

Legal Protection for The Insured in an Insurance Agreement in The Event of a Claim Default

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Abstract

The phenomenon of insurance default that occurs to customers is related to research on critical evaluation of the Indonesian national legal system and identifying the mechanism for resolving insurance law conflicts. The method used is normative juridical research with empirical and legislative approaches, the data collected comes from literature studies and literature studies. The data was analyzed qualitatively to analyze insurance laws in Indonesia, as well as the lack of regulations related to the process of insurance. The results of the study show that although there have been a number of regulations, such as Law Number 40 of 2014 concerning Insurance and the Consumer Protection Law, the implementation of legal protection for customers is still weak, especially in terms of settling claims and corporate liability in default. The dispute resolution mechanism through the courts, BPSK, and LAPS SJK also does not fully guarantee legal certainty and the effectiveness of the implementation of the decision. The absence of policy underwriters and weak integration of the legal system put customers in a legally disadvantaged position. This study recommends the establishment of a Policy Guarantee Institution, strengthening the authority of dispute resolution institutions, and harmonizing regulations to strengthen legal protection for customers. The implications of this study are important for improving the insurance legal system in Indonesia, in order to realize fair, certain, and useful consumer protection in real terms.

I. Introduction

The growth of the insurance industry in Indonesia has shown a significant increase in recent years, as

reflected in the total life insurance premium revenue which reached IDR 196.46 trillion in 2022 (OJK, 2023). However, the progress has been overshadowed by the increasing number of default cases befalling large insurance companies. This phenomenon raises serious questions about the effectiveness of legal protection for insurance customers as consumers. The insurance industry in Indonesia has experienced significant growth in the last decade, with total assets reaching IDR 1,289.6 trillion at the end of 2023 and a contribution of around 3.5% to the national Gross Domestic Product (GDP). Nevertheless, this positive development is inseparable from various problems that have emerged, especially related to the phenomenon of default by insurance companies that cause losses to customers.

A series of default cases that occurred at several large insurance companies such as Jiwasraya, Bumiputera, and Asuransi Jiwa Kresna (AJK) have shaken public confidence in the Indonesian insurance industry. Insurance claim default cases reflect the inability of insurance companies to meet their financial obligations to customers, which is often caused by various factors such as risk mismanagement, fraud in fund management, imprudent investment practices, and weak regulatory oversight. Based on data from the Financial Services Authority (OJK), throughout 2020-2023 there are at least 12 insurance companies that experienced default problems with total losses estimated to reach more than IDR 100 trillion.

One of the most striking cases is the default of the 1912 Bumiputera Joint Life Insurance (AJB), which has been going on since 2017 and until 2024 is still not fully resolved. This case has an impact on more than 3 million policyholders throughout Indonesia (Putra et al., 2025). Similar phenomena also occur in several other companies such as PT Asuransi Jiwasraya and PT Asabri. This condition highlights the weak legal protection system for customers in the face of default or default by insurance companies.

The legal framework that regulates the protection of insurance customers in Indonesia is scattered and less coordinated, including the Consumer Protection Law (Law No. 8 of 1999), the Insurance Law (Law No. 40 of 2014), and implementing regulations from the OJK. However, this regulation is considered to have not provided maximum protection, especially in the aspect of recovering customer losses quickly and fairly. Research by Salsabila (2024) found that many customers have difficulty obtaining their rights even after a court ruling. From a juridical perspective, there is no strict accountability mechanism for negligent management of insurance companies. In the case of Bumiputera, for example, customers are forced to wait year after year due to the unclear status of the company's asset settlement and government policies that tend to compromise on problematic insurance companies (Salsabila, 2024).

The urgency of this research is increasing considering that the legal framework that regulates the protection of insurance customers in Indonesia still faces many challenges in its implementation. Although there has been Law Number 40 of 2014 concerning Insurance, POJK Number 31/POJK.05/2015 concerning Good Corporate Governance for Insurance Companies, and Law Number 8 of 1999 concerning Consumer Protection, the existence of these regulations has not been fully able to provide comprehensive protection

for insurance customers, especially in the context of default. This research is crucial considering the economic and social impact caused by insurance default cases is very wide. Customers who are victims not only suffer financial losses, but also face legal uncertainty in an effort to get their rights. In addition, this phenomenon also has the potential to reduce the insurance penetration rate in Indonesia which is still relatively low (only around 3.7% of the total population) compared to neighboring countries such as Malaysia (6.5%) and Singapore (8.2%).

This research offers several aspects of novelty that distinguish it from previous studies, integrating normative juridical analysis and empirical juridical to examine the problem of insurance customer protection in default cases, which is different from previous studies that tend to use a separate approach. This study not only examines the legal aspects of insurance, but also considers the dimensions of consumer protection law, capital market law, and corporate law as an interrelated unit. This study developed a legal protection model that combines preventive (default prevention) and repressive (post-default handling) approaches that have not been widely discussed in previous studies. This study conducted a comparative study of insurance customer protection practices in various jurisdictions such as Singapore, Malaysia, Australia, and the United Kingdom to formulate policy recommendations that are adaptive to the global context. This study explores the use of financial technology (fintech) and regulatory technology (regtech) in improving insurance customer protection, which is an innovative approach in the context of insurance law in Indonesia.

Various previous studies have addressed the issue of consumer protection in the insurance industry in Indonesia, but there are several gaps that have not been bridged:

- a. Regulatory Gaps about most previous research has focused on normative analysis of insurance regulations without providing a comprehensive evaluation of their implementation in the field. This study seeks to bridge this gap by examining the effectiveness of regulations in the context of actual default cases.
- b. Methodological Gaps is that Previous studies have tended to use a purely normative juridical approach, while this study combines normative juridical approaches with empirical juridical and socio-legal studies to gain a more holistic understanding.
- c. Substance Gap about previous studies have focused more on insurance customer protection in general, without specifically examining the growing problem of default in recent years. This study specifically analyzes the issue of default with its various legal dimensions.
- d. Solution Gap is that previous research often stops at analyzing problems without offering concrete solutions. This research seeks to produce policy recommendations and applicable legal protection models.
- e. Comparative Gap about the lack of a comprehensive comparative study of the insurance customer protection system in Indonesia and international best practices is a gap that will be filled by this study.

Several previous studies have discussed insurance customer protection, such as research by Loewel & Mulyarini (2024), which emphasizes the importance of emotions and risk perception in policy purchase decisions. However, their study did not quantitatively explore how this perception changes after the default case. Similarly, the study by Putra et al. (2025) is more qualitative descriptive and has not systematically evaluated the effectiveness of existing protection policies.

A major gap in the previous literature is the lack of comprehensive quantitative studies assessing clients' perceptions, knowledge, and direct experience of the legal protections available. In fact, a quantitative approach is important to measure the level of regulatory effectiveness and public trust statistically and provide data-based recommendations. This research will contribute by filling this gap through a quantitative survey approach, focusing on customer perceptions and experiences after insurance defaults, as well as evaluating their understanding of consumer protection regulations. In addition, this study will examine the correlation between the level of legal literacy and satisfaction with the handling of default cases.

Theoretically, this study enriches the study of consumer protection laws in the context of the financial services industry, especially insurance. Meanwhile, practically, the findings from this study can be an important input for policymakers such as the OJK and the Ministry of Finance in designing new regulations that are more responsive to the interests of customers. The main objective of this study is to critically evaluate the effectiveness of the legal framework for the protection of insurance customers in Indonesia in the case of default. This research is expected to provide benefits in developing adaptive and evidence-based legal protection models, as well as encourage regulatory reform to prevent similar cases in the future. Problem reformulation is that about first, what is the legal arrangement of insurance for legal protection for the insured and second, what is the settlement framework in the case of failure on insurance claims.

2. Research Method

This type of research is normative legal research or also known as doctrinal law research. This approach is used to examine law as a system of norms, whose focus is on the analysis of laws and regulations, legal principles, legal theories, and court decisions related to insurance customer protection and dispute resolution. The data used is secondary data as the main data sourced from literature studies and literature research. Primary data is used as supporting data. The collected data is presented in the form of a qualitative narrative.

3. Results and Discussion

1. The insurance law regulates legal protection for the insured

The insurance industry plays a vital role in the national financial system as a means of risk mitigation.

However, in practice, Indonesia faces a number of serious problems related to insurance company defaults, which have a direct impact on customer rights. Some striking examples include the case of PT Asuransi Jiwasraya, PT Asuransi Jiwa Kresna, and Asuransi Jiwa Bersama (AJB) Bumiputera 1912. The failure of these companies to meet their obligations has triggered a crisis of public confidence in the insurance industry. This is the background for the urgent evaluation of the effectiveness of the existing legal framework in providing protection for customers.

The legal framework that regulates the protection of insurance customers in Indonesia consists of several laws and regulations, including:

- a. Concerning Insurance Law number 40 of 2014 explains in article 53 related to the protection of the interests of policyholders, namely insurance companies and reinsurance companies are obliged to prioritize the interests of policyholders, insureds, or participants in running their business.
- b. Concerning Consumer Protection Law Number 8 of 1999 explains that the protection of insurance customers is included in the general protection coverage for service consumers, in article 4 it relates that every consumer has the right to get comfort, security and safety in consuming goods and/or services, choosing goods and/or services and getting the goods and/or services according to the exchange rate and the conditions and guarantees promised, obtain true, clear, and honest information about the condition and guarantee of goods and/or services, hear their opinions and complaints about the goods and/or services used, obtain advocacy, protection and dispute resolution efforts. Provide a legal basis for insurance customers to demand policy information disclosure, claim transparency, and the right to sue in the event of irregularities.
- c. OJK Regulation (Financial Services Authority) Number 36 of 2024 amending the Financial Services Authority Regulation Number 69/Pojk.05/2016 concerning the Implementation of Company Businesses Insurance, Sharia Insurance Companies, Companies, Reinsurance, and Sharia Reinsurance Companies explained that article 22 letter A conveys that insurance companies are obliged to convey product information about benefits and costs. risks, and the terms and conditions of the policy are clearly and not misleading, Information must be communicated prior to the signing of the agreement, including an illustration of the benefits for the unit-linked product.

This framework is equipped with supervision and enforcement mechanisms through the OJK and dispute resolution institutions such as the Indonesian Insurance Mediation and Arbitration Agency (BMAI) and the Consumer Dispute Resolution Agency (BPSK).

However, a study by Nurainiyah, Astawa, & Setiady (2024) shows that although the legal framework is available, its implementation is often ineffective, especially in the context of liability transfers and restructuring that tend to be non-transparent and do not actively involve customers. In the case of Kresna Life Insurance, many policyholders complained about late claim payments without legal clarity. Research

by Hazhin & Diaz (2022) found that the legal process in the Commercial Court through the PKPU (Suspension of Debt Payment Obligations) mechanism actually weakens the position of customers as concurrent creditors. This indicates the existence of a vacuum or loophole in legal protection when a company is in a state of bankruptcy or restructuring.

Normatively, the OJK has an important role in supervising the insurance sector. However, Musjtari (2017) in the journal *Law and Justice* stated that the effectiveness of OJK supervision is still influenced by limited human resources and regulations that are not adaptive to the dynamics of the financial industry. The OJK has not maximally utilized its authority in imposing administrative sanctions or revoking the business licenses of companies that are proven to have committed defaults. Unlike banks that have a Deposit Insurance Corporation (LPS), the insurance industry in Indonesia does not yet have a national policy guarantee scheme. This causes customer losses to be not guaranteed if the company goes bankrupt. Harmundoro (2024) in his study at Atma Jaya University Yogyakarta emphasized the need to establish a policy guarantee institution to avoid large losses experienced by customers in the case of default. Debt restructuring by insurance companies is often carried out unilaterally without explicit approval from the customer. In the case of Bumiputera, the restructuring program through the unit-link scheme and state capital participation (PMN) is not accompanied by a guarantee of debt repayment in the short term. According to Setiawan et al. (2024), this creates legal uncertainty and worsens public trust in regulations.

The role of BPSK in resolving consumer disputes, including in insurance, is considered not optimal. Research by Musataklima (2023) concluded that many BPSKs in the regions do not have human resources who understand the complexities of insurance law. As a result, the resulting decisions are often unfair or legally unenforceable. Normatively, Indonesia has adopted the principle of consumer protection in the Consumer Protection Law, but has not specifically guaranteed the rights of insurance customers in extreme conditions such as default. According to Ritonga & Defriansyah (2024), the provisions regarding the responsibility of the directors and commissioners of insurance companies in default have not been strictly regulated, so the space for legal prosecution against management is still narrow.

In countries such as Japan and South Korea, there is an Insurance Policyholder Protection Funds program, which provides coverage for customer claims to a certain extent. Indonesia needs to learn from this model. Setiawan and his team (2024) also emphasized the importance of amending the Insurance Law to add a special clause on policy guarantees and a quick and fair compensation mechanism. Based on the above analysis, it can be concluded that Indonesia's legal framework in providing protection to insurance customers in default cases is still not substantially and procedurally effective. The protection provided is declarative, but not operational in real conditions such as bankruptcy or restructuring. Further research and legal reform is urgently needed to increasing the role and independence of the OJK, Establish a police guarantee board, Increase the capacity of alternative dispute resolution, Revise regulations to better protect the interests of

customers, especially in the context of restructuring.

2. The settlement framework in a case of failure on an insurance claim

The insurance industry as an integral part of the Indonesian financial system should provide guarantees of protection for customers when risks occur. However, in reality, not a few insurance companies have defaulted, such as in the case of Jiwasraya Insurance, Asabri, and AJB Bumiputera 1912. When the customer's rights are not fulfilled, dispute resolution becomes the last resort for the community to demand justice. The question then is: to what extent are the available dispute resolution mechanisms able to ensure justice, legal certainty, and benefits for customers.

In modern law, the dispute resolution system must uphold three main principles: Fairness: The settlement must be fair and balanced for both parties, legal certainty: Procedures and outcomes must be predictable and have a strong legal basis, benefits: The settlement process must provide tangible, fast, and tangible results for the aggrieved party.

According to Sutoro (2016), law enforcement without considering the benefits will only create rigid procedural formalities and fail to answer the needs of victims. Applicable Dispute Resolution Mechanism

a. Dispute Resolution Through Litigation (Court)

Litigation is a formal legal avenue provided by the courts. In Indonesia, insurance disputes can be filed in the District Court or the Commercial Court in bankruptcy cases. However, Sari & Irianti (2019) criticize that the litigation process is often long and expensive. This not only prolongs the suffering of the client but also weakens the principle of substantive justice.

b. Alternative Dispute Resolution (ADR)

In response to litigation inefficiencies, the Alternative Dispute Resolution (APS) system was developed through the following mechanisms: Mediation, Arbitration, Negotiation, LAPS SJK (Alternative Dispute Resolution Institution in the Financial Services Sector). According to Wulandari & Firdaus (2023), LAPS SJK can resolve disputes within a maximum of 60 working days and provide a binding and fair solution without having to go through the courts.

c. The Role of BPSK (Consumer Dispute Resolution Agency)

The Consumer Protection Law regulates the existence of BPSK as a forum for dispute resolution between consumers and business actors, including the insurance industry. However, its effectiveness is questionable. According to Supardi (2024), BPSK often faces challenges in terms of jurisdictional limitations, resource competence, and weak execution of decisions. The Urgency of Integrating Legal Principles In order for dispute resolution to be meaningful, the legal system must integrate three principles in a balanced manner: Justice about the victim community (customer) must be prioritized in the settlement

process, not treated as ordinary creditors in PKPU or bankruptcy cases, Legal certainty that the procedures and outcomes of settlement institutions such as LAPS SJK or BPSK must have clear enforcement power, benefits about the process should be fast, inexpensive, and guarantee a result that recovers losses.

According to Nurainiyah et al. (2024), only with this approach can the settlement system be reliable and effective. Based on the evaluation, a number of recommendations that can be implemented by the government include:

- a. Revise the Insurance Law to include explicit provisions on rights and legal channels for customers.
- b. Strengthening the SJK LAPS with quasi-judicial status so that the decision has permanent legal force.
- c. Increasing consumer legal literacy in the insurance sector through the role of OJK, universities, and the media.
- d. The establishment of the Policy Guarantee Program to ensure that insurance benefits remain acceptable under exceptional conditions.

The dispute resolution mechanism for insurance customers in Indonesia is currently in a developing position and has not been optimal. Although litigation and non-litigation (ADR) pathways are available, challenges still hinder their effectiveness, especially in terms of certainty of execution and coverage coverage. To achieve the principles of justice, legal certainty, and utility, it is necessary:

1. Reform of insurance sector regulations.
2. Strengthening the role of LAPS SJK as a mediation and arbitration institution.
3. Political and legal support for the establishment of a national policy guarantee institution.
4. Massive legal education to consumers.

The restructuring of the dispute resolution system not only answers legal issues, but also becomes a pillar to restore public trust in the national insurance industry.

4. Conclusion

The protection of insurance customers in Indonesia is a crucial part of the national legal and financial system, especially in the midst of increasing cases of default of insurance companies such as those that occurred in AJB Bumiputera, Jiwasraya, and Kresna Life. Although Indonesia already has a number of regulations, such as Law Number 40 of 2014 concerning Insurance, the Consumer Protection Law, and technical regulations from the OJK, the effectiveness of the legal framework still faces major challenges in its implementation.

In many cases, the legal framework of insurance protection tends to be declarative and weak in execution. When the insurance company is unable to meet its obligations, the customer does not have a policy guarantee scheme that guarantees certainty on the payment of claims. The applicable legal provisions have not concretely regulated the compensation mechanism in the case of default, as well as the liability of

negligent company management. Weak enforcement of customer rights shows the low effectiveness of the legal framework in ensuring substantive justice and legal certainty in practice.

On the other hand, Indonesia has provided several dispute resolution mechanisms such as litigation in court, arbitration, mediation through the Alternative Dispute Resolution Institution for the Financial Services Sector (LAPS-SJK), and the Indonesian Insurance Mediation and Arbitration Agency (BMAI). These pathways are intended to provide easier, faster, and cheaper access for the community, as an alternative to the lengthy and expensive court process. However, its effectiveness is still limited due to low public legal awareness, as well as the lack of optimal institutional support for the results of decisions from these institutions.

The principle of fairness demands that every customer be treated equally and get his or her rights proportionately without discrimination. But in reality, many customers do not get clarity on their claims due to the weak bargaining position of the insurance company. The principle of legal certainty has also not been fully fulfilled, because there is often no legal clarity regarding the handling of problematic company assets, as well as weak harmonization between regulations. As for the usefulness of the situation, the ideal settlement system should be able to provide quick results and have a real impact on society, but the reality shows that many disputes last for a long time without satisfactory solutions.

Thus, there needs to be systemic reform in the legal protection of insurance customers. This includes: (1) The establishment of the National Policy Insurance Agency, (2) Revision and harmonization of the Insurance Law with other laws to be more adaptive to the default situation, (3) Strengthening the role of the OJK as a supervisor and executor, and (4) Continuous legal education to the public to be better prepared to face potential disputes. Overall, the effectiveness of legal protection and dispute resolution mechanisms in Indonesia's insurance sector still needs to be improved, especially in responding to the dynamics of complex and far-reaching default cases. Improvement efforts must be based on the integration of the principles of justice, legal certainty, and benefits in a holistic and sustainable manner.

Based on the findings and conclusions that have been described earlier, there are a number of strategic steps that need to be taken by the government, supervisory authorities, insurance industry players, and the public to strengthen protection for insurance customers, especially in dealing with default cases. This recommendation is designed to answer actual problems with an approach based on the principles of justice, legal certainty, and legal usefulness in a balanced manner.

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