcy litigation process. Protection and supervision of the insurance industry require institutions outside the OJK. Current supervision is considered not optimal because the insurance industry supervisory institution is internal. The institution outside the OJK itself in question is the Policy Guarantee Institution. The birth of Law Number 24 of 2004 concerning the Deposit Insurance Agency marked a new chapter in the national banking system.

The existence of the Deposit Insurance Agency cannot be separated from efforts to improve the stability of the financial sector and to restore public trust. Comparing the Deposit Insurance Agency with the Policy Guarantee Agency is a proportionally similar thing. The success of the Deposit Insurance Agency can be a reflection of the establishment of the Policy Guarantee Agency in the insurance sector. In order to achieve solid and healthy insurance, so that policyholders get certainty and protection. The policy guarantee agency has been regulated in the International of Insurance Supervisor (IAIS). The IAIS is an international standard-setting body responsible for developing and implementing principles, standards and other supporting materials for the supervision of the insurance sector. The mission of the IAIS is to promote effective and consistent supervision of the insurance industry globally in order to develop and maintain fair, safe and stable insurance markets for the benefit and protection of policyholders and to contribute to global financial stability. (IAIS, 2017)

Indonesia has become a member of the IAIS, the mandate given to each country that binds itself is one of them the establishment of a policy guarantee institution. This can be regulated in article 6 which states that the policy guarantee institution is a scheme funded by the insurance industry collectively. The insurance policy guarantee institution is designed to protect policyholders and beneficiaries in the event of bankruptcy of the insurance company. In addition, the policy guarantee institution focuses on providing a minimum level of protection for insurance policyholders. Countries that are members of the IAIS have become examples of the establishment of a policy guarantee institution. The United States with its policy guarantee institution called ELIC (Executive Life Insurance Company), Japan with LIPPC (Life Insurance Policyholders Protection Corporation), Korea with KDIC (Korea Dispute Insurance) and other countries. (The Geneva Association, Research Report: US and Japan Life Insurers Insolvencies Case Studies, 2015) According to Chunli, Jing Li, 2017, the study studied the impact of early default risk and surrender risk on life insurance policies. (Chunli, 2017)

The initial failure of the insurance company is triggered once its asset value reaches a predetermined liquidation threshold. The analysis for policyholder representation can be transferred to many policyholders. First, solvency regulation and policyholder rationality are substitutes. Second, the pricing by the insurance company, policyholders who are more financially literate will be charged low while policyholders who are less financially literate will be charged excessively if there is no early termination by the regulator. Policyholders who are less financially literate can benefit more from the regulator's intervention than those who are more financially literate, the inequality in the financial position of policyholders with different levels of rationality can be reduced by imposing a default rule of early regulation by the regulator. If the regulator believes that policyholders in a risk group are mostly financially literate, he will get a regulation that is tight enough to maximize their financial benefits. (Chunli, 2017)

According to Aria Sri Agustin, Legal Review of the Establishment of Insurance Policy Guarantor Institutions in Indonesia, 2020, the Policy Guarantor Institution was established to protect the interests of insurance policyholders. Other regulations at the level of the Financial Services Authority Regulation and consumer protection have not been able to protect the rights of policyholders. This can be seen that these regulations only resolve formalities, namely that they will end up in the litigation process. Court decisions on insurance claim cases in Indonesia are still hanging and policyholders have not received legal protection. (Aria, 2020). Halomoan in 2022 with the title OJK's Accountability for Insurance Company Payment Failure. The results of the study show that OJK's handling of the Jiwasraya company's payment failure case has not been optimal, the government's main focus is to return the money to customers who have filed claims. That the supervision carried out by OJK has not been optimal. The Financial Services Authority is charged with the responsibility so that in the future there will be no more cases of payment failure like that experienced by insurance companies (Halomoan, 2022).

Many policyholders suffered huge losses because their rights were not paid by the insurance company that failed to pay, had their business license revoked or went bankrupt. The case of default, corruption and mismanagement of the business at PT Asuransi Jiwasraya (Persero) in October 2018, attracted the attention of the wider community because Jiwasraya is a state-owned company and a large insurance company with more than 100 years of experience. Established since the Dutch East Indies era on December 3, 1859 and changed to PT Asuransi Jiwasraya (Persero) on August 21, 1984. (Boas P, 2022). Insurance companies that experienced default before the issuance of Law No. 40 of 2014 include:

1. PT Asuransi Jiwa Bakrie Life experienced a payment default on the insurance company's Diamond Investa product, which is a type of Unit Link. See Since 2008, PT Bakrie Life has been unable to pay claims and interest and principal of investments to its customers due to liquidity difficulties. The company has been unable to return the promised insured funds, resulting in a default by Bumi Asih Jaya Insurance in October 2013, no longer being able to meet the provisions related to financial health (Risk Based Capital) and the ratio

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of investment balance to technical reserves and claim debt. Insurance companies that experienced default after the issuance of Law No. 40 of 2014 include:

1. PT Asuransi Jiwa Bumiputra in January 2018 experienced a delay in claim payments within 1-2 months due to the minimal premium generated by the company. There was a mismatch between assets and liabilities, where liabilities were greater than assets. AJBB (Asuransi Jiwa Bumiputera Bersama) is a purely private company with a joint venture legal entity. The policy owner is the owner of AJBB so that when the company experiences a loss, all policy owners must bear the loss. Policy owners cannot expect the government to bail out all losses of AJBB (Asuransi Jiwa Bumiputera Bersama).
2. PT Asuransi Jiwasraya announced a default in October 2018 because Jiwasraya was unable to pay off customer policy claims amounting to IDR 802 billion. A policy restructuring was carried out for 96% of retail policies, 96% for bancaassurance policies and 98% for corporate policies.¹(Yohana, 2021)
3. PT Asuransi Jiwa Kresna (2020) experienced a default on two of its insurance products. The two products are Kresna Link Investa (K-LITA) and Protecto Investa Kresna (PIK). Insurance companies must provide good service to policyholders, including by maintaining their financial health and implementing good corporate governance as explained in Article 2 of the Financial Services Authority Regulation (POJK) Number 2/POJK.05/2014 concerning Good Corporate Governance for Insurance Companies.

Article 1 Paragraph 1 of Law No. 21 of 2011 concerning the Financial Services Authority states that the Financial Services Authority is an institution that is individual and free from interference from other parties, who have the functions, duties and authority to regulate, supervise, inspect and investigate as referred to in this Law.

In Article 53 Paragraph (1) of Law No. 40 of 2014 concerning Insurance (Insurance Law) that Insurance Companies and Sharia Insurance Companies are required to be participants in the policy guarantee program, which is intended to guarantee the return of policyholder rights when the insurance company fails to pay, its business license is revoked or liquidated. However, until now the legal certainty of the policy guarantee program is still being prepared and will be completed in 2028. The Policy Guarantee Program (Institution) is formed in the Deposit Insurance Agency. The existence of the deposit insurance agency is regulated based on Law No. 24 of 2004 concerning the Deposit Insurance Agency. The purpose of the Deposit Insurance Agency is to create a sense of security for depositors and maintain the stability of the banking system in accordance with its authority.

PROBLEMS

1. How does the insurance industry in Indonesia provide protection for customer funds in the settlement of default claims to create legal certainty and form a policy guarantor institution?

RESEARCH METHOD

This research is normative juridical. The collected data is analyzed to obtain clarity on the problems to be discussed. All collected data is processed and systematically arranged to be presented in descriptive form which is then concluded. In data analysis, the author uses a qualitative method, meaning that all data obtained is analyzed in its entirety so that a systematic and factual picture is seen. The data analysis method in this study is a qualitative method. [6]

DISCUSSION

Insurance plays a role in Indonesia's economic development. Insurance accommodates losses due to development risks. Development is not free from risks that disrupt the results of development that have been achieved. With the presence of a strong insurance business, which accommodates losses arising from various risks. The default cases of a number of insurance companies have also disrupted the industry. The default cases were caused by violations of the regulator's rules. Insurance

companies that should guarantee the lives of policyholders actually provide a guarantee of a fixed return through insurance products wrapped in investments. The promised interest is very high. Insurance companies defaulted because the stock market conditions plummeted. The case experienced by Wana Artha Life policyholders. Its investment management is suspected of being related to a case involving Jiwasraya Insurance which has experienced default problems. A similar condition was experienced by PT Asuransi Jiwa Bersama (AJB) Bumiputera. Also PT Asuransi Jiwa Kresna which has only paid out policies of around 20 percent. In the case of Kresna Life Insurance and Jiwasraya Insurance. Kresna Life promises a return of around nine percent for its two products, Kresna Link Investa (K-LITA) and Protecto Investa Kresna (PIK). (<https://www.antaranews.com>, 2020). The role of the Financial Services Authority (OJK) is also questioned, why does OJK allow insurance to provide high and fixed returns, even though this has violated the rules. OJK should have predicted that this is dangerous and will be a time bomb for insurance companies. Public trust in insurance companies will decrease if defaults continue to occur. Insurance wrapped in investment, causes many victims, makes public trust decrease or distrust. So this affects customer compliance in paying premiums on time. To protect policyholders from small profits due to insurance companies going bankrupt at maturity, the Regulatory Authority implements a default mechanism. This is done to monitor the financial status of insurance companies and close insurance companies before it is too late. So policyholders get protection from the risk of early default from insurance companies along with early default regulatory intervention.[10]

Legal Protection for Insurance Policy Holders

Philipus M. Hadjon explained that legal protection for the people from the government is preventive and repressive (Philipus, 1987). Preventive legal protection is provided by the government in laws and regulations with the aim of preventing violations and ensuring the implementation of insurance policyholder protection. Namely, what is stated in the Consumer Protection Law, the Insurance Law and the Financial Services Authority Law and others to provide guidelines or limitations in carrying out obligations or rights of policyholders and insurance companies. And repressive legal protection aims to resolve disputes that occur including handling them in judicial institutions in the form of sanctions such as fines, imprisonment, and additional penalties if a dispute or violation occurs.

Therefore, POJK No. 6 / POJK.07 / 2022 concerning Consumer and Community Protection in the Financial Services Sector includes preventive and repressive legal protection. As preventive legal protection, this POJK regulates all the obligations that must be fulfilled by insurance companies in running their businesses, regulates things that are prohibited for consumers, namely being required to have good faith and provide honest information to insurance companies. And as repressive legal protection, namely if an insurance company commits a violation, the OJK can impose administrative sanctions as regulated in Article 50 (1) POJK 6/POJK.07/2022, namely starting from the first in the form of a written warning to the last in the form of revocation of the business license.

Legal Issues Related to Legal Protection for Defaulting Insurance Policyholders

The legal problem in question is that many insolvent insurance policyholders do not receive their rights as they should, so they experience large losses because their claims or insurance money are not paid by the insolvent insurance company. For example, as experienced by policyholders of PT Asuransi Jiwa Bakrie, known as Bakrie Life. The problem of default that has befallen Bakrie Life since 2008 is not paying claims due to liquidity difficulties. As a result, policyholders are worried about the legal uncertainty in resolving their rights and some even become ill and die due to prolonged depression. In fact, payment of policyholder rights must be resolved immediately in good faith by Bakrie Life. Good faith is one of the basic principles of insurance agreement (contract) law. The parties must carry out the agreement in good faith. The principle of good faith (utmost good faith) in insurance is regulated in Article 1338 paragraph (3) of the Civil Code as the most important

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principle (super eminent principle) in the contract, namely a basic or fundamental provision in contract law. (Ridwan, 2014)

Bakrie Life's failure to pay policyholders is a legal problem, namely a breach of promise in making timely payments of insurance money, even not making payments of death benefit claims for insured persons who died during the insurance period. The Financial Services Authority in decision Number KEP-76 / D.05 / 2016 has revoked the business license of PT. Asuransi Jiwa Bakrie on September 15, 2016. And until 2022 (it has been 14 years since 2008) there has been no resolution of the rights of Bakrie Life policyholders, resulting in legal uncertainty. If observed, in the case of Bakrie Life's failure to pay, it also violates Article 31 of the Insurance Law.

Legal Certainty of Policy Guarantee Program

In accordance with the theory of legal certainty according to Sudikno Mertokusumo, which states that "legal certainty is one of the justiciable protections against arbitrary actions, which means that someone will be able to obtain something that is expected in certain circumstances". Sudikno also emphasized that society expects legal certainty because with legal certainty society will be more orderly. The law is tasked with creating legal certainty because it aims for public order. Reviewed from the legal aspects in the Indonesian insurance legal system, it has not been able to protect policyholders. The Insurance Law and existing regulations only focus on the Financial Services Authority, namely through the bankruptcy mitigation and litigation process. And the defaulting insurance companies that end up bankrupt are as follows:

- 1) AJB Asih Jaya with Supreme Court Decision 408 K/Pdt.Sus-Pailit/2015. In its development until September 2022, it is getting worse, namely the bankruptcy of AJB Asih Jaya has not been completed even though 7 years have passed so that currently there are around 70,000 policyholders whose claim payments are still pending.²
- 2) Kresna Life with Supreme Court Decision 647 K/Pdt.Sus-Pailit/2021. Where Kresna Life stated that it would take the Judicial Review route.³

The court decision has determined that the insurance companies are declared bankrupt. After the bankruptcy decision, it is immediately followed by the appointment of a curator by the court to be able to liquidate claims from policyholders. However, this does not solve the problem, but instead creates problems. This shows that the return of policyholder rights is hampered because in practice, in accordance with the Bankruptcy Law, policyholders are placed as concurrent creditors. Meanwhile, according to Article 52 paragraph (1) of the Insurance Law, it is regulated that policyholders/insured have a higher legal position than the higher legal position of other parties or preferred creditors.

Settlement of bankruptcy insurance cases in Indonesia is limited to court decisions. This has various shortcomings, namely the low level of execution where the level of asset recovery for the settlement of bankruptcy cases is very low. Whereas asset recovery is a basic indicator of the success or failure of bankruptcy law in a country. (Theresia, 2009). Indonesia has become a member of the International Association of Insurance Supervisors (IAIS). The International Association of Insurance Supervisors (IAIS) is a voluntary membership organization of insurance supervisors and regulators from more than 200 jurisdictions in nearly 140 countries. The mission of IAIS is to promote effective and consistent supervision of the global insurance industry in order to develop and maintain a fair, safe and stable insurance market for the benefit and protection of policyholders and to contribute to global financial stability. (IAIS, 2013)

²"Former Bumi Asih Insurance Owner Complains About Boedel Bankruptcy Clarity, Requests Replacement of Curator", <https://finansial.bisnis.com/read/20220831/215/1572898/mantan-owner-insurance-earthlove-complain-about-clarity-the-slug-bankrupt-ask-for-replacement-curator>, accessed on November 10, 2022 at 14.50 WIB.

³ "Knock! Kresna Life has been declared bankrupt, so what happens to customers?" <https://www.cnbcindonesia.com/market/20210612125219-17-252606/tok-Krishna-life-disconnected-bankruptKeep-going-fate-Customer-How>, accessed on November 10, 2022 at 17.55 WIB.

IAIS has outlined 3 components in the formation of a policy guarantee institution. First, facilitating the continuation of insurance. Second, providing financial support to insolvent insurance companies and/or entities that intend to buy insolvent insurance companies or whose policies will be transferred from insolvent insurance companies. Third, working as a bridge institution where there is no direct buyer from the insolvent insurance company. This legal certainty must be stated in a regulation as the basis for the establishment of a Policy Guarantee Institution. This institution will be regulated technically, the composition of the institution comprehensively. As in Law Number 24 of 2004 concerning the Deposit Guarantee Institution. The legal umbrella for the institution has succeeded in protecting banking businesses and protecting customers who use banking services. So that customer trust in banking will increase.

Although the political will of the establishment of an insurance policy guarantee institution is still in the field of study. The study includes a comparison of several countries that were invited to discuss, as well as discussing the occurrence of capital deviations. This is because the Policy Guarantee Institution will be given a large injection of funds. As much as 4 trillion for development and income reserves. However, the Insurance Association said this did not happen, because there is supervision from several insurance companies over the money in the Policy Guarantee Institution. So the possibility of moral hazard does not occur because of the check and balances mechanism from several validated insurance companies.

The discussion never ends because of the difficult technicalities, the standardization of which insurance companies will become members of the Insurance Policy Guarantee Institution. Later there will be criteria, such as the capital ratio (risk based capital/RBC) which is currently a safe limit of at least 120%. However, this is considered to be a Legal Review of the Establishment of the Insurance Policy Guarantee Institution in Indonesia discriminating against one of the insurance companies in operation. The established standardization has not been accepted by other insurance companies. Only insurance companies that have a healthy financial balance sheet can become permanent members of the Insurance Policy Guarantee Institution in Indonesia.

The Indonesian state in the theory of a state of law must be fully responsible for the fulfillment of rights, social security and organizing public welfare. The state in this case is responsible for the state and financial health of the economy in the insurance sector. If the Insurance Policy Guarantee Institution in Indonesia is not formed, the state in this case is experiencing a regressive state or going backwards. This is because the insurance companies supervised by the Financial Services Authority in their implementation do not yet have an active mechanism. The Financial Services Authority is considered very passive. And if the Institution is not formed immediately, then the operations of insurance companies in Indonesia do not yet have a mechanism for both preventive and repressive actions in insurance management, then undesirable things such as collapse can occur systematically and the state in this case fails to protect all its citizens.

The Policy Guarantee Program (LPP) functions to replace policyholder funds if the insurance company defaults. LPP is needed for legal certainty in protecting policyholders amidst the many insurance companies that default, have their business licenses revoked and are declared bankrupt by regulators. There have been many insurance companies that have defaulted and had their business licenses revoked and then declared bankrupt by regulators but there is no clarity regarding the fate of policyholder funds, such as Bakrie Life (business license revoked), AJB Asih Jaya (bankrupt), Kresna Life (bankrupt), AJB Bumiputera (defaulted and under special supervision of OJK) and many other problematic insurance companies.

The legal certainty of LPP must be immediately realized in a regulation as the basis for its establishment and operation. This institution will comprehensively regulate preventive and repressive actions so that insurance policyholders get legal certainty in guaranteeing protection for insurance policyholders. This institution is an independent, transparent and accountable institution in carrying out its duties and authorities. Legal protection for policyholders has been guaranteed by a special law and regulation on Policy Guarantee in various countries so that Indonesia needs to follow suit. Currently, the insurance legal system in Indonesia shows that the settlement of insurance insolvency

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cases is only handled by the Financial Services Authority and can end in a court decision in the form of bankruptcy. While other countries have comprehensively regulated preventive and repressive actions so that insurance policyholders obtain legal certainty and guaranteed protection of their rights.

Considering the importance of legal protection guarantees for policyholders of insurance companies, it is important to immediately realize legal certainty for the Policy Guarantee Institution in the form of a Law such as the Deposit Insurance Institution Law in the banking sector. Special laws and regulations governing the Policy Guarantee Institution as already implemented in other countries, for example in Singapore, Australia and Japan, are as follows:

1. Policy Guarantee Agency in Singapore

The Policy Guarantee Institution has been managed by the Singapore Deposit Insurance Corporation (SDIC) since 2011. This was after the Deposit Insurance and Policy Owner's Protection Schemes Act 2011 was enacted as a new regulation that guarantees banking customers and insurance customers. (MAS, 2010)

2. Police Insurers in Australia

There are 3 (Three) Three main bodies that regulate the insurance industry are 1. Australian Prudential Regulation Authority (APRA): APRA is an independent statutory body that oversees: authorised deposit taking institutions (e.g. banks, building societies and credit unions); general insurance companies; life insurance companies;

3. Australian Securities and Investments Commission (ASIC): ASIC is a statutory body with the authority to register and license financial services providers;

4. Australian Competition and Consumer Commission (ACCC): The ACCC promotes competition and fair trade in the marketplace for the benefit of consumers, businesses and the community. The ACCC is empowered to ensure that individuals and businesses comply with Australia's competition, fair trading and consumer protection laws. The ACCC was established under the Competition and Consumer Act 2010 (Cth) and is given broad statutory powers to carry out its functions. Other bodies include the Australian Financial Complaints Authority (AFCA) which deals with complaints from insured parties about insurers and/or their insurance products. AFCA uses non-adversarial methods to try to resolve disputes and/or make recommendations. In addition, there are additional regulatory bodies for specific industries and types of insurance – for example, workers compensation is regulated by the state-based WorkCover body.

5. Police Guarantee Institutions in Japan

The insurance policyholder guarantor scheme is operated by the Insurance Policyholders Protection Corporation Of Japan (IPPC) which was established in 1996 and is only for life insurance. Then it also handles non-life insurance after the amendment of the Insurance Business Law which was enacted in June 2000.

CONCLUSION

Legal protection for insurance policyholders is very minimal even though customers have fulfilled their obligations. When an insurance company defaults, policyholders do not receive their rights as they should from the defaulting insurance company (insolvency), their business licenses are revoked or they are liquidated and go bankrupt (bankrupt). In accordance with the Insurance Law, the Financial Services Authority only protects insurance policyholders through mitigation and litigation (courts) requires a relatively long time to complete and is difficult to execute. And the legal certainty of the Policy Guarantee Program (Institution) to protect policyholders is still pending because it is still being formed and will be completed in 2028. The legal certainty should have been in a Law no later than October 2017 in accordance with the mandate of Article 53 (2) of the Insurance Law. The Policy

Guarantee Institution is a solution to provide legal certainty in guaranteeing comprehensive protection for policy holders, both preventive and repressive.

SUGGESTION

Based on the conclusions above, several suggestions can be made as follows:

- 1) To guarantee legal protection for insurance policy holders, the Government and the House of Representatives must immediately realize legal certainty in the form of a Law on Policy Guarantee Institutions.
- 2) The Policy Guarantee Institution is an independent institution that comprehensively regulates preventive legal protection and repressive legal protection of the rights of insurance policy holders.

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