

**Exploring Legal Vacuum in Tax Dispute Claims: A Study of Tax Insurance
Regulatory Asymmetry in M&A Transactions**

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Abstract

The absence of tax insurance regulations in Law No. 40/2014 and POJK creates legal uncertainty that triggers post-M&A disputes. The unclear scope of “tax risk” coverage has the potential to increase the fiscal burden and losses of companies. This study aims to identify and analyze gaps in tax insurance regulations within the Indonesian legal framework. The results are expected to formulate recommendations for amendments to the Insurance Law, technical guidelines from the OJK-DJP, and standard policy clauses. The research method uses a normative legal approach with statutes, conceptual analysis, and case studies. This study found that the absence of specific regulations on tax insurance in the Insurance Law and POJK creates uncertainty regarding coverage after M&A. The lack of clarity in the definition of “tax risk” and the absence of mandatory clause guidelines trigger potential disputes and fiscal losses for businesses. Therefore, amendments to the Insurance Law, integrated technical guidelines from the OJK and DJP, and tax insurance contract standards are needed to ensure legal certainty and investment stability.

I. Introduction

Law No. 40 of 2014 on Insurance is the main legal basis governing insurance business activities in Indonesia. This regulation aims to create a healthy, stable, and competitive insurance system, as well as provide maximum protection to policyholders, insured parties, or participants. By establishing a clear legal framework, this law supports the growth of an insurance industry that is integrity-driven and transparent, in line with the principles of good corporate governance. Its scope covers various types of insurance businesses, including general insurance, life insurance, reinsurance, and sharia-based insurance. Each form of business is specifically regulated to ensure that its operations comply with applicable regulations and the evolving needs of society. In terms of definition, Article 1 of this Law explains that the objects of insurance include various insurable interests. These include property and services, life and limb, human health, legal liability, and other interests that may suffer loss, damage, or depreciation. Thus, this law provides a strong legal basis for protection against various risks faced by individuals and legal entities in Indonesia.

Although Law No. 40 of 2014 on Insurance has established a legal framework for the insurance industry in Indonesia, there is a significant regulatory gap related to tax insurance. This regulatory gap arises because the law does not explicitly regulate insurance products related to tax obligations, such as protection against the risk of tax disputes or fiscal penalties. As a result, insurance companies face uncertainty in designing and offering tax insurance products, while policyholders lack legal certainty regarding the protection they receive.(T. B. Adi, 2025)

This uncertainty has an impact on tax insurance practices in Indonesia. Without clear guidance, insurance companies tend to be reluctant to develop tax insurance products, which in turn limits the protection options available to taxpayers. In addition, this legal uncertainty can be exploited by certain parties to engage in tax avoidance practices through non-transparent insurance schemes. In the long term, this can undermine the integrity of the taxation system and reduce public confidence in the insurance industry. Therefore, regulatory reforms are needed that specifically regulate tax insurance to ensure fair protection for all parties involved.(T. W. Adi, 2024)

In the Indonesian insurance legal system, there is a clear distinction between loss insurance and surety, as stipulated in Law No. 40 of 2014 concerning Insurance. Property insurance is a risk coverage service business that provides compensation to the insured or policyholder for losses, damages, incurred costs, loss of profits, or legal liability to third parties that may be suffered by the insured or policyholder due to the occurrence of an uncertain event. Meanwhile, surety is a service business that provides a guarantee for the fulfillment of the financial obligations of the insured party to the beneficiary, which may take the form of payment or the performance of specific work.(Suhantri dkk., 2023)

However, in practice, the classification of tax insurance policies often causes ambiguity. This is due to uncertainty in determining whether the policy falls under the category of loss insurance or surety insurance. For example, a policy designed to cover

the risk of fines or administrative penalties for tax noncompliance may have characteristics similar to surety insurance, as it serves as a guarantee of financial obligations to the tax authorities. On the other hand, if the policy is designed to provide compensation for financial losses arising from tax disputes, it is more appropriately classified as loss insurance. This ambiguity can create legal uncertainty for insurance companies and policyholders, as well as complicate oversight by the relevant authorities. Therefore, more specific regulations are needed to clarify the classification of tax insurance policies, in order to ensure legal certainty and optimal protection for all parties involved.(Hanin, 2025)

Ambiguity in the classification of tax insurance policies in Indonesia has significant implications for the claims process in tax disputes. Uncertainty in determining whether a policy falls under the category of loss insurance or surety insurance causes legal uncertainty for insurance companies and policyholders.(Nurainy, 2023) This makes it difficult to enforce rights and obligations, because without a clear classification, there is no certainty regarding the protection provided by the policy. For example, in the dispute between PT. Wiryra Perca and PT. Asuransi Wahana Tata, ambiguity in the insurance agreement led to a dispute over liability for claim payments. This case demonstrates that without specific and clear regulations, ambiguity in the classification of tax insurance policies can lead to disputes that are detrimental to all parties involved. Therefore, regulatory updates are needed to specifically regulate the classification of tax insurance policies to ensure legal certainty and optimal protection for all parties involved.

A legal vacuum in the context of taxation in Indonesia refers to a situation where there are no clear or specific legal provisions regarding a matter, thereby causing uncertainty in its implementation.(Ganie & others, 2023) In administrative law, a legal vacuum can occur when legislation does not regulate, is incomplete, or is unclear on a particular issue, thereby requiring discretion on the part of government officials to resolve it.(Putra, 2024) This discretion, although intended to fill a legal vacuum, can lead to legal uncertainty and potential abuse of authority if not properly regulated.

In the context of corporate tax dispute claims, legal uncertainty can have a significant impact on companies. Uncertainty or the absence of specific regulations governing tax insurance, for example, can expose companies to significant financial risks in the event of a tax dispute. Without legal certainty regarding insurance protection against tax risks, companies may have to bear the financial burden of fines or penalties imposed, which can affect the company's liquidity and financial stability. Additionally, this legal uncertainty can hinder companies in planning effective business strategies and tax compliance, as well as increase reputational risks if a prolonged tax dispute arises.(Andriani & Selfeny, 2024a)

The urgency of research related to legal vacuums in tax insurance in Indonesia is very important, given its impact on legal certainty for corporations and potential consequences for state tax revenue. This legal vacuum creates uncertainty in the classification of tax insurance policies, which in turn affects the claims process in tax disputes. Without clear regulations, insurance companies and taxpayers lack a

definitive reference for determining their rights and obligations, which can lead to legal disputes that harm both parties. To address this issue, improvements to tax insurance regulations are needed. Recommendations for improvement include the formulation of regulations that specifically govern the types of insurance policies that can be used to cover tax risks, as well as the establishment of clear and transparent claim procedures. In addition, harmonization between insurance and taxation regulations is needed to ensure that tax insurance products comply with applicable taxation provisions. These regulatory improvements will not only provide legal certainty for corporations but also increase state tax revenue by encouraging taxpayer compliance through adequate insurance protection. Thus, this study represents a crucial first step in creating a better legal system that supports sustainable economic growth.

2. Research Method

This study uses a normative juridical method with a statutory approach, conceptual approach, and case approach. The research stage begins with an inventory of primary and secondary legal sources. Based on this analysis, this study will formulate normative recommendations for regulatory improvements to fill legal gaps and address identified asymmetries.

3. Results and Discussion

Analysis of Regulatory Gaps in Tax Insurance for M&A Transactions

Tax insurance is a legal instrument designed to provide protection against the risk of uncertainty regarding tax obligations that may arise after a merger and acquisition (M&A) transaction.(Nur Hidayat, 2015) In the context of Indonesian tax law, M&A transactions can trigger various fiscal consequences, such as tax disputes, fiscal corrections, or regulatory changes that affect a company's tax obligations. However, to date, there are no explicit provisions in Indonesian legislation that specifically regulate tax insurance in the context of M&A.

In practice, M&A transactions often pose significant tax risks.(Andriani & Selfeny, 2024b) For example, revaluation of fixed assets prior to a merger may be subject to income tax on the difference in the revaluation of assets, as stipulated in the Tax Law. In addition, the transfer of assets in the form of land and/or buildings in M&A transactions is also subject to final income tax, in accordance with Government Regulation No. 34 of 2016. Other risks include the potential for tax audits that could result in fiscal corrections or post-transaction tax disputes. In an effort to mitigate these risks, companies may consider using tax insurance as a protection mechanism. However, the absence of clear legal provisions regarding tax insurance in Indonesian legislation creates legal uncertainty for businesses. This can hinder the effectiveness of tax insurance as a risk mitigation instrument in M&A transactions.(Arifin dkk., 2024)

Law No. 40 of 2014 concerning Insurance (Insurance Law) establishes the legal framework for the insurance industry in Indonesia. However, in the context of tax insurance, there is a significant regulatory gap. Article 1(3) of the Insurance Law defines the subject matter of insurance as insurable interests, but does not explicitly include tax risks as the subject matter of coverage. Furthermore, the classification of insurance business lines regulated in Articles 2 and 3 of the Act does not list tax insurance as one of the recognized business lines. This indicates that protection against post-M&A transaction tax liabilities, such as income tax on asset revaluation differences, is not yet accommodated within the current insurance legal framework.(Ramadanty dkk., 2025)

The absence of clear regulations regarding tax insurance in the Insurance Law creates legal uncertainty for businesses seeking to mitigate tax risks through insurance instruments. Although Article 5 of the Insurance Law provides room for the expansion of insurance business lines in line with public needs, the implementation of such expansion requires further regulation by the Financial Services Authority (OJK), which has yet to specifically address tax insurance. From a legal perspective, this regulatory vacuum could hinder the development of innovative and market-responsive insurance products, particularly in the context of complex and high-risk M&A transactions from a tax perspective.(Tarigan dkk., 2017)

Financial Services Authority Regulation (POJK) Number 23 of 2023 concerning Business

Licensing and Institutional Matters for Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies regulates various aspects of licensing and institutional matters in the insurance industry in Indonesia. However, this regulation does not specifically address the standards for contracts and mandatory clauses in tax insurance policies, particularly those related to M&A transactions. In international practice, tax insurance policies often include warranty & indemnity (W&I) clauses and tax liability caps to protect parties involved in M&A transactions from unforeseen tax liability risks.(Frantar, 2020) However, in Indonesia, there are no guidelines or standards governing the content of such tax insurance contracts. The absence of regulations that govern these clauses in detail can create legal uncertainty for insurance companies and parties involved in M&A transactions. From a legal perspective, the absence of contract standards and mandatory clauses in tax insurance policies indicates the need for more comprehensive regulations. This is important to provide legal certainty and adequate protection for businesses in dealing with complex tax risks in M&A transactions.(Pakpahan dkk., 2024)

In the context of Indonesian taxation, there are regulatory inconsistencies that affect the application of tax insurance in merger and acquisition (M&A) transactions. Minister of Finance Regulation (PMK) No. 11 of 2025 sets out provisions regarding alternative values as the basis for tax assessment and specific rates for value-added tax (VAT). However, this regulation does not specifically address the VAT treatment of tax insurance products in M&A transactions, leading to conflicting interpretations regarding whether tax insurance falls under taxable services or not. Additionally, the Director General of Taxes Circular Letter No. SE-01/PJ/2025 clarifies the tax treatment of income tax (PPh) and VAT on reinsurance commissions received by insurance or reinsurance companies. This circular letter states that reinsurance commissions are subject to PPh and PPN, but are not subject to PPh Article 23 withholding tax if received by domestic corporate taxpayers. However, in the context of reinsurance to transfer tax risks in M&A transactions, there are no specific provisions governing the tax treatment of such transactions, which could potentially lead to tax disputes.(Bastian, 2011)

The regulatory vacuum surrounding tax insurance in the context of mergers and acquisitions (M&A) in Indonesia creates significant legal uncertainty for corporations.(Iswi Hariyani & others, 2011) The absence of clear legal protection increases the potential for disputes between insurance companies and policyholders, especially in terms of interpreting the scope of tax insurance coverage. For example, disputes over the imposition of Value Added Tax (VAT) on unit-linked insurance services in the Tax Court demonstrate the ambiguity in determining whether the investment component in such insurance products is subject to VAT. In this case, the tax authority assessed that investment management fees were taxable services, while the insurance company argued that all services provided were part of insurance services exempt from VAT. The Tax Court panel ultimately ruled that unit-linked products were part of life insurance services not subject to VAT, rejecting the tax authority's appeal for reconsideration. In addition to litigation risks, the absence of standard clauses in tax insurance policies makes it difficult for companies to prove the scope of coverage

provided. Without guidelines governing clauses such as warranty & indemnity (W&I) or tax liability caps, companies face difficulties in determining whether certain risks, such as post-M&A tax audits, are covered under insurable claims. This can hinder the effectiveness of tax insurance as a risk mitigation tool in M&A transactions and increase legal uncertainty for the parties involved.

The regulatory vacuum regarding tax insurance in the context of mergers and acquisitions (M&A) in Indonesia has a significant impact on foreign investors' interest in investing in the financial services sector, particularly insurance and banking.(Khasanah & others, t.t.) In global practice, tax insurance is an important instrument in mitigating fiscal risks that may arise after M&A transactions. However, in Indonesia, there is no specific legal framework governing tax insurance products, creating legal uncertainty for foreign investors. Foreign investors intending to acquire an insurance company in Indonesia are required to report their acquisition plans to the Financial Services Authority (OJK) and undergo a fit and proper test in accordance with OJK Regulation No. 23 of 2023 on Licensing and Institutional Requirements for Insurance Companies, Sharia Insurance, Reinsurance, and Sharia Reinsurance. However, the regulation does not specifically address tax risk assessment in acquisition application documents, leaving foreign investors without technical guidelines to assess and manage potential tax risks arising from M&A transactions.

The absence of clear regulations regarding tax insurance in the context of mergers and acquisitions (M&A) in Indonesia has the potential to cause fiscal losses for the country. One of the impacts is the possibility of tax avoidance by corporations through the exploitation of legal loopholes in the transfer of tax obligations using insurance policies without a clear basis for taxation.(Thian, 2021) For example, the absence of provisions governing the tax base (DPP) for other values for tax insurance products can be exploited by companies to avoid tax obligations that should be paid. In addition, tax insurance premiums that are not officially recorded in the taxation system have the potential to avoid Income Tax (PPh) Article 4 paragraph (2) deductions. Insurance premiums paid by companies to employees or other parties should be subject to PPh, but in practice, without specific regulations, these premiums may escape the tax withholding that should be applied. This, of course, reduces the government's potential revenue from the tax sector.(Lubis dkk., 2024)

One of the main implications is the asymmetry of information between regulators, namely the Financial Services Authority (OJK) and the Directorate General of Taxes (DJP), in monitoring and supervising tax insurance policies.(Firmansyah & Santoso, 2024) To date, there is no integrated database that allows these two institutions to effectively access and share information about tax insurance policies issued in M&A transactions. The absence of an integrated information system hinders supervision and law enforcement efforts and opens up opportunities for practices that are not in accordance with the provisions of the law.(A. A. Putri, 2025) In addition, there is sectoral overregulation caused by a lack of integration between regulations issued by the OJK and provisions in the General Provisions and Tax Procedures Law (KUP Law). For example, OJK

Regulation No. 23 of 2023 concerning Business Licensing and Institutional Matters for Insurance Companies regulates aspects of licensing and institutional matters for insurance companies, including in the context of M&A. However, this regulation is not integrated with the provisions in the UU KUP that regulate tax aspects, thereby creating regulatory overlap and potential conflicts in its implementation. The lack of harmonization between these sectoral regulations can create legal uncertainty for businesses and hinder the effectiveness of oversight by the relevant authorities.

In this regard, comprehensive regulatory improvements are needed to enhance legal certainty and the effectiveness of supervision in the practice of tax insurance in Indonesia. One of the main steps is to amend Law No. 40 of 2014 on Insurance. This amendment aims to include “tax risk” as a valid object of coverage in Article 1(3) of the Law, thereby providing a clear legal basis for the development of tax insurance products. Additionally, mandatory contract standards for tax insurance must be established, including important clauses such as liability limits (indemnity limits), claim periods, and exclusions. The establishment of these standards will help ensure that all parties involved in tax insurance transactions have a common understanding of their rights and obligations, thereby minimizing the potential for future disputes. From a legal perspective, these steps will strengthen the legal framework governing tax insurance, provide legal certainty for businesses, and support more effective oversight by relevant authorities. As a result, it is hoped that a more conducive and transparent investment climate will be created in Indonesia.(Yohanes & Yusuf, 2024)

In this regard, comprehensive regulatory improvements are needed to enhance legal certainty and the effectiveness of supervision in the practice of tax insurance in Indonesia.(Nurainiyah dkk., 2024) One of the key steps is to harmonize the Financial Services Authority (OJK) and the Directorate General of Taxes (DJP) in issuing technical guidelines governing tax insurance in the context of mergers and acquisitions (M&A). These guidelines should cover policy monitoring mechanisms, premium reporting, and tax risk disclosure standards in transaction documents to ensure transparency and accountability for all parties involved. In addition, the Value Added Tax (VAT) rates on tax insurance services need to be synchronized to avoid dual interpretations. As a reference, Minister of Finance Regulation (PMK) No. 11 of 2025 has set a VAT rate of 1.1% for the transfer of used motor vehicles. Thus, the establishment of a similar special rate for tax insurance products can provide legal certainty and prevent potential tax disputes.

Another strategic step is the establishment of the Policy Guarantee Agency (LPP), which aims to protect insurance policyholders, including in the context of tax insurance. Law No. 4 of 2023 on the Strengthening and Supervision of the Financial Sector (UU PPSK) has mandated the Deposit Insurance Agency (LPS) to implement the Policy Insurance Program (PPP), which will take effect on January 12, 2028. This program is designed to guarantee customer claims in the event of an insurance company default, with two main schemes: reimbursement of claims up to the maximum guarantee limit and transfer of policies to a healthier insurance company.

The lack of regulations governing tax insurance in the context of mergers and acquisitions (M&A) in Indonesia creates significant legal uncertainty. Law No. 40 of 2014 on Insurance does not explicitly include tax risks as objects of coverage, resulting in ambiguity in the application of tax insurance in M&A transactions. As a result, companies face higher litigation risks and difficulties in proving claims, while foreign investors are hesitant to invest due to the lack of legal certainty. Additionally, the potential for fiscal losses for the state increases due to legal loopholes that allow tax avoidance through insurance policies that are not clearly regulated. To address these issues, amendments to Law No. 40/2014 are needed to specifically regulate tax insurance, including definitions, scope, and mandatory contract standards. Collaboration between the Financial Services Authority (OJK) and the Directorate General of Taxes (DJP) also needs to be strengthened to develop technical guidelines and integrated oversight mechanisms. Without appropriate regulatory intervention, systemic risks in the insurance industry and M&A market in Indonesia will continue to rise, hindering economic growth and fiscal stability.

Implications of Insurance Policy Classification Ambiguity on Corporate Tax Dispute Claims

Ambiguity in the classification of insurance policies within the context of corporate taxation creates significant legal uncertainty. Insurance policies may be categorized either as indemnity insurance, which provides protection against potential financial losses resulting from specific events, or as surety insurance, which guarantees compliance with legal obligations, including tax liabilities.(Susanto, 2024) Ambiguity in this classification may lead to differences in interpretation between the insured and the insurer, particularly regarding claim submissions and the tax treatment of premiums and insured amounts.(Harahap, 2025) The case of PT. Wirya Perca vs. PT. Asuransi Wahana Tata serves as a clear example of how ambiguity in policy classification can lead to complex legal disputes. In this case, PT. Wirya Perca filed a claim for losses it had suffered, but PT. Asuransi Wahana Tata rejected the claim on the grounds that it was submitted past the deadline stipulated in the policy. Differing interpretations of the policy's provisions ultimately led to a lengthy legal process, reaching the level of cassation at the Supreme Court, which eventually granted PT. Asuransi Wahana Tata's appeal.

From a legal perspective, insurance agreements are governed by the Indonesian Commercial Code (KUHD), specifically Article 246, which defines insurance as an agreement in which the insurer commits to compensating the insured for losses that may be suffered due to an uncertain event. However, in practice, the interpretation of the provisions in the policy often leads to differences of opinion between the parties involved.(Wibowo, 2025) To address this issue, the principle of *contra proferentem* can be applied, where ambiguous provisions in the policy are interpreted in favor of the insured. Additionally, recent legislation such as Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (P2SK Law) provides a more comprehensive legal framework for regulating the insurance sector,

including aspects of consumer protection and dispute resolution. However, despite the existence of more modern regulations, challenges in interpreting and implementing the provisions of insurance policies remain a critical issue that requires serious attention from industry players and relevant authorities.

In the context of corporate taxation, loss insurance has specific and relevant legal characteristics. Loss insurance, or general insurance, is an agreement in which an insurance company provides compensation to the insured for financial losses arising from unexpected events, such as tax penalties or legal expenses related to tax obligations.(Qanita & Mardianingrum, 2023) This agreement is based on the principle of indemnity, which aims to restore the insured's financial position to the state it was in before the loss occurred, without providing any additional gain.(Charlie S dkk., 2024) From the perspective of tax law, premiums paid for loss insurance can be categorized as deductible expenses in the calculation of taxable income.(Tahery & Idayati, 2023) This is in accordance with Article 6 paragraph (1) of Law Number 36 of 2008 concerning Income Tax, which states that expenses directly or indirectly related to business activities can be deducted from gross income. However, it is important to note that compensation or benefits received by the insured from the insurance company, as long as they do not constitute a gain, are not subject to tax.

The legal characteristics of loss insurance in the context of corporate taxation include several key principles. First, the principle of utmost good faith, which requires both parties to act honestly and transparently in the insurance agreement.(Chailin & others, 2024) Second, the principle of insurable interest, which states that the insured must have a financial interest in the insured object.(Navisa, 2020) Third, the principle of subrogation, which grants the insurance company the right to assume the insured's rights against a third party after claim payment.(R. R. S. A. I. Putri, 2024) Fourth, the principle of contribution, which applies if the insured holds more than one insurance policy for the same risk. Fifth, the proximate cause principle, which determines whether the loss incurred is a direct result of the insured risk.(Arumsari, 2020)

In the context of Indonesian tax law, guarantee insurance that ensures the fulfillment of corporate tax obligations, such as customs bonds, is classified as a performance bond and therefore the premiums paid cannot be deducted as business expenses.(Kustiani dkk., 2020) Based on Article 9 of the Income Tax Law (UU PPh), this type of premium falls under the category of non-deductible expenses because it is not considered a cost incurred to earn, collect, or maintain income. The coverage object is a guarantee aimed at ensuring corporate tax obligation compliance rather than compensating for actual losses. However, the existence of hybrid policies creates a gray area in tax insurance practices. The clauses often contain loss elements, such as the statement “compensation for tax penalties,” alongside elements of liability guarantees. Vague contract drafting—such as referring to “tax payment guarantees” without further explanation—raises significant ambiguity. The practical impact is that corporations may not be able to claim premium costs as income deductions because they are considered guarantees, while insurance companies might reject

claims on the basis that the policy does not provide financial loss protection. This situation creates uncertainty for all parties and highlights an urgent need to clarify the legal framework, whether through revising contract regulations, clearly defining product types, or harmonizing interpretations of relevant articles in the Income Tax Law.

The case began when PT Wirya Perca purchased a "tax compliance guarantee" policy from Aswata to protect itself against the risk of tax audits and penalties that might arise following an M&A. When an audit occurred, Wirya filed a claim for the fiscal penalty costs, but Aswata rejected it, arguing that the policy was a surety bond insurance, not compensation for losses resulting from the audit. The rejection was based on the view that regulatory risks—such as changes in tax laws or the imposition of surcharges—were outside the scope of the compliance guarantee as designed in the policy. The main ambiguity lay in the phrase “protection against the risk of tax non-compliance,” which lacked an operational definition, leaving wide room for interpretation. During litigation, Aswata argued that the policy clause provided only a ‘guarantee,’ not financial compensation for fiscal losses. Meanwhile, Wirya insisted that paying the premium reflected protection against actual tax losses. The court focused on the principle of contract interpretation: ambiguous clauses that create dilemmas are to be interpreted in favor of the insured, based on the *contra proferentem* rule. The decision held that Aswata was obligated to pay the claim due to the policy’s unclear design, in accordance with ruling number 62/Pdt.G/2020/PN.Bpp.

The tax impact of this ruling is also significant. PT Wirya Perca failed to classify the premiums as deductible operating expenses because the policy was initially categorized as collateral. As a result, the premiums did not reduce taxable income. After the claim was paid, the amount was considered income and subject to Article 23 Income Tax withholding. Financially, the company suffered a double loss: paying premiums without any tax deduction benefit, plus paying income tax on the claim, as well as bearing legal costs during the dispute process and potential fiscal reassessments.(Novita & others, 2024) Legally, this case underscores the need for clearer regulations in tax insurance clauses—avoiding the use of terms like “guarantee” or “protection” without clear risk coverage definitions. Regulations should require operational definitions, distinctions between types of policies such as ‘coverage’ versus ‘guarantee,’ and guidelines for drafting standard clauses to minimize disputes. Without regulatory intervention, hybrid practices like these will continue to create uncertainty for companies and open the door to conflicts between parties and tax authorities.

From a contract law perspective, the presence of unclear clauses may violate the principle of utmost good faith.(Lathif & others, t.t.) At both the pre- and post-contract stages, insurance companies are required to clearly explain the policy coverage, and insured parties must fully disclose all material information. Failure to comply with these principles may lead to policy cancellation or claim denial. Furthermore, the

contra proferentem rule requires that any ambiguous clauses be interpreted against the party that drafted them—in this case, the insurance company. This could potentially result in unexpected premiums and additional claims liabilities for the insurer. From a tax perspective, ambiguity in policy classification creates significant uncertainty regarding the deductibility of premiums. If a policy is classified as a guarantee rather than fiscal risk insurance, the premiums cannot be expensed under Article 9 of the Income Tax Law, resulting in fiscal adjustments and additional tax liabilities. Claims paid may also be treated as income, subject to income tax, further increasing the company's financial burden. This uncertainty also affects company operations. Corporate cash flow is disrupted due to the need to cover premium payments, potential taxes, and dispute costs. Additionally, the company's reputation may be harmed if the tax authorities categorize it as a high-risk taxpayer, which could lead to heightened scrutiny during audits or further investigations.

To avoid ambiguity in tax insurance contracts, clear policy design and proper dispute resolution mechanisms are crucial to ensure legal certainty.(Kwartama, 2024) The insurance clause must explicitly state that "this policy is a loss insurance policy covering compensation for financial losses resulting from tax disputes." This clarity ensures that the policy is classified as risk insurance (loss insurance), not a bond, so that premiums are considered deductible expenses and claims are treated as reimbursements.(Siswanto, 2016) Adding technical appendices that detail the types of risks covered—such as tax penalties and appeal costs—can clarify the scope of protection, while exclusions for risks like fraud or accounting negligence should be explicitly stated. Additionally, a claims mechanism that includes deadlines for submitting documents and joint verification with the internal tax team will ensure the process is structured and transparent. In case of disputes, a tiered mechanism can be established. The first stage would be internal mediation facilitated by an independent claims committee, followed by arbitration at institutions like BANI. This legal strategy aligns with insurance contract principles, including the potential use of drafting history documents to apply the contra proferentem rule, where unclear clauses are interpreted against the drafting party, usually the insurance company.

Regulatorily, the Financial Services Authority (OJK) needs to develop standard guidelines for corporate tax insurance policy clauses and establish standardized product classifications. This aligns with OJK Regulation No. 8/2024 on Insurance Products, which emphasizes the integrated drafting of clauses, premiums, and product reporting. With these guidelines in place, insurance companies will have clear direction in designing products, while corporations can have greater confidence in the effectiveness of protection and fiscal compliance. Through well-defined contract design, systematic dispute resolution, and supportive sectoral regulations, both the insurance industry and corporations will gain stronger legal certainty. This not only safeguards cash flow and corporate reputation but also helps build a more stable and credible M&A market ecosystem in Indonesia.

Ambiguity in the classification of tax insurance policies has proven to cause serious

legal and fiscal consequences. The case between PT Wirya Perca and PT Asuransi Wahana Tata demonstrates that unclear contract design can eliminate certainty regarding the rights and obligations of the parties involved. The unclear treatment of the policy—whether as a guarantee or loss protection—results in the insured bearing multiple financial burdens, ranging from non-deductible premiums, claim denials, to fiscal adjustments on received income. This situation not only complicates corporate management but also creates systemic risk within the insurance industry and the M&A market in Indonesia. The fundamental solution lies in two approaches. Preventatively, contracts must be specifically designed with clear drafting that includes an explicit statement that the policy is a loss insurance, supplemented by technical appendices detailing the covered risks and clear exclusions. Claim procedures also need to be standardized with deadlines for documentation and integrated verification..

Correctively, dispute resolution should be based on the principle of *contra proferentem*, where ambiguous clauses are interpreted in favor of the insured, accompanied by a structured mediation mechanism and the potential for escalation to arbitration bodies such as BANI. This practice helps restore balance between contractual rights and obligations. By implementing precise contract design and adequate dispute resolution procedures, corporations can avoid fiscal and legal complications while strengthening trust in the tax insurance market. This model provides a pragmatic solution to build stability within the M&A ecosystem and mitigate potential losses for both corporations and the state.

4. Conclusion

Based on the above explanation, it can be concluded that the lack of specific regulations regarding tax insurance within the framework of the Insurance Law and related Financial Services Authority Regulations (POJK) has created a legal gap that hinders the effectiveness of this instrument as a risk mitigation mechanism in post-M&A transactions. Without an operational definition of “tax risk” in Article 1 of Law No. 40/2014, without a recognized line of business for tax insurance, and without guidelines for mandatory clauses (such as warranty & indemnity or tax liability cap), business actors and insurance companies face uncertainty regarding coverage scope, which could lead to potential disputes and adverse fiscal impacts. Therefore, it is urgently necessary to amend the Insurance Law to include the object of “tax risk,” issue integrated technical guidelines by the OJK (Financial Services Authority) and the Directorate General of Taxes (DJP), and develop standardized tax insurance contracts to establish legal certainty, adequate protection, and a more stable investment climate in M&A transactions in Indonesia.

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