

Arrangement of Investment-Based Insurance after the Enactment of Law No 40 Year 2014 on Insurance

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Abstract

This article gives an overview that investment-based insurance regulation is not specifically described in the Law No 40 of 2014 on insurance, although this law was made in the adjustments made to the development of insurance business. Insurance-based investments as expressly provided in this Act. Investment-based insurance has developed in the business world, it is with this consideration is then enacted Law No. 40 of 2014. Because it needs to review the Insurance Act. The principle of insurance should not enrich themselves but insurance is risk transfer institution, whereas investments held is to enrich themselves investors. Insurance law should clearly explain the principles of investment insurance, then the Financial Services Authority (OJK) in the birth of the Regulation will be easier if the Insurance Act has clearly and firmly, so that policyholders will gain more legal certainty.

Keywords: Insurance, Investment

1. INTRODUCTION

Insurance grows as more and more various risks (1) are encountered in various aspects of life (2). One effort to tackle these risks is insurance. Risk is uncertainty that may give birth loss (3) Therefore the need for insurance services is increasingly felt both individuals and the business world.

Insurance provided for in Article 1774 of the Civil Code (Civil Code) provides that: A covenant agreement is an act whose outcome, about its profit and loss, both to all parties and to a temporary party depends on an incident that is not necessarily. Such are insurance agreements, live cigak flowers, gambling and gambling. (4) Indonesia's legal system comes from civil law brought by the Dutch royal government to Indonesia during the colonial period. Such civil law can be traced back to French civil law to Roman law. The existence of Indonesian insurance law stems from the codification of civil law (Code Civil) and the code of commerce at the beginning of the nineteenth century during the reign of Emperor Napoleon in France. At that time, the Dutch trade law contained only articles on marine insurance until the draft of the Commercial Law Code (Wet Boek Van koophandel) of 1838 which contained regulations on fire insurance, crop insurance and life insurance. This system adopted for the Dutch East Indies is still valid in Indonesia. Insurance as a legal phenomenon in Indonesia both in the sense and in its present form is derived from Western law, the Dutch government which imported insurance as a legal form (rechtfiguur) in Indonesia by enacting Burgelijk Wetboek and Wetboek Van Koophandel with one announcement on 30 April 1847, both laws regulate insurance as a treaty. (5) The insurance agreement means that people are willing to pay a little money to pay huge losses. Muslim-majority Indonesia will question the validity of insurance, whether it is lawful or haram seen from religion. (6)

Law No. 40 of 2014 on Insurance delegates authority to OJK to expand the scope of the insurance business. In addition, the law also recognizes the existence of sharia insurance, sharia insurance is also an institution for investment, based on sharia by avoiding three things, maisir, gharar and riba, but often considered less than optimal. (7) Insurance Institution in its development not only function as a transfer of risk agency but increasing its function as an investment institution, this is very interesting because both of these institutions are two things that basically are in different realms. Scientifically between insurance and investment is a different concept. Therefore, the problem in this paper is how the arrangement of investment-based insurance in Indonesia after the enactment of Law No. 40 of 2014 on the Insurance.

1.1 Problem Formulation

This paper will discuss how the arrangement of investment-based insurance in Indonesia after the enactment of Law No. 40 of 2014 on the Insurance. This study is in juridical or study of Normative law. The data is found from Study document. The data analysis is done descriptively and qualitative.

2. DISCUSSION

ARRANGEMENT OF INVESTMENT BASED INSURANCE IN INDONESIA AFTER THE IMPLEMENTATION OF LAW NO 40 YEAR 2014 ABOUT INSURANCE

The insurance is an institution that serves as a transfer of risk from the insured to the insurer. According to the theory of risk transfer (risk transfer theory), the insured realize that there is a threat of danger to wealth and soul. If a danger falls on the soul or property, he or she will suffer loss or loss of life or physical disability to the business world in carrying out its activities in the face of various risks that may disrupt the continuity of its

business. (8) By paying a premium to the insurer, (9) The function other than the transfer of risk, the insurance shall be the payment of loss, in the event of no event that causes loss. In practice there is not always a dangerous danger. This is an opportunity for the insurer to pay the premium, (10) if at one time actually happened events that cause harm. (11) In traditional insurance this insurance is usually based on KUHD and has long been used by consumers of non-traditional insurance or so-called modern insurance is the type of unitlink insurance is very popular today, because unitlink is a type of insurance that combines life insurance with investment. (12) A striking feature of unitlink insurance (13) is the presence of an element of investment in the insurance. Therefore, there has been a change of insurance paradigm as the institution of transfer of risk to become an investment institution. Basically insurance is not an investment because insurance is a function of protection, the difference between insurance as a sacrifice that is done now to avoid unexpected risks in the future. Investment (14) is an activity of placing funds in one or more of one type of asset during a certain period in the hope of earning an income and / or increasing the value of investment Whereas investment or investment according to Article 1 number 1 of Law no. 25 Year 2007 is any form of investment activity, either by domestic investor or foreign investor to do business in the territory of the Republic of Indonesia. In general, investment or investment can be defined as an activity performed by both natural person and judicial person in an effort to increase and / or maintain its capital value, in the form of cash money, (equipment), fixed assets, intellectual property rights, or expertise. (15) Currently there are many products offered by insurance companies in Indonesia, insurance is no longer only offer life protection and education insurance only (traditional insurance) but has penetrated into investment with its Unitlink product. The advantage of this unitlink insurance product is the cash value of the investment return. In the cash value there are several things that must be understood by the prospective customer is the unit price, the number of units, the investment funds selected and the total cash value which is a form of investment profits. The growing value of cash value from month to month and from year to year can be used as a reserve in making pension plans, children's education fund and old age guarantee. Cash value is a regular cash fund received by the customer and can be taken at any time, not as difficult as traditional insurance programs in the process of making funds. (16) But in practice most insurance has been united with investment so it is not clear anymore the difference between the two because the insurance function as a risk transfer agency has shifted to the investment function.

With the development of insurance business and the development of the needs of the community both from the business actors insurance or the insured party or the community that bind themselves to the insurance agreement then emerged a new function of insurance institutions as an investment agency. After going through a crisis and scientific anomalies, then arise a new paradigm in the business of the insurance business.

Investment based on the above description contains the meaning of adding wealth for the future, very different from insurance, insurance prohibits enrichment is evidenced by the existence of special principles that must be adhered to in the insurance. Insurance as can be inferred from Article 246 KUHD is a compensation agreement. Indemnification here implies that the compensation of the insurer must be in balance with the losses actually incurred by the insured. The principle objective of indemnity or indemnity is to restore the insured's financial position to its original position just prior to the occurrence of the loss. The insured is only entitled to get a compensation that really happened, not for profit.

An investment-based insurance agreement requires certainty and clarity of legislation, the issue of certainty always associated with the law, giving the consequence that the (legal) certainty here always questions the legal relationship between citizens and the state. Though a value, legal certainty is not solely always related to the state because the essence of legal certainty is a matter of protection from the act of arbitrariness. Therefore, the actors who may perpetrate arbitrary, not limited to the state alone, but also by a group of other parties outside the country. Insurance which in normal science stage is a risk transfer agency arranged in positive law in Indonesia, shifted or as investment institute also which in concept and regulation not yet into the realm of insurance. This is what requires assurance both in regulation and in the structure of science. To provide legal protection to the public in the insurance agreement through a positive legal product governing this matter, so that legal certainty for the community will be realized.

The regulation on the rights of policyholders still refers to the general rules specifically relating to the form and content of the policy in the KUHD and the Law on Insurance. In such arrangements regulate *lex generalis* about the policy, and the stuffing but does not specify the rights of the policy holder especially related to investment. The rights of the policyholder actually must be formally regulated by law primarily to protect the policyholder from any risk or incident. (17) The legal basis of the policyholders' claim for damages to investment funds is set forth in the contract or agreement between the policyholder and the insurance company. Unclearness will have an impact on legal certainty on the rights of policyholders in insurance. (18) An investment-based insurance agreement in practice is made by a standard agreement made unilaterally by the insurer as the insurer.

Law No. 8 of 1999 on Consumer Protection (UUPK) defines a standard clause as a rule or terms and conditions that are prepared and determined first unilaterally by business actors or product dealers as outlined in

a binding and mandatory document or agreement filled with consumers. In essence, the producer or service provider has prepared a standard agreement with general terms and the consumer has only the option of agreeing or rejecting it. Besides the procedure is unilateral, there are other problems. The contents of the standard agreement contain provisions for the transfer of obligations or responsibilities of business actors. This provision usually intends to limit, or even remove, entirely the responsibility it should be charged or incurred by the producer. So there is an imbalance of bargaining position between the two parties. (19)

Life insurance companies in Indonesia today almost have Unitlink products, which offer insurance protection as well as investment benefits to the insured. Law No. 40 of 2014 on Insurance does not expressly set about this investment-based insurance. Scope of Insurance Business Article 2 of Chapter 2 states:

- (1) General insurance companies may only organize:
 - a. General insurance business, including health insurance business line and personal accident insurance line and business
 - b. Reinsurance Efforts for the risk of other general insurance companies
- (2) Life insurance companies can only organize Life Insurance Business including annuity line, health insurance business line and personal accident insurance line.
- (3) A Reinsurance Company may only run a reinsurance business.

The above article is about the scope of an insurance business, which confirms that the business of an insurance company can only organize life insurance business including annuity line, health insurance and personal accident insurance. No investment insurance words at all. Therefore, it becomes the main problem of how the Law N0 40 of 2014 regulates the issue of investment insurance, because this law is its existence and its enforcement is very new in Indonesia, the Insurance Law only delegates the expansion of the scope of insurance business to the Financial Services Authority, hereinafter abbreviated as OJK which will make the rules related to this investment investment insurance with the legal basis Article 5 paragraph 3 of the Insurance Law states that further provisions on the extension of the scope of general insurance business, life insurance business, sharia general insurance business and sharia life insurance business is regulated in OJK regulations. The OJK is authorized by the Insurance Law to regulate the scope of an insurance business, which is related to investment-based insurance to the authority of OJK.

How does OJK manage this investment-based insurance? When the Act does not strictly regulate, will legal certainty be realized by OJK regulation? Why this Act does not strictly regulate this investment insurance. In civil law all treaties shall not be contradictory to the law as the *halal causa* of the lawful terms of agreement under Article 1320 of the Civil Code. Is it enough with the rules of the Financial Services Authority? Whether the rules of OJK will provide protection to the policyholders of this investment-based insurance.

Modification of insurance products to attract more diverse society. The ultimate goal of pure insurance which is a risk management tool becomes less attractive because of the preferences of people who tend to opt for investment products with guaranteed refunds plus future returns. Meanwhile, pure insurance is considered to only provide temporary protection. In the event that the risk does not occur, the paid premium will be forfeited. Therefore insurance companies must think creatively in order to be able to package insurance into another interesting form. Then created a unilink insurance product which is a combination of insurance with investment. (20) Investments in unitlink do not result in optimal growth when compared to separate investment products because of high costs. The optimal investment in the first five years is unlikely, because in this period the return on investment is reduced by the cost of acquisition. Information on investment risks and costs that often arise is not known to consumers, this is due to the fact that the agent is not clear enough to provide important information to the insured. (21) Under the KUHD the Insurer is obliged to pay insurance claims, the insured often fails to receive the insurance claim payment when the event already happened. (22) Due to the high refusal of claims by the insurance company, making insurance services get the spotlight from the public. (23)

The application of insurance principles is not strictly enforced. The imbalance between term and condition in the insurance agreement clause tends to be burdensome to the customer, so the expectation of strengthening the customer's bargaining position and the giving of responsibility impulse to the insurer is not or very less. Although sometimes due to customer's own ignorance of the procedure for filing a claim (24) The insured or the customer is bound by the standard agreement.

The Insurance Agreement is based on a contractual agreement made by the insurance company. This is a weakness in the system of legal protection of the community, especially the policyholder in insurance, especially if the insurer bankrupt or bankrupt. In Indonesia many insurance companies are bankrupt or bankruptcy so that embezzlement of the funds of the insured or the policyholder. The action is usually done by reinsurance, but it does not guarantee the return of premiums and promises expressed by the insurance company at the closing of the agreement, as evidenced by the number of insured complainant (25) because the investment they input in the form of premium does not return.) The law must provide protection in premium payments made by policyholders as consumers of insurance companies. In a premium payment requires a rule that securely guarantees the rights of the policyholder and sides with the policyholder. Legal arrangements that will provide

protection to insurance consumers since the closing of the insurance. (27)

Unitlink life insurance is one way to invest effectively, namely the value of direct investment diukaitkan with investment performance, in addition to providing protection to the insured. How to link the value of investment with the insurance policy is to provide unit value, that the total unit is managed by the insurance company. Alternatively by linking mutual fund units, in this way direct unit value can represent the asset value of the fund and will fluctuate following the investment performance. (28)

The insurance benefits contained in unitlinks are not different from those given by traditional life insurance, death, health benefits, and other benefits in accordance with the selected program. Particularly, unitlink provides benefits Investment returns from premiums placed on investment funds are expressed in units, the performance of returns depends on the sub-unit's performance of unitlink investment selected by the customer in accordance with the stock market and money market conditions. (29)

Law No. 40 of 2014 on insurance is not explicitly regulated concerning insurance associated with investment. However, Article 5 of this Law stipulates by giving authority to OJK to expand the scope of insurance business. Article 5 explains:

1. The scope of General Insurance Business and Life Insurance Business as referred to in Article 2 paragraph 1 and paragraph 2 and Sharia General Insurance Business and Sharia Life Insurance Business as referred to in Article 3 paragraph 1 and paragraph 2 can be extended in accordance with the needs of the community.
2. The extension of scope of General Insurance Business, Life Insurance Business, Sharia General Insurance Business, and Sharia Life Insurance Business as referred to in paragraph 1 can be in the form of additional benefit based on the result of fund management.
3. Further provisions concerning the extension of the scope of General Insurance Business, Life Insurance Business, Sharia General Insurance Business and Sharia Life Insurance Business as referred to in paragraphs 1 and 2 shall be regulated in the Peraturan of the Financial Services Authority.

Article 5 point 1 of the Act allows the extension of general insurance business, life insurance or sharia insurance to expand the scope of business in accordance with the needs of the community. Insurance-based investments have grown in the insurance business, meaning whether this is a necessity, while the concept of insurance is very different from investment.

Under this Insurance Act, OJK is authorized to issue regulations relating to the expansion of this type of insurance business including investment-based insurance, as it suits the needs of the community. In the Rules of Service Authority Number 23 / POJK.5/2015 on Insurance Products and Insurance Product Marketing in Article 1 point 2 explains that Insurance Products Associated With Investment hereinafter referred to as PAYDI are insurance products that provide the least protection against the risk of death and provide a benefit that refers to the investment proceeds of a specially formed set of funds for insurance products whether expressed in units or non-unit forms.

The concept of investment-based insurance so far that only life insurance can run the investment-based insurance. In contrast to general insurance, the life insurance industry has long known investment-based insurance products known as unit link. In fact, data from the Association of Indonesian Life Insurance (AAJI) showed premiums of unit linked products grew 9%, while traditional products grew only 4.1% until December 2014. (30) However, because OJK is given the authority to give birth to the form of expansion of insurance scope based on Article 5 of the Insurance Law, OJK has issued Regulation of Financial Services Authority Number 69./PubJK.05 / 2016 About the Implementation of Insurance Company Business, Sharia Insurance Company, Reinsurance Company and Sharia Reinsurance Company. The regulation concerning the implementation of this insurance business is one of the arrangements which is the pouring of the mandate of Law number 40 year 2014 on insurance.

The above is a type of insurance product that can be marketed by general insurance. Whereas in Article 1, the two POJKs mentioned above are defined as Insurance Products Associated With Investment (PAYDI) are insurance products that provide the least protection against the risk of death and provide benefits that refer to the investment returns from a specially formed fund for insurance products in the form of units and not units.

Meanwhile, General Insurance Company may only conduct general insurance business including health insurance business line and self accident insurance business line as described in Article 2 of OJK Regulation concerning Implementation of insurance business. Likewise in Article 3 it is explained that Sharia General Insurance Business can only conduct General Insurance business, including health insurance business line based on sharia principles and self accident insurance business line

A rule that allows general insurance companies to sell investment-based insurance products is a very new thing that has never been set before. The problem arises when there is a principle in general insurance that is the principle of indemnitas. The principle of Indemnity is one of the main principles in the insurance agreement, as it is the underlying principle of the working mechanism and gives the direction of the insurance agreement itself.

The insurance agreement has a primary and specific purpose is to provide a compensation to the insured by the insurer. Understanding the loss should not cause the insured person's financial position to be more benefited from the position before suffering losses. Thus, it is limited to the initial state / initial position, meaning only return it in the starting position. (31) The Book of Commercial Law concerning the interests, regulates it in two articles, namely Article 250 and Article 268. Article 250: "Where a person has entered into an obligation for oneself, or if a person has held a coverage, the holding shall have no interest in the insured goods, the insurer shall not be obligated to provide compensation." Article 268: "a liability can be of any interest that can be judged by money, subject to danger, and not excluded by law" In essence, any such interest can be insured, whether of material importance or of a rights interest, insofar as it satisfies the requirement of Article 268 above, namely that the interest may be assessed by money, subject to danger and not excluded by law.

The principle of indemnity can be called the principle of fair compensation, in which the amount of compensation paid by the Insurer must be balanced with the real losses suffered by the insured. With this principle means the insured must not replace more than the losses suffered, because the insured is prohibited to enrich themselves through insurance. How OJK ahead regulates the problem is this indemnity principle, because this indemnity is an important principle of insurance agreement on general insurance, if OJK gives birth to a regulation that allows general insurance to carry out investment-based insurance business, it is theoretically contrary to the principle of indemnity. This is a very interesting issue because between insurance and investment in theory are two different things.

3. CLOSING

3.1. Conclusion

Insurance arrangements under the Insurance Act contain dual insurance system, where in this arrangement there are two concepts of insurance that is conventional insurance and Takaful Insurance. The authors can conclude related to this that Law No. 14 Year 2014 which regulates two insurance systems but basically the same operation without differentiating the principles and institutions of sharia, meaning two systems but operational remains the same. While no investment-based insurance is explicitly stated in the insurance law. Investment-based insurance regulations in Indonesia have not met legal certainty. The arrangement of investment-based insurance is contained in several Financial Services Authority Regulations, so far there has been no special arrangement regarding insurance related to this investment. The rules are in some POJKs so as to create obscurity in the applicable law.

3.2. Suggestions

Starting from the conclusion, the author put forward the following suggestions:

The investment-based insurance arrangements must meet the legal certainty principles so that the concept becomes clear and clear, which will provide protection to policyholders as legal ideals of the existence of investment investment insurance. Correlation between legal certainty and investment-based insurance activities is required, if there is a correlation then this program can run well.

BIBLIOGRAPHY

- (1) Neory,mike,Taylor,Graham, *from the law of insurance to the law of lootery*, Sholarly journal , 1998, ISSN 03098168.
- (2) Sunarmi, *Pemegang Polis Asuransi dan Kedudukan Hukumnya*, Jurnal Ilmu Hukum, Vol 3, No 1, ISSN 20878591, 2012
- (3). A. Abbas Salim, *Dasar-dasar Asuransi*, Raja Grafindo Persada, Jakarta, 1995, hlm 3
- (4). Man Suparman Sastrawidjaja, Endang, *Hukum Asuransi, Perlindungan Tertanggung Asuransi Deposito, Usaha Perasuransian*, Alumni, cet 5, Bandung,, 2013, hlm 38-39
- (5). www.akademiasuransi.org/http:dasar hukum asuransi Indonesia,11 Maret 2013, Jam 13.00 WIB
- (6). Maryanto, *Asuransi Dalam Hukum positif Indonesia dan Pandangan Hukum Islam*, Jurnal Hukum, Vol XIV No 1, April 2004
- (7). Isfandani, *Optimalisasi hasil Investasi Lembaga Keuangan syariah (studi Kasus pada institusi Asuransi syariah)*, masalah, Vol 2 no 1 1 maret 2011
- (8). Herman Darmawi, *Manajemen Asuransi*, Jakarta: Bumi Aksara, 2000, cet 1, hlm. 1
- (9) Abdul kadir Muhammad, *OpCit*, hlm 12
- (10). *Ibid.* hlm 13
- (11). Risiko berubah menjadi kerugian
- (12).Devi Demitra maksum, *Mengenal Lebih jauh Jenis-Jenis asuransi*, manulife financial, ddmitra@portfoliokita.com.
- (13).<http://sikapiuangmu.ojk.go.id/article/108/asuransi-jiwa-unit-link> diakses minggu tanggal 11 oktober 2015. Jam 13.00 WIB

- (14). Ketut Sendra, *Asuransi Jiwa Unit Link Dalam Konsep Dan Penerapannya*, PPM, Jakarta, 2004, hlm 9
- (15) Ana Rokhmatussa'dyah dan Suratman, *Hukum Investasi dan Pasar Modal*, Sinar Grafika, Jakarta, 2010, hlm.3.
- (16). <http://www.asuransikita.co.id/blog/apa-perbedaan-investasi-di-bank-dengan-di-perusahaan-asuransi-jiwa/> terakhir diakses pada hari kamis tanggal 1 Oktober 2015, jam 10.30 WIB
- (17). Henky K.V Paendong, *Perlindungan Pemegang polis asuransi Jiwa di kaitkan dengan nilai investasi*, Vol 1/N0 6, Oktober-Desember, edisi khusus, 2013
- (18). *Ibid.*
- (19). <http://www.hukumonline.com.perjanjian-baku>, diakses hari Jumat, tanggal 25 Maret 2016, jam 8.05 WIB
- (20). Rizmy otlani Novastria, Pegawai dorektorat Jenderal Perpajakan, dalam <http://sikapiuangmu.ojk.go.id/id/article/108/asuransi-jiwa-unitlink> minggu 11 Oktober 2015, jam 13.20. WIB
- (21). Taufik Gumulya, CEO TGRM Financial Planning services <http://sikapiuangmu.ojk.go.id/id/article/108/asuransi-jiwa-unitlink> minggu 11 Oktober 2015, jam 21.30 WIB
- (22). Kristin Sitanggang, *Perlindungan Tertanggung Dalam Hal Gagal Pembayaran Klaim*, Repository, Jurnal ilmu Hukum, Unpad, Vol 4, 2013
- (23). Budi Hermana, *Asuransi umum dan perkembangan ekonomi Indonesia secercah asa di tengah badai* 2013, bhermana.staffgunadarma.ac.id diakses Minggu tanggal 22 Maret 2016, jam 10.20 WIB
- (24) Dwi Endah Ernawati, 2009, *Penerapan Asas-Asas Asuransi Dalam Perjanjian Asuransik\Kendaraan Bermotor*, Jurnal Portal Garuda.dikti.com
- (25). Yetti Kurniati, Vol 2 *Perlindungan hukum bagi para pihak dalam perjanjian asuransi hasil pertanian (crop Insurance)*, Oktober, 2003, hlm 60-82
- (26) Henky k V paendoeng, *Perlindungan Pemegang Polis Pada Asuransi Jiwa Dikaitkan Dengan Nilai Investasi*, Jurnal Ilmu Hukum, vol 1 nomor 6 oktober-desember, 2013 edisi khusus
- (27) Patel, Vip, Pauly Mark, *Consumer Protections In Insurance premiums, USA*, 2003
- (28). Ketut Sendra, *Asuransi Jiwa unitlink Dalam Konsep Dan Penerapannya*, PPM, Jakarta., 2004, hlm 21.
- (29). *Ibid.* Hlm 13
- (30) [.http://www.akademiasuransi.org/2015/04/produk-asuransi-umum-berbasis-investasi.html](http://www.akademiasuransi.org/2015/04/produk-asuransi-umum-berbasis-investasi.html)
- (31). Sri Rejeki Hartono, Opcit, hlm98

Peraturan Perundang-undangan

Kitab Undang-Undang Hukum Perdata (KUHPerdata)
Kitab Undang-Undang hukum Dagang (KUHD)
Undang-Undang Nomor 2 tahun 1992 tentang Usaha Perasuransian
Undang-Undang Nomor 40 Tahun 2014 tentang Perasuransian
Website