How to Cite:

Santri, S. H., Yaswirman, Y., Warman, K., & Fauzi, W. (2022). Accountability answers company insurance life based investing against the risk of failure to pay for policyholders. *Linguistics and Culture Review*, 6(S1), 427-437. https://doi.org/10.21744/lingcure.v6nS1.2087

Accountability answers Company Insurance Life Based Investing against the Risk of Failure to Pay for Policyholders

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Abstract--- The problem of this research is how to regulate investment-based life insurance in Indonesia and the liability of investment-based life insurance companies against the risk of default by policyholders. This study uses a research method that has an empirical juridical type. The study results explain that the regulation of investment-based life insurance in Indonesia is regulated in Law Number 40 of 2014 concerning Business Per Insurance, OJK 23/POJK.05/2015 Number concerning Products and Marketing and Decree of the Chairman of BPPM and Financial Institutions Number KEP-104/ BL/2006 concerning Investment-based life insurance products. PP Number 87 of 2019 concerning insurance companies in the form of joint ventures, RI's Financial Decree Number 422/KMK.06/2003 and Director General of Financial Institutions Decree Number 2475/LK concerning investment insurance products and forms of liability of default insurance companies must fulfill the contents of the agreement insurance that gives rise to the rights and obligations of the insured reciprocally. However, Law Number 40 of 2014 concerning Insurance Business does not fully regulate violations in the insurance business and does not regulate how the insurance company is responsible for the company's inability to fulfill insurance claims.

Keywords---company insurance, insurance life, investments, policy holder, policy.

Introduction

The non-bank financial institution that plays a role as one of the pillars of the national economy is the insurance industry. The insurance industry in Indonesia has a significant role in supporting the national development process. We have seen through the contribution of insurance companies in managing long-term funds to generate profits and use for development funds by the government. Companies Insurance as the company's services, on the one hand, to sell services to customers; on the other hand, the insurance company acts as an investor of savings societies to invest that productive (Hartono, 2008).

Insurance has the concept of risk transfer which is used as a tool to reduce risk (Santri, 2018), the uncertainty of losses that occur in human life (Syafriadi & Santri, 2019), which is inherent and combines many risk-affected units of the same type with a relatively large amount; the aim is to predict the possibility of the loss will occur and if the loss does occur it will be shared by all parties who are members of the group proportionally (Santri, 2018). Events that cause losses must be covered in the policy (Syafriadi & Santri, 2019). There are various types of Insurance, and it cannot only be seen from one aspect of the difference. Types of Insurance can be distinguished in terms of management, operational objectives, and type of coverage. Types of Insurance in terms of management, divided into two, namely conventional Insurance and sharia insurance that recognizes the concept of risk transfer, Islamic Insurance recognizes the concept of risk-sharing management. The occurrence of an insurance agreement must apply the principles of Insurance (Santri, 2017).

Insurance arrangements are contained in the draft Civil Code Article 1774, the Book Law Legal Trade Article 246, and Law No. 40 the Year 2014 on Business Insurance. Article 1774 Book of the Law Law Civil Code states that:

A chancy agreement is an action whose outcome, regarding the profit and loss, both for all parties and some parties, depends on an uncertain event. Such are insurance agreements, interest for a person's life (life forked interest), gambling and betting" (Sastrawidjaja, 2003).

Article 246 of the Commercial Code defines Insurance:

An agreement by which a binding to an insured to receive a premium, to provide a replacement to him or for any loss, damage, or lost profits that are expected which may be suffered due to an event that is not necessarily.

Article 1 point 1 of Law Number 40 of 2014 concerning Insurance Business defines Insurance:

An agreement between two or more parties, whereby the insurer binds himself to the insured by receiving insurance premiums, to provide compensation to the insured, due to loss, damage, or loss of expected profits or legal liability to third parties may be suffered by the insured, which arises from an event that is not certain or to provide a payment that is based on death or the life someone who insured.

The Insurance widely marketed today is investment-based life insurance, first introduced in the UK in 1957 and proliferating throughout the world, including investment-based Insurance Naming in various including, Unit-linked Insurance Plan (ULIP) known in India which develops investment features with life protection (Saravanakumar & Mahadevan, 2001), Unit Linked Life Insurance (ULLA) known in France, America known as *Ping* An, while in Indonesia as variable life insurance, China knows itself familiar with the title insurance unit-linked.

Investment-based life insurance has not been around for a long time in Indonesia, approximately 20 years if initially insurance companies only sold traditional insurance products that only transferred risk. However, several insurance companies are now competing to issue products that transfer risk, and customers are given the option to invest (Bukhari, 2015). Investing can be defined as an activity that is carried out either by an individual (natural person) or a legal entity (judicial person) to improve and maintain the value of their capital in the form of cash (cash), equipment (equipment), the asset does not move, intellectual property rights, and expertise (Rokhmatussa'dyah & Suratman, 2010).

The basic concept of investment-based life insurance is a life insurance product packaged in a modern way, which provides life insurance protection benefits with investment benefits. Investment benefits will be obtained based on the premium rate. Determination of premium rates on investment-based life insurance must consider calculating interest rates, acquisition costs, including agent commissions, administrative fees, and other general costs, and the estimated investment returns from premiums. The consideration of the premium rate provisions is regulated by the Decree of the Minister of Finance of the Republic of Indonesia No. 225/KMK.017/1993 Chapter IV Article 13 paragraph (2). Premiums paid to insurance companies are used as investment capital; investment-based life insurance is closely related to money market and stock market conditions. Market share is the place where the investor is connected to conduct transactions, sale, and purchase of shares, while the market money is the place for a party or an individual to be able to borrow funds at the level of interest as a reward or advantage that is offered to donor funds.

Holders of investment-based life insurance policy given the freedom to choose and determine their own in which the funds are to be invested (Fitriana Wulan et al., 2014), can choose the instrument investments, such as equity funds, balanced funds, income funds, or fixed. Investment-based life insurance premium payments are grouped into single premiums and periodic premiums. Single premium in question is the premium paid as well as in advance or with a word another deposit premium is only done one time during the period of a protection insurance policy; the regular premium is the premium that is paid periodically or gradually get every month, or every year until a specific time. The prospect of developing investment-based life insurance is triggered by the boom in mutual funds in the capital market. The goal is an alternative product that provides

flexibility for the holder of the policy for access by direct Investment. Investment-based life insurance can be an innovative and creative product in the insurance business. Implementation of investment-based life insurance in an insurance company cannot always run smoothly. Often obstacles are found in its implementation, especially in claim settlement.

Article 31 paragraph (4) of Law Number 40 of 2014, which investment-based life insurance companies violate, is the delay in settlement or payment of claims, or not taking actions that should be taken, resulting in delays in settlement or payment of claims. The period of payment of the insurance claim itself is regulated in Article 27 of the Decree of the Minister of Finance No. 422 / KMK.06 / 2003 of 2003 on the Implementation of Business Companies Insurance And Corporate Reinsurance reads: "Insurance company should have to pay claims no later than 30 (thirty) days since the agreement between the insured and the insurer or certainty about the number of claims that should be paid".

The public's very high euphoria for the presence of investment-based life insurance products is inversely proportional to reality. Investment-based life insurance, whose initial concept is to provide self-protection for human life and provide investment guarantees that are not following what is expected by society, has a considerable risk (Cermati, 2016) of default. The losses caused by the risk of default, which investment-based life insurance companies carry out because of their mistakes, mean that the company must be responsible for mistakes because it harms other people. The responsibility for basic mistakes made by so-called liability without based on fault-point quarter and Losses on risk cases failed to pay were made by the company life insurance-based investments is the responsibility for the error, which has been made in managing the fund policyholders. The shape of his mistakes are deals on products that harm, enterprise control system is still weak, governance of less good companies, office branches are not productive, access to capital is limited, the quality of the source of the power of man insurance is limited (Lee & Lee, 2015; Mason & Harrison, 2002). Liability Companies Insurance-based Investment requires that companies Insurance run its responsibilities, specifically in terms of payment of compensatory damages against the risk of failing to pay that lead to dispute the parties because the case is related to the rights of privacy that the policyholder should obtain (Gupta & Sapienza, 1992).

Method

This research has the type of empirical jurisdiction, meaning that a study conducted on the actual state of society or community environment with the intent and purpose of finding facts (fact-finding), which then leads to the identification of (problem identification) and eventually lead to the settlement of problems (problem-solution) (Soekanto, 2007). Sources of data used are primary data and secondary data. Primary data, namely data obtained directly by researchers from sources related to research problems secondary data is data obtained from literature consisting of primary legal materials, secondary legal materials, tertiary legal materials. Primary legal materials are legal materials in the form of applicable statutory regulations, including in this case judge decisions and related agreements, statutory regulations, secondary legal materials, namely

legal materials that explain primary legal materials, consisting of academic reference books, or the writings of the laws of the experts are related to the issues discussed, as well as publications and the results of previous research. Tertiary legal materials are legal materials that provide instructions and explanations of primary and secondary legal materials, such as legal dictionaries, encyclopedias.

Discussion

Investment -based life insurance arrangements in Indonesia

Investment-based life insurance is a hybrid insurance product that provides two benefits at once, namely the benefit of life insurance compensation protection and investment benefits in the form of cash value. The insurance benefits contained in investment-based life insurance are no different from the protection provided by traditional types of life insurance, namely death benefits, health benefits, and other benefits according to the selected program. Benefits result of Investment of the premium placed on fund investment expressed in the unit, the performance of lead results are dependent on the performance of sub-data investment unit links the selected customers following the conditions of market shares and market money (Sendra, 2004).

Investment-based life insurance, also known as a unit link, is a modern insurance product that packs insurance protection and Investment. By becoming a unit link customer, one will get two benefits at once, namely Insurance and investment protection. Product protection is offered in insurance health or life insurance, but it is generally packaged in the form of time savings front or education insurance (Tri Hendro & Rahardja, 2014). There are several unique in investment-based life insurance, including the investment element, an essential component in this Insurance. The mortality cost component, administrative costs, and investment fees are explicitly disclosed in the policy attachment so that the policyholder can identify it (Tödtling & Trippl, 2005). The minimum guarantee or the maximum level of investment return borne by the insurance company depends on the investment performance managed by the company. The holder of an investment-based life insurance policy has the right to choose an investment portfolio from several investment alternatives determined by the insurance company (Klein et al., 2005). This investment-based life insurance has an unbundled nature, meaning that the investment components, costs, and life insurance are separate and can be identified.

Settings where the FSA has regulated investment-based life insurance itself with FSA issued Regulation No. 23 / POJK.05 / 2015 on Insurance Products and Marketing Products and the Decree of the Chairman of Board of Trustees Market Capital and Financial Institutions No. KEP-104/BL/2006 concerning the product Insurance soul-based Investment. Regulation more about investment-based life insurance is also set in Rule Government of Number 87 the Year 2019 on companies insurance in the form of business together, the Minister of finance No. 422/ KMK.06/2003 on the Implementation of Enterprise Per assurance, and the Decree of Directorate General of the Institute of Finance No. 2475 /LK on investment insurance products.

The setting and supervision of the insurance life-based Investment, both conventional and sharia, are under the FSA. Related arrangements for products-based insurance investment in Indonesia refer to the rules, among others, Decision of the Chairman of Board of Trustees Market Capital and the Institute of Finance No. KEP- 104/ BL/2006 concerning the product unit link, Regulation Authority Services Finance Number 23 / POJK.05 / 2015 on Product Insurance and Marketing Products Insurance Regulatory Authority Services Finance No. 69 /Pojk.05/2016 on the Implementation of Business Insurance Company Islamic Insurance, Reinsurance, and Corporate Reinsurance Sharia.

Liability company insurance life -based Investment against the risk of failing to pay the holder of the policy Principles of legal liability of insurance companies

Responsibility means that the state shall bear all things. If there are things, we may be prosecuted, condemned, sued, and so on. In carrying out its obligations, the insurance company must be responsible for all the actions it takes (Yücenur & Demirel, 2012). The concept of responsibility was put forward by the originator of the pure legal theory, namely Hans Kelsen. According to him, responsibility is closely related to obligations but not identical. Obligations arise because of the rule of law regulating and providing legal liability to the subject. Legal subjects burdened with obligations must carry out these obligations as orders from the Rule of Law (Chen et al., 2010). As a result of not carrying out obligations, it will result in sanctions. This sanction is a forced act of the Rule of Law so that obligations can be carried out properly by legal subjects (Korolova et al., 2021). According to Hans Kelsen, the subject of law which imposed the sanctions said to be responsible or by law are responsible for the violations (Kelsen, 2006).

The concept is that the sole responsibility that emerged from the Rule of Law is on obligations to legal subjects with the threat of sanctions if obligations are not implemented (Ibegbulem, 2021). Responsibility thus can also be said as a legal responsibility as it emerges from the command rule of law or enactment reserved. The sanction is also the penalties established by law because it is accountable to the subject of law being a legal responsibility. She referred to the general legal theory, which states that everyone, including the government, must be responsible for every action, either through error or without fault (IZZA, 2018).

Hans Kelsen further divides the responsibilities consist of accountability of individuals, namely an individual shall be liable to the offense itself, the accountability of collective means that an individual is responsible on an offense which is done by the other, liability based on fault which means that an individual responsible for violations done on purpose and estimated to cause damages, liability absolute which means that an individual is responsible for the attacks committed by accident and not estimated (Kustina et al., 2019).

Etymologically, responsibility is the obligation to everything or the function of accepting the burden due to one's actions or other parties' actions. At the same time, responsibility by the Indonesian dictionary senses that a state shall bear all the things (if there is something to be prosecuted, condemned, sued, and so on). According to the legal dictionary, there are 2 (two) terms of responsibility, namely

liability (the state of being liable) and responsibility (the state or fact of being responsible). Liability is a broad legal term, where liability refers to the most comprehensive meaning, covering almost every character of risk or responsibility that is certain, dependent, or possible. Liability is defined to designate all the characteristics of rights and obligations. Liability is also a condition subject to the obligation is actually, or potentially, the condition is responsible for things that actually or possibly as a loss, threat, crime, cost or expense, the conditions that created the task to implement the legislation with immediately or in the future come (Sunariani et al., 2019). Meanwhile, responsibility means that things can be accounted for or an obligation, including decisions, skills, abilities, and skills. Responsibility also means obligations are responsible Act is implemented, and correct or otherwise compensate for any damage that has been caused.

The principle of legal responsibility can be divided into two types, namely, liability based on fault and strict liability. Liability based on fault is the burden of proof that burdens a patient who has just received compensation if he succeeds in proving an element of an error on the part of the defendant, the error is an element that determines liability, which means if there is no evidence of an error, there is no obligation to provide compensation. Strict liability (absolute responsibility), namely, the element of error, does not need to be proven by the plaintiff as the basis for payment of compensation.

Liability companies insurance life-based Investment against the risk of failing to pay the holder of the policy

In carrying out the insurance business, the insurance company must meet the standard of business behavior that has been determined in Article 11 Paragraph (1) Letter b of Law Number 40 of 2014 concerning Insurance Business which consists of insurance policy requirements, premium rate, claim settlement, requirements expertise in the field of Insurance and the provisions of any other that relate to the operation of the business. However, if we look at Article 26 Paragraph (1) of Law Number 40 of 2014 concerning Insurance, the standard of conduct of the insurance business is regulated more strictly. This article states that insurance companies are required to comply with standards of business behavior which include provisions regarding insurance policies, premiums or contributions, underwriting and introduction of policyholders, the insured, or participants, settlement of claims, expertise in Insurance, product distribution, or marketing, handling of policyholder complaints, the insured: or participants, and other standards related to business operations. Judging from the article, it is clear that investment-based life insurance companies do not meet points d and g (Dahl, 2004; Grosen & Jørgensen, 2000; Bauer et al., 2006). The company does not resolve claims and handle complaints from policyholders, insured, or participants.

Defaults in several insurance companies were due to errors in managing customer funds, starting from fund collection and not the optimal implementation of risk management within the company (Sudarma & Sari, 2020). The loss on the risk of default cases carried out by investment-based life insurance companies is a liability due to errors, which have been made in managing the funds of the

insurance policyholder. Forms of guilt are deals on products that harm; the system control companies are still weak, corporate governance is not good, the office branch is unproductive, access to capital is limited, the quality of the human resources of Insurance is limited (Saleh, 2019).

Forms liability company insurance against the risk of failing to pay the policyholder is not described in Law No. 40 of 2014 concerning Business Insurance; this legislation does not directly address violations in the insurance business and unregulated how corporate responsibility insurance against the non-inability company in fulfilling insurance claims. Only just Act No. 40 of 2014 concerning the business of Insurance set the delay in the payment of claims contained in Article 31, Paragraph (4) of Law No. 40 of 2014, which states that company insurers are prohibited from doing acts that can slow down the settlement or payment of claims, or no action that should be done to result in delays in settlement or payment of claims. A company that is unable to fulfill its debt obligations can be filed for bankruptcy by creditors or the insured and insurance companies. The insurance company's bankruptcy application is submitted to the Financial Services Authority by the insured. The Application for bankruptcy is regulated in Article 50 Paragraph (1) of Law Number 40 of 2014 concerning Insurance stating, "Application for a declaration of bankruptcy against an Insurance Company, Sharia Insurance Company, Reinsurance Company, or Sharia Reinsurance Company based on this law can only be submitted by the Service Authority. Finance". In the case of this company, insurance life-based Investment should remain obliged to carry out its commitment to repay its obligations, and still, no attempt liquidation of the GCC continues to run against the company insurers who fail to pay to the holder of the policy.

Conclusion

OJK has regulated the legal basis for the existence of investment-based life insurance itself by issuing OJK Regulation Number 23/POJK.05/2015 concerning Insurance Products and Product Marketing and Decree of the Chairman of the Capital Market and Financial Institution Supervisory Agency Number KEP-104/BL/2006 regarding products Investment-based life insurance. Other regulations concerning life insurance -based Investment also set in Rule Government of Number 87 the Year 2019 on companies insurance in the form of business together, the Decree of the Minister of finance of Republic of Indonesia Number 422/KMK.06/2003 on the Implementation of Enterprise Per assurance, and the Decree of Directorate General of the Institute of Finance No. 2475 /LK on investment insurance products.

The insurance company's responsibility, life-based Investment against the risk of failing to pay policyholders in Indonesia, is not regulated in Law Number 40 the Year 2014 concerning attempts per assurance. This law only discusses the delay in payment of claims in Article 31 Paragraph (4) of Law Number 40 of 2014 Insurance companies are prohibited from taking actions that can delay the settlement or payment of claims, or not taking actions that should have been taken, resulting in delays in the settlement or payment of claims. Companies that cannot fulfill their debt obligations can be filed for bankruptcy by creditors or the

insured (under Insurance). The insurance company's bankruptcy application is submitted to the Financial Services Authority by the insured.

Acknowledgments

We authors thank all support and feedback given by academic supervision. Similar support in financial is also appreciative. Without these supports, we would not be able to finish this study.

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