

Legal Protection for Consumers of Unit Link Life Insurance Products

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Abstract

Insurance is a non-bank financial institution which has the main function of distributing and distributing risks by collecting funds or also known as premiums obtained from the public or companies by marking an agreement or policy in which there is various information regarding the agreement between the insurer and the policy holder which has the aim of positive for various parties. These various parties are insurance companies, policy holders and the government. Because of this positive goal, the existence of this insurance must be maintained and expanded along with its development. The manifestation of this supervision is manifested in several factors such as statutory regulations, understanding of the community, good faith in both parties and the professionalism of insurance marketing personnel. The aim of this research is to identify legal certainty for consumers who purchase unit-linked life insurance products which are analyzed based on existing and applicable laws and regulations in Indonesia. This type of research is normative juridical, namely a type of research approach to laws and regulations that is linked to the existing case, namely the number of unit link policy holders who complained to the Financial Services Authority about the money in the policy running out or not in accordance with the explanation from the life insurance company marketing staff since 2019 until this writing was written.

Keywords | *Legal Certainty, Life Insurance, Unit Link.*

INTRODUCTION

The financial services industry is an industry that has an important role in the economy in Indonesia. One sector of the financial industry that has the potential to experience high development in the future is the insurance sector. This is characterized by a condition where the level of public awareness in Indonesia is still low regarding understanding insurance compared to people abroad and the low ratio of insurance sector assets to gross domestic product (GDP) in Indonesia.

Currently, most of the premiums generated in the insurance industry come from life insurance businesses where the type of product with the highest premium income is obtained from Unit Link life insurance products (Insurance products linked to investments). This Unit Link insurance product is actually able to increase public awareness of insurance as well as investing, and the benefits of investing in Unit Link insurance are an added value compared to traditional insurance products and pure investments. Policy holders need to understand that the investment funds formed also experience the risk of fluctuating cash values. This risk depends on the investment chosen.

Usually, insurance companies that sell Unit Link products will offer various types of investments to choose from, such as shares, fixed income, money markets, mixed investments and Sharia-based investments. In practice, many problems occur related to this Unit Link product due to the public's lack of understanding regarding the investments they participate in. In fact, most of the complaints from insurance customers are about the decrease in their funds placed in Unit Link insurance products. "Member of Commission



As a result, in 2022, as many as 2.4 million customers will have to cover insurance. At the beginning of 2023, President Joko Widodo mentioned that the Financial Services Authority (OJK), which is actually a supervisory and regulatory institution that actually has the authority to resolve Unit Link customer problems that occurred, was asked to immediately follow up on complaints from victims where this complaint report has been around since from 2019 to 2023 and it is still felt that this Unit Link insurance product is causing problems that will not be resolved, many people are being harmed. One of the biggest causes of this problem is the lack of financial literacy among Indonesian people.

This study was prepared with the aim of finding out or identifying the legal problems that exist among consumers who purchase Unit Link insurance products, where the main cause is that customers feel cheated by insurance companies due to misunderstanding or unclear information between customers and marketers when offering life insurance. Link Units. We often find marketers who do not provide sufficient explanations to customers regarding how investments in Unit Link life insurance products work. For this reason, the author tries to formulate recommendations in order to strengthen legal certainty for Unit Link insurance consumers.

Based on the placement of investment funds, Unit Link insurance is divided into money market Unit Link insurance, fixed income Unit Link insurance, mixed income Unit Link insurance, and stock fund insurance. For this reason, OJK has special provisions regarding Unit Link insurance, including OJK Circular Letter Number 5/SEOJK.05/2022 concerning Insurance linked to Investment (SEOJK PAYDI). This provision takes effect from March 14, 2023, where this Circular Letter regulates the implementation of insurance and insurance companies including Sharia insurance. This needs to be done in order to improve aspects of consumer protection, apart from that SEOJK PAYDI also aims to improve governance and risk management for insurance companies, so that marketing Unit Link products does not cause problems again in the future.

Insurance in Indonesia is actually regulated in Law number 40 of 2014 concerning insurance, which hereinafter in this article is called the Insurance Law. This law was formed by the government to build a healthy, reliable, trustworthy and competitive insurance industry in increasing protection for policy holders, insureds or participants and playing a role in encouraging national development. In article 9 of the Insurance Law, it is explained that the involvement of the Financial Services Authority (OJK) in approving or rejecting insurance company business license applications. Apart from that, it is discussed in article 21 of the Insurance Law that Insurance Companies are obliged to submit reports, information, data and/or documents to the Financial Authority Services. The Financial Services Authority also covers the dissolution or revocation of business licenses from Insurance Companies as discussed in Article 42 of the Insurance Law.

Based on the description above, the author will analyze the application of the Insurance Law, to what extent this Law protects consumer rights to Unit Link life insurance products offered by life insurance companies in Indonesia. And analyze the extent to which the Financial Services Authority (OJK) has authority over Unit Link Life Insurance Marketers in intervening in the sales process to consumers.

METHOD

This research uses a normative doctrinal approach, or normative juridical legal research or normative legal research which is basically an activity that will examine aspects. Normative Legal Research Methods can be interpreted as a research method on statutory regulations both from the perspective of the hierarchy of statutory regulations (Horizontal). Normative legal research methods use a normative juridical approach. "The normative juridical approach is an approach that refers to applicable laws and regulations." Based on existing doctrine and the description above, it can be concluded that what is meant by normative legal research is a type of legal research methodology that bases its analysis on applicable laws and regulations and their relevance to the legal issues that are the focus of the research.

RESULTS AND DISCUSSION

Application of the Insurance Law, to what extent does this Law protect consumers' rights to Unit Link life insurance products offered by life insurance companies in Indonesia.

Indonesia is a country of law, which means that all aspects of life in the territory of the Unitary State of the Republic of Indonesia must be based on law and all legislative products and their derivatives that apply in the territory of the Republic of Indonesia. Apart from that, in accordance with article 1 paragraph (3) of the Constitution of the Republic of Indonesia (third amendment), the concept of a rule of law aims at the goal of creating democratic life and protecting human rights and equitable welfare. In simple terms, it is a state that places law as the basis of state power and the exercise of this power in all its forms is carried out under legal authority.

The legal protection provided by the Republic of Indonesia as a legal state for the wider Indonesian community regarding life insurance products is stated in the Insurance Law where this is stated in article 6 paragraph (1), namely the form of legal entity that can carry out insurance business is a limited liability company, cooperative or joint ventures that already existed when this law was enacted.

Opening a branch of an insurance company in every city in Indonesia cannot immediately open and operate, but still requires reporting to the Financial Services Authority and can only open and operate after obtaining official permission from the Financial Services Authority. Protection against bankruptcy is also discussed in the Insurance Law where when an insurance company goes bankrupt or is liquidated, insurance funds must be used first to fulfill obligations to policy holders, insureds, or other parties who are entitled to insurance benefits. The Insurance Law also clearly discusses the regulation and supervision of insurance business activities carried out by the Financial Services Authority. Where this regulatory and supervisory function is absolutely carried out by the Financial Services Authority.

Protection provided by insurance law to unit-linked life insurance consumers.

The protection provided by the insurance law provided by the government of the



Republic of Indonesia to consumers of unit-linked life insurance has actually been regulated in such a way in the insurance law, apart from that the regulations or provisions are also stated in the decisions of the capital market supervisory body and institutions. finance, regulations issued by the financial services Authority (POJK), including circular letters from the Financial Services Authority (SEOJK).

Based on complaints regarding unit links to the Financial Services Authority (OJK), starting from 2019 there were 360 complaints and in the following year, namely 2020, complaints increased to 593 complaints, and in the first quarter of 2021 it had reached 273 cases, until finally the complainants were Feeling cheated, early in 2022 submitted this report or complaint to the House of Representatives People (DPR). In 2023, finally Mr Joko Widodo, the President of the Republic of Indonesia, also spoke out regarding this case. He hopes that this case will be treated more seriously when he attends the financial industry's annual meeting. This was conveyed because many unit link life insurance users complained while crying to him. At the same time and opportunity, Pak Joko Widodo also asked the Financial Services Authority (OJK) to intensify supervision.

The problems experienced by consumers are often caused by the low level of public understanding of the financial products they use. Consumers ultimately buy and use unit-linked products without fully understanding the characteristics of the product, its suitability to their needs, the benefits they will receive, the costs that arise due to additional benefits, and the risks of choosing an investment location. This causes consumers to have a less favorable position when dealing with financial services businesses. If we look at the general condition of consumers, the level of consumer empowerment in Indonesia is still low. This can be shown by the Indonesian Consumer Empowerment Index (IKK) in 2022 which reached a value of 53.23, compared to countries Europe has reached a value of 73.8. Paying attention to the development of unit linked insurance which continues to increase in Indonesia, the many reports submitted to the OJK, as well as information on problems There is in the mass media, the OJK conducted a study on aspects of consumer protection in this unit link. OJK as the authority that has the authority to carry out consumer protection as mandated by the President of the Republic of Indonesia regarding the national strategy for consumer protection, apart from that, there is still Law Number 21 of 2011 concerning the Financial Services Authority, which is obliged to provide education and protection to consumers and the public.

The issuance of the Insurance Law is believed to be one of the milestones in establishing legal certainty for unit-linked life insurance consumers, with the authority granted by the Insurance Law to the Financial Services Authority (OJK) in article 8 paragraph (1) in terms of opening a business by an insurance company, including reporting information, data and/or documents to the Financial Services Authority (OJK), as well as further provisions regarding corporate governance are regulated in the Financial Services Authority (OJK) Regulations. However, there are still many reports or complaints from the public regarding the unit links they purchased as described above.

This problem is caused by a legal vacuum regarding problems that occur with unit-link life insurance. The Financial Services Authority (OJK), which has full authority over

insurance, only issued Financial Services Authority Circular Letter Number 5/SEOJK.05/2022 concerning Insurance Products linked to Investment (PAYDI) where in fact the Circular Letter is a legal product whose contents are a text containing notifications regarding certain matters that are considered important and urgent which are materially binding in general, however, are not regulations but rather internal administrative instruments. In accordance with the mandate of Law Number 10 of 2004, Circular Letters cannot actually be qualified as statutory regulations. Circulars only explain or contain technical instructions for general regulations. Even though the text of the Circular gives the impression that it is a regulation, it is only for one's own circle and is only intended to clarify.

The position of the Financial Services Authority Circular Letter Number 5/SEOJK.05/2022 concerning Insurance Products linked to Investment (PAYDI) is not as a statutory regulation, because this Circular Letter does not fulfill the elements of a legal norm but is only a policy regulation (Beleidsregel). This Circular Letter only urges life insurance business players to implement patterns or concepts in accordance with what is written in the Financial Services Authority Circular Letter Number 5/SEOJK.05/2022. From the conclusion above, it is found that it is reasonable if there are several recommendations or directions in this Circular Letter that are not carried out properly because they do not give rise to legal sanctions and do not provide a deterrent effect to perpetrators of violations of this circular letter. In fact, the purpose of the Circular was actually to protect the interests of the public from errors in interpretation or understanding when prospective customers want to buy a unit-link life insurance policy. However, it turns out that this Circular Letter is deemed less useful because there are no sanctions up front, so violations can continue to occur.

The Financial Services Authority (OJK) has authority over Unit Link Life Insurance Marketers to intervene in the sales process to consumers.

The Financial Services Authority (OJK) is a State Institution established based on Law Number 21 of 2011 which is one of the implementations of article 33 paragraph (5) of the 1945 Constitution which mandates the formation of laws governing the national economy. The Financial Services Authority (OJK) has functions, duties and authority in terms of regulation, supervision, inspection and investigation of financial institutions in the banking sector, capital markets and non-bank financial industries including insurance. The global aim of establishing this state institution is none other than to carry out government, especially for the Financial Services Authority (OJK), which has the task of enforcing the law through issued policies and regulations that must be enforced in both the banking and non-banking sectors, including insurance, as well as planning and compiling regulations. and the flow of supervision to financial institutions, both banks and non-banks, including insurance, with the aim of creating transparent financial institutions. The Financial Services Authority was formed with the aim of replacing the role of Bapepam-LK in regulating and supervising capital markets and financial institutions as well as replacing the role of Bank Indonesia which previously had the task of regulating and supervising banks, as well as



protecting consumers in the financial services industry.

In carrying out its functions and duties, the Financial Services Authority (OJK) obtains independence that is free from interference from other parties, except for matters expressly regulated in this law. The Financial Services Authority (OJK) was built on the basis of governance principles such as independence, accountability, accountability, transparency and fairness, this principle of independence is intended, among other things, when making a policy or decision as the implementation of functions and supervision must remain in accordance with applicable laws and regulations.

State institutions are actually not only formed based on law but are also formed from statutory regulations. The Financial Services Authority (OJK) as a state institution is part of the government of the Republic of Indonesia which is placed at the center with its duties, functions and authority clearly regulated in the Law. This State Institution or Financial Services Authority (OJK) was formed by the state and for the interests of the Indonesian state to achieve what the state aspires to.

There are two parts to state institutions, namely:

1. Direct state equipment
2. Indirect state equipment.

As a state institution which is part of the Indonesian government, it is understood that all activities carried out must be based on sovereignty and independence based on the basis of the Indonesian state, all of which leads to the goals of the concept of the country. The Financial Services Authority (OJK) as a state institution is an organ authorized to serve the public and is obliged to provide civil services for every citizen who wishes to communicate with the government. Another definition of the Financial Services Authority (OJK) as a state institution is a group of people who work together to carry out limited responsibilities in terms of using power or a public body whose function is to carry out efforts so that the country's ideals can be realized. So, in short, it can be concluded that the main objective of establishing a state institution, in this case the Financial Services Authority (OJK), is to maintain the stability of a system in society so that residents can carry out their lives with safe financial transactions and grow sustainably and increase public trust in transactions. finance, both in the banking sector and in the non-bank financial institutions sector.

The definition of insurance is an insurance business that is involved in financial services, where the system of this business is to collect funds from the public by charging a fee or premium to the policy holder of an insurance as a return for the protection provided to members of the insured community or the insured person who buys the product. This insurance covers the impact of financial losses due to an uncertain event affecting a person's life or death, including reinsurance businesses, and supporting businesses rather than the insurance business itself, insurance loss assessment, and finally actuarial services. As explained at length in the previous pages, an insurance policy is issued due to an agreement between the policy holder and an insurance company. As with the form of an agreement, of course there is the potential for renege on our Wan Achievement, namely an insurance company failing to pay a customer for a disaster suffered by that customer. Therefore, security and supervision of insurance companies in Indonesia is needed. The Insurance Law

has appointed the Financial Services Authority (OJK) as an institution that has the authority to supervise activities in the insurance area which has the function of realizing a financial system that grows sustainably and stably, as well as maintaining fair, orderly, transparent, accountable, operational conditions. and focuses on protecting the interests of consumers and society.

After the author examined the entire Insurance Law, it was discovered that there was no authority from the Financial Services Authority (OJK) over insurance marketers. The authority of the Financial Services Authority (OJK) was limited only to members of the board of directors, members of the board of commissioners, or the equivalent of members of the board of directors and members of the board of commissioners in legal entities in the form of cooperatives or joint ventures, members of the sharia supervisory board, company actuaries, internal auditors, controllers, or other employees of insurance companies who deliberately provide reports, information, data, and/or documents to the Financial Services Authority (OJK). The limited authority of the Financial Services Authority (OJK) is what causes violations of marketing actions to consumers or the general public to occur frequently and continue to occur. This is because when a violation occurs, the Financial Services Authority (OJK) will examine the relevant directors and ask for information or complaints. So, in business terms, a director's tendency towards his partners, namely marketing personnel, will tend to be non-neutral and slightly partial to the marketing personnel who provide premium income to the insurance company, so it is suspected that the company's tendency will cover or protect the marketing personnel in question, especially when These marketers provide very large premium income for the insurance company, have good achievements. Meanwhile, the consequences arising from this legal vacuum are legal uncertainty (Rechtsonzekerheid) where in the legislation there are parts that should be there but apparently do not exist, and if this happens continuously in the long term it will result in legal chaos (Rechtsverwarring).

CLOSING

Conclusion

Law Number 23 of 2014 divides absolute and concurrent authority, especially in health matters which are the concurrent authority of the government at the central to village levels. While the Insurance Law provides certainty to unit-linked life insurance consumers, it has restrictions regarding insurance company ownership which can only be owned by Indonesian citizens or Indonesian legal entities with relevant ownership. The regulation also stipulates requirements and procedures for insurance companies wishing to operate in Indonesia, with supervision and permits granted by the Financial Services Authority (OJK). This law also gives the OJK the authority to refuse permits, revoke permits, assess the suitability of directors and commissioners, and impose sanctions for violations of statutory regulations. Regarding complaints regarding the cash value of insurance products, OJK issued Circular Letter Number 5/SEOJK.05/2022 concerning investment-related insurance products (SEOJK PAYDI). Even though this circular does not have sanctions, it functions as a notification of urgency by not having a legal position that is lower than statutory regulations.



The Financial Services Authority (OJK) has limited authority over unit-linked life insurance marketers in accordance with the Insurance Law. Its authority focuses on granting, refusing and revoking insurance company licenses, as well as supervising high-ranking officials in the company. Problems arise when marketers, who are considered to be the root of the problem, are involved in sales practices that are alleged to prioritize commissions over customer interests. This causes customer dissatisfaction who feel cheated because the cash value of the policy does not match what was promised. Even though customers report this to the OJK and the media, the OJK's limited authority is only focused on company officials, so that problem resolution is not optimal. As a result, the customer finally involved the People's Representative Council of the Republic of Indonesia (DPR) in complaining about this case.

Suggestion

The Financial Services Authority (OJK), whose authority is derived from the Insurance Law, should be more strict in controlling marketers who violate the provisions as they should, not only with circular letters, but can also issue Financial Services Authority Regulations (POJK) where this POJK has legal force. which is binding and accompanied by sanctions for parties who violate it, so that this regulation will cause the parties involved to be very careful when selling unit-linked insurance, especially marketers who are in direct conflict with potential customers.

The Insurance Law provides additional articles related to the authority of the Financial Services Authority to be able to reach marketers directly, especially those involved in or selling unit-linked life insurance. This is based on the assumption that if the authority of the Financial Services Authority (OJK) can only reach top officials from insurance companies, then it is feared that officials from these insurance companies will feel reluctant and unwilling to impose sanctions on marketers who violate the regulations. issued by the Financial Services Authority (OJK) because these marketers contributed a lot to the company and excelled in providing premium contributions. Meanwhile, if the authority of the Financial Services Authority is expanded through the Insurance Law to reach marketers who commit violations, then warning letters or reprimands will no longer come from the insurance company that oversees it, but directly from the Financial Services Authority (OJK) and the sanctions will be heavy. can be given to unit link life insurance marketers if warnings delivered verbally or in writing are ignored, such as termination of membership as a life insurance worker under the auspices of the Indonesian Life Insurance Association (AAJI).

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