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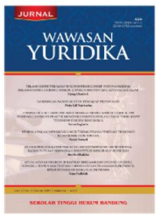

The Significance of Policy Guarantee Institution in Providing Legal Certainty for Insurance Policyholders

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Abstract

This study examined the factors that contributed to the non-establishment of the Policy Guarantee Agency. As stipulated in Article 53, paragraph (4) of Law Number 40 of 2014 concerning Insurance, the formation of the Policy Guarantee Agency was mandated within three years of the enactment of this law. The establishment of this agency held significant importance in furnishing legal safeguards for policyholders. Employing a descriptive research design encompassing normative juridical analysis through statutory and conceptual frameworks, this study regarded secondary data acquired through documentation studies for data collection. The ensuing qualitative analysis of the data revealed that the establishment of the Policy Guarantee Agency necessitated a comprehensive investigation, encompassing considerations such as funding, human resources, and the agency's structural integration, whether as an autonomous entity or as part of an existing Deposit Insurance Corporation. Consequently, achieving consensus among legislative bodies was imperative to advance the establishment of the agency.

A. INTRODUCTION

Insurance is a business entity primarily engaged in risk management. Over the past decade, its presence has grown significantly within society. This phenomenon prompts us to consider whether this reflects a heightened awareness within the insured community or if the prominence of insurance institutions can be attributed to the extensive promotional efforts undertaken by insurance companies to market their products. In this age of rapid technological advancements, insurance product marketing has expanded to include telemarketing, a method that unfortunately opens the door to potential misuse of

circumstances (*misbruik omstadigheden*) which could ultimately harm consumers.[1]

Exploring this further, it becomes evident that this topic could serve as an independent research area. However, the focus of this article is solely directed towards analyzing the legal dynamics existing between individuals utilizing insurance services, referred to as the insured or policyholders, and the insurer, recognized as the insurance company. The emergence of this legal relationship gives rise to a framework of rights and obligations between these parties. Central to this inquiry is whether both parties will genuinely uphold their agreed-upon commitments, as stipulated in their contractual arrangement. To address this concern, it is prudent to initially grasp the essence of legal relationships. Sudikno Mertokusumo's insights into the regulation of legal relationships, which manifest in diverse forms, offer a valuable perspective. This regulation might involve defining conditions leading to the establishment of a legal event or outlining obligations that individuals must honor when engaging in social interactions.[2] In this context, it becomes crucial to assess whether the party assuming the role of the guarantor, and consequently assuming the transferred risks, possesses a clear comprehension of the expected conduct within this legal relationship. This, in turn, necessitates a prior understanding of the risks deemed insurable.

From a normative perspective, Law Number 40 of 2014 concerning Insurance (UUP/UU No. 40/2014) stipulates that the scope of insurable objects encompasses life, physical well-being, and all quantifiable interests.[3] To delve into the wide array of potential insurance subjects vulnerable to risk, it becomes paramount to grasp the essence of risk itself. In the realm of legal scholarship, diverse interpretations of risk have been elucidated.[4] A. Junaidi Ganie asserts that risk emerges from unanticipated events causing deviations beyond planned outcomes. This interpretation aligns with Agus Prawoto's perspective, as cited by Sentosa Sembiring, viewing risk as

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1 Utiyafina Mardhati Hazhin dan Heru Saputra Lumban Gaol, "Penyalahgunaan Keadaan (Misbruik van Omstadigheden) Dalam Perjanjian Asuransi Melalui Telemarketing," *Kertha Patrika* 41, No. 2 (30 Agustus 2019): hlm. 101.

2 Sudikno Mertokusumo, *Mengenal Hukum (Suatu Pengantar)*, 2 ed. (Yogyakarta: Liberty, 1988), hlm. 43.

3 Indonesia, "Lebih lanjut tentang hal ini dijabarakan dalam Pasal 1 angka 25 UU No. 40/2014) dan Pasal 268 Kitab Undang-Undang Hukum Dagang (KUHD)."

4 A. Junaidi Ganie, *Hukum Asuransi Indonesia* (Jakarta: Sinar Grafika, 2011), hlm. 40.

unforeseeable losses that can befall anyone (entailing financial uncertainty). [5] Wahyu Rofikah and Dina Fitrisia Septiarini present a more simplified outlook, defining risk as the realm of uncertainty that has the potential to yield losses.[6]

The perspectives articulated by the aforementioned experts collectively underscore the concept that risk entails an inherent state of uncertainty for individuals. This uncertainty signifies the potential reduction or forfeiture of economic value due to the unfolding of events resulting in losses, which consequently must be shouldered by those affected by these events. As an illustrative instance, the passing of a family's breadwinner can trigger repercussions for the surviving members. In light of this, given the indiscriminate nature of such events, a logical course of action involves the professional management of these risks. Enterprises specializing in the proficient handling of risk, conducting their operations in a business-like manner, are commonly referred to as insurance companies or underwriters.

Risk management requires the fulfillment of several conditions, including insured party's commitment to remit a fee, commonly referred to as a premium, to the insurance provider. The exact nature of this premium, as expounded in the UUP, denotes a sum set by the insurance company, upon which the policyholder agrees to facilitate payment in adherence to the terms of the insurance arrangement. [7] The precise magnitude of these costs to be borne hinges upon the specific insured entity. It is vital for the insured party to recognize that once approval is granted, a legal bond takes shape between the insurer and the insured, encapsulated within an accord recognized as the insurance policy.[8] This legal relationship establishes the framework. In cases where an adverse incident befalls the insured, the insurer is contractually obligated to furnish a designated sum of funds, aligning with the stipulations outlined within the insurance policy.

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5 Sentosa Sembiring, *Hukum Asuransi* (Bandung: Nuansa Aulia, 2014), hlm. 1.

6 Wahyu Rofikah dan Dina Fitrisia Septiarini, "Implementasi Manajemen Risiko Underwriting Pada PT Asuransi Jasindo Syariah," *Jurnal Ekonomi Syariah Teori Dan Terapan* 7, No. 5 (3 Juli 2020): 901-910, https://doi.org/10.20473/vol7iss20205pp901-910, hlm. 906.

7 Indonesia, "Lebih lanjut rumusan secara lengkap tentang apa itu premi lihat Pasal 1 angka 29 UU No 40/2014."

8 "Lebih detail tentang apa itu polis asruansi, dijabarkan dalam Pasal 1 angka 6 Peraturan Otoritas Jasa Keuangan Nomor 23/POJK.05/2015 Tentang Produk Asuransi Dan Pemasaran Produk Asuransi. "

Based on the provided content, it can be deduced that insurance, in its conceptual framework, offers a sense of reassurance to policyholders by mitigating the uncertainties they face. Nonetheless, the actual implementation sometimes falls short of these expectations. The concern arises as to whether policyholders receive adequate legal protection in instances where insurance companies fail to fulfill their commitments. In normative terms, the UUP explicitly outlines the establishment of a Policy Guarantee Institution to safeguard the interests of policyholders. Regrettably, this institution remains unrealized as of now. Consequently, the position of policyholders appears relatively fragile, lacking a legal assurance of receiving payments in accordance with the agreements made.

Media reports have highlighted instances over the past decade where several insurance companies have reneged on their obligations. For instance, Bakrie Life's failure to honor claims submitted by customers in 2008 resulted in prolonged unresolved issues. Similarly, the AJB Bumiputera case has persisted without resolution, exemplifying defaults on customer payments. Another poignant case is that of Jiwasraya Insurance, reaching its apex in November 2018 when the company announced its inability to pay claims totaling IDR 802 billion to JS Savings Plan customers.[9] Reflecting on these incidents, one can surmise that these predicaments ideally should not have arisen, or at the very least, early intervention could have been instrumental in prevention. Such intervention might have been facilitated by an institution dedicated to safeguarding policyholders' interests. The conceptualization of an Insurance Policy Underwriting Agency could potentially serve as a guiding force in overseeing activities within the insurance industry. It is the collective aspiration of various stakeholders that the legal mandate for establishing a Policy Guarantee Agency is expeditiously executed. By doing so, the upholding of public trust in insurance institutions can be sustained, reinforcing the credibility of insurance institutes as a whole.

The adherence to agreed-upon terms holds significance in this context. This is of significance because, from the perspective

[9] Donald Banjarnahor, "Bank Dunia Sebut Bumiputera & Jiwasraya Bahaya, Apa Kata OJK?," CNBC Indonesia, https://www.cnbcindonesia.com/news/20190910182018-4-98446/bank-dunia-sebut-bumiputera-jiwasraya-bahaya-apa-kata-ojk, diakses 22 Januari 2023.

of legal institutions, the concept of insurance inherently involves an agreement. This perspective aligns with the insurance definition outlined in UUP: Insurance constitutes an agreement between an insurance company (insurer) and a policyholder.[10] This agreement serves as the legal foundation for insurance companies to collect premiums. Additionally, funds are accumulated from the insured as a consideration for risk management services provided by the insurance company. The collected premiums serve as the criteria for two key aspects: firstly, for disbursing compensation to policyholders in the event of a loss-inciting incident; and secondly, for facilitating payments following the demise of the insured individual.

With reference to the aforementioned definition of insurance, the legal perspective strengthens the notion that insurance fundamentally constitutes an agreement. Consequently, the obligations mutually accepted by both parties demand adherence.[11] Drawing from principles inherent in contract law, the act of signing an insurance agreement effectively binds the insurer and the insured to their respective responsibilities.[12] Nonetheless, situations where the insurer fails to uphold the agreement are not uncommon. In such cases, how should the insured respond? The conventional recourse often involves taking legal action, which is resource-intensive in terms of both finances and time. Recognizing this reality, it appears that the creators of the UUP (presumably the relevant regulatory body) drew insights from business practices within the banking sector, particularly in safeguarding customers when defaults occur. To address this concern, the UUP explicitly includes a provision that mandates insurance companies licensed for risk management to partake in the Policy Guarantee Program (LPP).

Based on the aforementioned explanation, the examination and analysis of the significance of the Policy Guarantee Program (LPP) become crucial in ensuring legal certainty for policyholders when faced with instances where the insurer (insurance company) fails to fulfill claims made by the

[10] Indonesia, "Pasal 1 angka 1 UU No. 40/2014."
[11] Indonesia, "Pasal 1320 dan Pasal 1338 ayat (1) KUHPdt."
[12] Indonesia, "Dalam Pasal 1 Angka 22 UU No 40/2014 dibedakan antara Tertanggung dengan Pemegang Polis. ."

policyholder. The weight of LPP's presence within the insurance industry's framework is also underscored by various research endeavors carried out by diverse groups. Notably, Nur Aisyah Savitri emphasized the indispensability of legal safeguards for life insurance policyholders. For policyholders, the insurance policy serves as the sole tangible evidence attesting to the existence of a written insurance agreement established between the insured individual and the insurance company. In the context of life insurance, the agreement's content serves as an indicator of a binding commitment achieved through an insurance agreement, corroborated by the policy document.[13]The insurance agreement effectuates the transfer of risk from the insured party to the insurer or insurance company. The perspective advanced by this researcher unequivocally underscores the paramount importance of extending legal protection to policyholders. However, it should be noted that the research in question does not explicitly detail the entities or institutions responsible for providing legal certainty to policyholders.

A comprehensive elucidation of the legal safeguards for policyholders, particularly within the context of PT. Jiwasraya, is approached proactively through the formulation of regulations concerning the Policy Guarantee Agency. Additionally, a reactive approach is employed, encompassing both criminal and civil law enforcement. Drawing a comparative perspective from the insurance framework in Singapore, it becomes apparent that the government in that nation extends explicit guarantees of protection and legal assurance to policyholders. Considering the accrued advantages from such practices, the pressing need to promptly establish a Policy Guarantee Agency in Indonesia is underscored.[14] The salient focal point of this study resides in the realization that legal protection for policyholders is realized through preemptive strategies, which entail the establishment of regulations concerning the Policy Guarantee Agency. These regulations encompass guidelines for the institution's creation and could also encompass regulations issued by the Policy

[13] Nur Aisyah Savitri, "Perlindungan Tertanggung Pada Asuransi Jiwa Berdasarkan Undang-Undang Nomor 40 Tahun 2014 tentang Perasuransian," *Jurnal Hukum Magnum Opus* 2, No. 2 (2019): 162-173, http:// https://doi.org/10.30996/jhmo.v2i2.2502, hlm. 170.

[14] Rahmi Zubaidah *et al*., "Perlindungan Hukum Pemegang Polis Asuransi Jiwa Di Indonesia (Studi Kasus PT. Asuransi Jiwasraya," *Jurnal Hukum dan Etika Kesehatan 2*, No. 1 (2022): 84-94, https://doi.org/10.30649/jhek.v2i1.48, hlm. 84.

Guarantee Agency itself. Moreover, an additional layer of protection is implemented through reactive measures, encompassing both the criminal and civil dimensions of law enforcement.

Several other researchers, including Wetmen Sinaga, share the perspective on the significance of establishing a Policy Guarantee Agency. The concept of the Policy Guarantee Agency has been formally outlined within the framework of the International Association of Insurance Supervisors (IAIS), an organization responsible for setting global standards in the insurance industry. The IAIS assumes the crucial role of formulating principles, standards, and supplementary guidelines for overseeing the insurance sector. Its directive underscores the necessity for each member country to institute a dedicated Policy Guarantee Agency.[15]

The statements made by the aforementioned researchers underscore the significant role of a Policy Guarantee Agency within the insurance industry. This institution's significance extends beyond merely safeguarding policyholders; it also serves to bolster the credibility and reliability of the insurance sector in the eyes of the public. In light of findings from prior research, there arises a clear need to enhance the position of policyholders, and one effective avenue for achieving this is through the establishment of a robust Policy Guarantee Agency. Consequently, the primary objective of this study is to conduct an analysis of the vital importance associated with the presence of a Policy Guarantee Agency.

B. RESEARCH METHODS

The research descriptive research was performed using the normative juridical approach involving both the statutory approach and conceptual approach. The research primarily examined numerous laws, regulations, and other legal sources pertinent to the insurance industry. Approaches that took into account the insights from experts in insurance and individuals engaged in insurance business activities, who are anticipating the establishment of the Policy Guarantee Agency were also used. The viewpoints provided by these experts and practitioners are substantiated by a range of general

[15] Wetmen Sinaga, "Tinjauan Yuridis Terhadap Hak Dan KepentinganPemegang Polis Asuransi," *Jurnal Hukum To-Ra : Hukum Untuk Mengatur Dan Melindungi Masyarakat* 8, No. 3 (23 Desember 2022): 341-356, https://doi.org/10.55809/tora.v8i3.161, hlm. 345.

perspectives sourced from media outlets, encompassing electronic and print media. The inclusion of expert doctrines or opinions serves to elucidate the definitions, concepts, and legal principles that serve as the analytical foundation for this research endeavor. To gather the necessary data, the research employs a data collection technique that relies on the scrutiny of library materials or secondary data, drawn from documentation studies. Subsequent to the data compilation phase, a qualitative analysis is conducted.

C. RESULTS AND DISCUSSIONS

The inevitability of encountering risks in the course of daily activities is an undeniable reality. These risks are often unforeseeable, and they may manifest in various forms, such as property loss due to theft or unexpected fires. In the event of such occurrences, strategies are required to effectively manage these risks. Business law literature provides several approaches to mitigate the potential impact of these risks. One prevalent approach involves transferring the risk to an insurance company, a designated entity authorized for this purpose.

In the legal context, the Insurance Law distinguishes between companies dealing with general insurance and those offering life insurance. This distinction is grounded in the distinct characteristics of each insurance type. Consequently, the management of an insurance company is expected to possess expertise in risk management. To ascertain the qualifications of potential directors and commissioners, the Financial Services Authority (OJK) has been entrusted with the responsibility of overseeing and regulating the activities of the insurance industry, including the administration of fit and proper tests. This regulatory framework is elaborated in OJK Regulation Number 4/POJK.05/2013. Article 2 of this regulation stipulates that the fit and proper test is conducted by the Financial Services Authority. The scope of this assessment extends to all relevant parties, encompassing those individuals entrusted with managerial and supervisory roles, as well as those who exert significant influence over entities such as insurance companies, pension funds, finance companies, and guarantee companies.

The stringent nature of the requirements within the insurance industry is comprehensible, as insurance companies that diligently adhere to the stipulated prerequisites can anticipate smooth operations devoid of hindrances. By

conforming to regulations, an insurance company fortifies its legal standing and safeguards its status as an active participant in the insurance sector. Simultaneously, individuals availing insurance services can be assured that their premium payments are secure. Research indicates that robust insurance companies extend legal protection to their clientele. Given the direct engagement of insurance business activities with the general public through the collection of premiums, obtaining a permit from the Financial Services Authority (OJK) is mandatory. This requirement stems from the necessity to ensure the integrity of the insurance process. Entrepreneurs intending to establish an insurance company must therefore initiate their endeavor by contemplating the appropriate business entity structure. Subsequently, the completion of requisite documentation necessary for the commencement of insurance operations becomes imperative.

One crucial aspect in the management of risks entrusted to insurance companies by customers is the adherence to proper corporate governance. In this context, the remarks of an insurance institution observer, Farid, are noteworthy. He points out that insurance institutions undertake a form of deposit-taking through the collection of premiums. The funds gathered are then managed to fulfill commitments to policyholders. Hence, a cautious approach is necessary to achieve favorable outcomes. It is evident that proficient management is essential in the insurance business to ensure that the managed funds are not only advantageous for policyholders but also for the institution itself. This significance is amplified by the fact that insurance companies are authorized by the Financial Services Authority (OJK) to indirectly amass funds through premium collections, which can subsequently serve as a resource-raising avenue for the government.

Recognizing the substantial risks encountered by actors in the insurance industry, the OJK has introduced various regulations, including those concerning risk management, as delineated in Financial Services Authority Regulation Number 1/POJK.05/2015. The necessity of managing risks in accordance with good corporate governance principles is underscored, as the failure to do so may heighten the likelihood of unfavorable events leading to losses for insurance companies. In compliance with POJK No. 1/POJK.05/2015, risk management must be executed,

encompassing active supervisory roles by directors and the board of commissioners, assurance of sufficient implementation of standards, procedures, and risk limits, transparency in the process of identifying, measuring, and monitoring faced risks, availability of risk management information systems within each operational unit, and systematic clarity in the operation of the internal control system as a whole. Adhering to these directives enhances the capacity of insurance entities to manage potential risks and contributes to their financial stability and overall sustainability.

To establish a systematic framework for the execution of corporate governance, the OJK introduced POJK Number 73/POJK.05/2016. This regulation explicitly mandates insurance companies to uphold good corporate governance across all operational facets. The aims to be realized through the implementation of good corporate governance are elucidated in Article 3 of POJK No. 3/POJK.05/2016, with the intention of:

1. Optimizing the value of the insurance company for all stakeholders, specifically policyholders, insured parties, participants, and/or those entitled to benefits.
2. Enhancing the well-organized, professional, effective, and efficient management of the insurance company;
3. Improving the compliance of the company's divisions, the Shariah supervisory board, and its hierarchies to ensure that decisions and actions are based on high ethics, compliance with regulations, and awareness of the company's social responsibility to stakeholders and environmental preservation;
4. Establishing a healthier, trustworthy, reliable, and competitively capable insurance company; and
5. Increasing the insurance company's contribution to the national economy.

It is imperative to implement effective corporate governance practices, which are normatively regulated. This concern holds particular relevance for insurance managers, as insurance companies inherently aim to generate reasonable profits. Therefore, in pursuit of optimal business outcomes, insurance managers must formulate a comprehensive business plan. This plan draws guidance from the stipulations outlined by regulatory bodies within the insurance sector. Notably, POJK Number 24/POJK.05/2019 mandates insurance companies to devise business

plans. The significance of crafting such plans lies in their capacity to serve as documented blueprints, not only for internal company use but also for regulatory authorities. These plans facilitate the assessment and articulation of the insurance company's developmental trajectory and operational strategies over a defined time span. Furthermore, these documents function as strategic tools for attaining predetermined goals within specified timelines, a concept expounded upon in Article 1, sections 1 and 2 of POJK Number 24/POJK.05/2019.

Hence, the pursuit of established business objectives necessitates unwavering adherence to the principles of sound corporate governance. Consequently, when promoting insurance service products, an unequivocal focus must be placed solely on relaying information pertaining to these insurance offerings. Furthermore, the communicated information must exhibit utmost transparency, devoid of any concealment, thereby empowering potential policyholders with a comprehensive understanding of their entitlements and responsibilities in purchasing insurance products.

Given the extensive proliferation of insurance products, insurance companies need to operate in alignment with the tenets of robust corporate governance and ethical business practices, executed with transparency and equity. This mode of management aspires to ensure the consistent and punctual discharge of commitments by insurance companies. Consequently, the rationale behind the perpetual emphasis on maintaining a level of financial viability for insurance companies becomes evident. Mandated by pertinent laws and regulations, these measures stipulate that insurance companies must consistently uphold a predefined solvency threshold, ensuring their financial stability and resilience at all junctures.

As an institution officially sanctioned by public authorities, insurance necessitates meticulous organizational structuring. Conversely, individuals availing insurance services warrant safeguarding. To ensure the rightful protection of policyholders, insurers must extend assurances. Legally, a company's ability to sustain business operations seamlessly is paramount. Equally vital, however, is the acknowledgment that the effective transfer

of risk to insurance companies thrives when underpinned by public endorsement from insurance service users.[16]

Upholding public confidence hinges on the insurance company's adherence to the commitments delineated within the policy. This stance inherently embodies a reverence for human dignity, signifying the esteem for others along with their associated rights. Nevertheless, an even weightier facet underscores the insurance domain - the imperative to institute a guarantee fund. This mandate finds its regulatory footing within the UUP (Insurance Law), a sentiment articulated by Agoes Parera. Complementing the intrinsic nature of insurance operations, where obligations are contingent upon uncertainty, the establishment of a guarantee fund assumes paramount significance. The ultimate aim of this fund is to preemptively equip the company with the means to honor its responsibilities towards policyholders within unforeseen circumstances.[17]

The UUP has implemented a regulation mandating the establishment of a guarantee fund, aimed at proactively safeguarding policyholders' interests. As commonly understood, failing to fulfill this obligation constitutes a breach of commitment. For policyholders who do not receive their entitled rights, legal recourse is available, involving judicial proceedings. Nevertheless, pursuing resolution through the court system is time-consuming and financially demanding. Moreover, adopting this litigation approach could potentially erode public trust in insurance companies, institutions designed to mitigate community risks. This underscores the necessity for legal certainty. When purchasing an insurance policy, individuals should have a legally backed assurance that the insurance company will hold and allocate funds as agreed upon. This ensures that policyholders can rightfully assert their claims within an agreed-upon timeframe.

The occurrence of default can stem from various reasons, such as mismanagement that leads to an insurance company's bankruptcy. If such a situation arises, it raises questions about the welfare of policyholders. Is there an institution that ensures the protection of policies held by the community?

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[16] Badan Pembinaan Hukum Nasional, "Laporan Akhir Pengkajian Hukum Tentang Aspek Hukum Pemailitan Perusahaan Asuransi Di Indonesia" (Jakarta: Departemen Hukum dan Hak Asasi Manusia RI, 2005).

[17] Agoes Parera, *Hukum Asuransi di Indonesia* (Yogyakarta: Kanisius, 2019), hlm. 67.

Considering the origins of the Deposit Insurance Agency (LPS), it is crucial to emphasize the significance of the Policy Guarantee Agency's existence. This agency not only serves as a protective entity but also as an investment conduit, playing a pivotal role in bolstering public confidence in insurance establishments. This importance is underscored by the fact that when the community has trust in insurance institutions, they are more inclined to entrust the management of their risks to these companies voluntarily.

To maintain public trust in insurance institutions as both risk management entities and protectors, it is justifiable to assert that the immediate establishment of a Policy Guarantee Agency (LPP) is imperative. This step is essential in assuring potential policy buyers of a secure transaction environment. The rationale behind this proposition is grounded in the recurrent concern that surfaces when individuals contemplate purchasing insurance policies: What happens if an insurer defaults? This apprehension stems from the awareness that insurance companies might encounter challenges in fulfilling their obligations in a timely manner. Given this context, a dedicated institution that safeguards the interests of policyholders is deemed necessary. The current quandary revolves around the existence of the Policy Guarantee Agency as mandated by the UUP (Insurance Law). Empirical evidence reveals two conspicuous cases following the enactment of Law no. 40/2014—those of Bumi Putra Life Insurance (AJBP) and Jiwasraya Insurance—both grappling with payment failures, leaving policyholders uncertain about the resolution of their claims. The presence of the Policy Guarantee Agency, as envisioned within the UUP, assumes paramount importance. This agency, should it materialize, will ensure policyholders' entitlements even in the event of business license revocation. Equally significant, its establishment would foster greater confidence among potential policy buyers, reinforcing their trust in insurance institutions as reliable providers of risk proctection.[18]

If this is indeed the case, the delay in the establishment of the LPP can be attributed to the intricate nature of the task at hand. Setting up an LPP involves a comprehensive examination of various facets. Renova

[18] Indonesia, "Lihat Penjelasan Pasal 53 ayat 1 UU No 40/2014."

Siregar has highlighted that several challenges have hindered the formation process, encompassing factors like capital availability, operational expenses of insurance companies, divergent types and lines of insurance business, and the intricate technical mechanisms of guarantee schemes.[19] Additionally, it's noteworthy that the creation of an LPP necessitates legal enactment, underscoring the requisite political determination from lawmakers. Amidst these considerations, the insurance industry is eagerly anticipating the expeditious realization of the LPP. Various professional associations within the insurance sector have emphasized its urgent necessity in ensuring policyholders' interests. Moreover, it's vital to recognize that the establishment of the LPP holds significance not only for the well-being of policyholders but also for the sustainability of the entire insurance industry.[20]

Whether the LPP operates as an independent entity or becomes integrated with the existing Deposit Insurance Corporation (LPS) within the banking sector, the specific configuration doesn't seem to be a significant concern. What holds more weight is recognizing that the establishment of the LPP will significantly bolster policyholders' confidence in insurance institutions. The series of instances in the insurance sector involving defaults should be regarded as valuable lessons, underscoring the vital role of insurance institutions in safeguarding individuals who are legally susceptible to potential losses. Numerous voices, including that of Nida Sahara, have echoed this sentiment, particularly in the wake of default claims such as those seen in the case of PT (Persero) Asuransi Jiwasraya. Similarly, the case involving Bumiputera 1912 Life Insurance serves as a compelling lesson, further highlighting the urgency of promptly realizing the LPP's establishment. Such action is deemed crucial to preempt the recurrence of analogous scenarios. The avoidance of such reoccurrence is pivotal for the well-being of policyholders, as its repetition would ultimately disadvantage them.[21] Therefore, it becomes imperative for

[19] Renova Siregar, "Urgensi Pembentukan Lembaga Penjamin Polis (LPP) Dalam Melindungi Dan Menjamin Dana Nasabah Yang Dikelola Perusahaan Asuransi" (Universitas Gadjah Mada, 2021), http://etd.repository.ugm.ac.id/penelitian/detail/198930, diakses 12 Mei 2021.

[20] Elisa Valenta Sari, "Cegah Gagal Bayar Premi, Lembaga Polis Asuransi Diperlukan," ekonomi, https://www.cnnindonesia.com/ekonomi/20170216162652-78-194022/cegah-gagal-bayar-premi-lembaga-polis-asuransi-diperlukan, diakses 22 Januari 2023.

[21] Nida Sahara, "Lembaga Penjamin Polis Urgen Dibentuk Tahun Ini," https://investor.id/finance/202511/lembaga-penjamin-polis-urgen-dibentuk-tahun-ini, diakses 10 Juni 2020.

the government to intervene through the formulation of policies articulated in the form of laws and regulations to cater not only to the interests of insurance policyholders but also to the broader insurance industry stakeholders.

Preventing the persistence of default cases within the insurance sector holds immense significance. While insurance is actively promoted as both a protective entity and an avenue for investment, the occurrence of repeated defaults could erode the public's faith in these institutions. It's imperative for all stakeholders to glean insights from instances of default, as is evident in the Bakri Life case. As Nidia Zuraya has pointed out, a review of the performance of the domestic insurance industry indicates that the issue of default is not a novel occurrence. Notably, the default incident involving Bakrie Life remains unresolved to this day.[22]

The prolonged process of establishing LPP might be attributed to the complexity of its formation, a facet that is not as straightforward as it may initially appear. This intricacy is closely tied to the indistinct model of the forthcoming LPP. As noted by Wan Ulfa Nur Zuhra, from a legal perspective, the UUP has indeed decreed the establishment of LPP. However, this legislative provision lacks elucidation regarding the specific nature of the institution that will be established to extend assurances to policyholders and insurance beneficiaries. It appears that this uncertainty is the crux of the issue – the precise scope of policy guarantees that LPP anticipates from the lawmakers to enact remains undefined. Consequently, all stakeholders are presently in a state of anticipation for the enactment of the legislation concerning policy guarantees.[23]

Considering the diverse perspectives on the significance of LPP, it is valuable to delve into the rationale behind its inclusion within the UUP. Upon closer examination, the backdrop for integrating LPP provisions into the UUP becomes apparent, as elucidated by Chairul Umam. The integration of policyholder assurance stipulations into the law serves as a proactive measure to instill confidence and tranquility among insurance clients. This

[22] Nidia Zuraya, "Gagal Bayar Asuransi, Berkacalah pada Kasus Bakrie Life," Republika Online, 21 November 2019, https://republika.co.id/share/q18q2e318, diakses 8 Desember 2021.

[23] Wan Ulfa Nur Zuhra, "Setelah Tikar Perusahaan Asuransi Digulung," tirto.id, https://tirto.id/setelah-tikar-perusahaan-asuransi-digulung-boej. diakses 22 Januari 2023.

framework ensures that in the event of failure to fulfill insurance benefits due to circumstances such as insolvency or liquidation of the insurance firm, a safeguarding institution exists to uphold customer rights. The method of delegating the oversight of the policy guarantee initiative through legislation takes root in two fundamental approaches. First, by integrating policy guarantee elements into the preexisting structures of the LPS through amendments to its governing statutes. The second approach involves the establishment of the LPP as an independent entity through the enactment of distinct legislation.[24]

Drawing from the aforementioned viewpoints, the rationale behind the imperative regulation of LPP becomes evident – primarily to offer policyholders a sense of ease and legal assurance. This reassurance stems from the understanding that the funds entrusted to insurers are safeguarded, ensuring that the coverage for insured risks will be upheld by the insurance in line with the terms outlined in the policy. Consequently, should any legal predicament arise within the insurance company, the presence of an entity dedicated to advocating for the rights of policyholders is deemed indispensable.

As articulated by Farid, a perceptive observer of the insurance industry, the realm of business, including insurance, is not exempt from the potential occurrence of bankruptcy. This susceptibility poses a direct risk to insurance companies' capacity to fulfill their obligations to policyholders. Consequently, this predicament has engendered the notion of establishing an authorized institution to guarantee the entitlements of insurance policyholders in situations where the insurer is incapable of meeting its obligations. Internationally, analogous institutions are recognized under names like Policy Guarantee Agencies or Policyholder Protection Funds.[25]

As previously mentioned within this paper, the process of establishing an LPP, as mandated by the UUP, is evidently complex. The term itself, "LPP," signifies the challenges involved in creating a new institution. As highlighted by insurance observer Fery W., effectively managing

[24] Chairul Umam, "Melihat Hal Krusial Dalam Wajah Baru Undang-Undang Perasuransian," *Jurnal RechtsVinding*, 2014,https://rechtsvinding.bphn.go.id/jurnal_online/MELIHAT%20HAL%20KRUSIAL%20DALAM%20WAJAH%20BARU%20UNDANG-UNDANG%20PERASURANSIAN.pdf, diakses, 8 Mei 2020.

[25] Farid. "Menakar Urgensi Lembaga Penjamin Polis di Indonesia." Industry.co.id, 13 Agustus 2018. https://www.industry.co.id/read/40164/menakar-urgensi-lembaga-penjamin-polis-di-indonesia, diakses 6 Juni 2020.

such an institution demands not only substantial financial resources but also a capable workforce. Contrary to popular assumption, the endeavor of forming an LPP is considerably more intricate than commonly perceived. To establish this institution, a significant financial investment is essential, alongside the need for skilled human resources capable of effectively managing a guarantee institution to ensure its successful operation. A pragmatic approach that circumvents the need for extensive funds and enables swift implementation is to incorporate the LPP within the existing framework of the LPS. By adopting this approach, the LPS would encompass two primary departments: one dedicated to safeguarding bank customer deposits and the other focused on underwriting insurance policies.[26]

Since the enactment of Law No. 40/2014, a glimmer of hope has emerged, not only within the insurance industry but also among the general public who voluntarily seek protection through insurance programs. This emergence of hope is grounded in the explicit mention of the LPP within Law No. 40/2014. Before the establishment of the LPP, policyholders found themselves in a relatively vulnerable position, and the reason for this vulnerability is clear. Their position was akin to that of other creditors. As affirmed by insurance expert Irvan Rahardjo, a closer examination of Law No. 40/2014 reveals a normative framework that furnishes customers with various layers of protection in the event of insurance companies failing to uphold customer rights.

The initial layer stipulates that companies must adjust the guarantee fund in tandem with the progression of their business. Importantly, these funds are not to be encumbered or leveraged as collateral for any rights. Their utilization necessitates approval from the OJK. Subsequently, the second layer entails the OJK's authority to suspend the company's board of directors and commissioners. Once this suspension occurs, the OJK designates a statutory manager to assume control of the insurance company when its capacity to meet policyholder obligations comes into question. Finally, the third layer, established in normative terms, empowers the imposition of administrative sanctions

[26] Fery W, "Lembaga Penjamin Polis Sudah Perlu Dibentuk atau LPS Saja Fungsinya Diperluas?," Kompasiana, 13 Januari 2020, https://www.kompasiana.com/fery50973/5e1c28c9097f367550280452/lembaga-penjamin-polis-sudah-perlu-dibentuk-atau-lps-saja-fungsinya-di-perluas, diakses 10 Januari 2021.

upon insurance companies unable to fulfill their commitments. These sanctions encompass written warnings, curtailments on business operations, and proscriptions against marketing insurance products. In certain scenarios, heightened capital requirements and asset freezing measures may also be imposed on these insurance entities.[27]

Drawing upon the insights of seasoned experts and experienced insurance practitioners, the establishment of legal safeguards for customers in a tiered manner aligns normatively with the ideal course of action. The focal point now shifts to the tangible realization of this protection, as the challenge lies in concretely addressing the scenario where an insurance company faces insolvency. In this predicament, the policyholder's fate becomes intertwined with that of other creditors.[28] Elucidated by Rosiani Niti Pawitri, the Bankruptcy Law's Article 52 theoretically positions policyholders or the insured as "preferred" creditors in the context of bankruptcy proceedings. This ostensibly implies that policyholders enjoy a legally elevated status compared to other creditors. However, the practical implementation demands a nuanced perspective. Even as preferred creditors, policyholders' rights are accorded precedence, but their entitlements are disbursed only subsequent to the satisfaction of separatist creditors, specifically those holding material guarantee rights. This distribution hierarchy is outlined in Article 1134, paragraph (2) of the Criminal Code.[29] A parallel standpoint resonates with Wahyuni Widiawati and Permono. Within the framework of insurance insolvency, the status of policyholders or the insured, when examined through the lens of the Criminal Code, leads to an equitable yet analogous position. Consequently, debt settlement occurs in accordance with the principle of equilibrium, wherein payment is apportioned commensurate with the magnitude of each creditor's outstanding

[27] Irvan Rahardjo, "Nasib Nasabah Pasca Izin Asuransi Dicabut," CNBC Indonesia, https://www.cnbcindonesia.com/opini/20180119150856-14-2003/nasib-nasabah-pasca-izin-asuransi-dicabut. diakses 22 Januari 2023.

[28] Indonesia, "Lihat Peraturan Otoritas Jasa Keuangan Nomor 28 /POJK.05/2015 tentang Kepailitan Asuransi,".

[29] Rosiani Niti Pawitri, "Kedudukan Dan Perlindungan Hukum Pemegang Polis Pada Perusahaan Asuransi Yang Pailit Berdasarkan Undang-Undang Nomor 40 Tahun 2014 tentang Perasuransian," *Wacana Hukum* 23, No. 1 (2017): 40-49, https://doi.org/10.33061/1.jwh.2017.23.1.2027, hlm. 46.

claims, as stipulated in Article 1132 of the Criminal Code.[30]

The exposition above underscores a glaring vulnerability in the position of policyholders, wherein the occurrence of a default casts a shadow of uncertainty over their entitlements. This portrayal accentuates the pressing need to establish a Policy Guarantee Institution, a mandate laid out by the UUP. The specific structure of the forthcoming LPP may not be the central topic of contention. What holds paramount significance presently is ensuring a secure legal framework that safeguards the rights of insurance policyholders when defaults transpire. Within the contours of this framework, UUP has rightly endowed insurance company customers with a distinct status, designating them as privileged creditors entitled to preferential treatment during debt settlement in instances of insurance company bankruptcy.

Nonetheless, in practical terms, the envisaged advantages of this privileged position may not be fully realized. Customers could still find themselves at a disadvantage, unable to retrieve their dues, either partially or in full, should the insurance company fall into bankruptcy. Thus, the urgency to institute a guarantee mechanism becomes paramount. This guarantee would not merely act as a safety net but also serve as a catalyst for public awareness regarding the indispensable role of insurance in securing their livelihoods. This awareness, fostered through the assurance of a fail-safe system, has the potential to organically cultivate a broader recognition of the value of insurance in individuals' lives.[31]

D. CONCLUSIONS

The establishment of the Policy Guarantee Agency holds significant importance in offering policyholders a sense of legal certainty. In instances where claims made by policyholders remain unpaid, the responsibility to fulfill these claims is automatically assumed by the Policy Guarantee Agency. This obligation rests upon the Agency due to the normative

[30] Wahyuni Widiawati dan Permono, "Perlindungan Hukum Terhadap Pemegang Polis Perusahaan Asuransi Yang Pailit," *Zaaken: Journal of Civil and Business Law* 1, No. 1 (19 Februari 2020): 165-181, https://doi.org/10.22437/zaaken.v1i1.8627, hlm. 180.

[31] Muhammad Ichsan dan Toto Tohir Suriaatmadja, "Perlindungan Hukum terhadap Pemegang Polis Asuransi pada Perusahaan Asuransi Pailit karena dicabut Izin oleh Otoritas Jasa Keuangan (OJK) berdasarkan Undang-Undang Nomor 40 Tahun 2014 tentang Perasuransian," *Prosiding Ilmu Hukum*, No. 0 (24 Juli 2019): 673–679, https://doi.org/10.29313/.v0i0.16305, hlm. 678.

inclusion of insurance companies as members thereof. Within the broader framework of guarantee institutions, the Policy Guarantee Agency assumes a specialized role, focusing specifically on matters concerning insurance product services provided by insurance companies. It is important to note that the actual formation of the Policy Guarantee Agency is pending, contingent upon legal stipulations. Thus, a comprehensive analysis encompassing diverse facets, including funding, human resources, and the envisioned model of the Policy Guarantee Institution, becomes imperative.

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