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Legal Protection of Mis-Selling Cases Victims on Unit Linked Insurance Products: The Basis of Law No. 40/2014 regarding Insurance Policy

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ABSTRACT

There are many Indonesian people who want to buy insurance with the most benefits in this modern era. It causes investment-based insurance very popular among community. There are two problem statements of this research, (1) how is the arrangement of mis-selling cases on unit linked insurance products based on Law No. 40/2014 regarding insurance policy; (2) how is the legal protection of mis-selling cases on unit linked insurance products based on Law No. 40/2014 regarding insurance policy. The type of this research is normative legal research. The source of data is classified into two types, there are primary legal source and secondary legal source. Meanwhile, the data collection of this research is collecting legal materials through inventory procedures and identification of laws and regulations. The data analysis technique used legal and descriptive interpretation analysis techniques. Based on an analysis conducted by the researcher, there are two research results, (1) arrangements for victims of mis-selling cases of Unit Link Insurance Products based on the insurance law using the services and facilities provided by OJK and legal protection for mis-selling victims both preventively and repressively based on the insurance law which is specified using OJK regulations.

Keywords: *Legal Protection, Mis-Selling, Unit Link Insurance*

INTRODUCTION

The Investment Related Unit Linked Insurance Products (PAYDI) have become a spotlight in public, especially after the case of losing customers due to poor management of the insurance company. This case have spreaded around mass media and social media. Then, it caused many insurance customers choose to remove their unit link insurance.

OJK (Financial Services Authority) found that the number of unit-linked customers decreased from 7 million to only 4.2 million insured at the end of last year. It means that almost 3 million customers have closed the unitlink policy in the midst of Covid-19 pandemic. OJK even stated that the cases reported by media regarding unitlink insurance had an impact on the non-bank financial sector. First, insurance service products that do not match the offer or miss out on sales. The second, decrease in investment returns for PAYDI products. The third, request for substantial premiums refunds that have been paid, and the last impact is difficulty in filing a claim even though the policy has expired. Agus stated that these impacts have to avoid then the policyholders are not harmed in the future. Therefore, OJK emphasizes that policyholders have a very good understanding of which investment products to buy, including PAYDI or unit link products. In the press conference of the Indonesian Life Insurance Association (AAJI), Agus also stated that business actors must ensure that agents do not ask consumers to sign blank insurance application forms and the bidding process must be properly documented.

Some customers lose on average between 50% and 70% of the premium they paid for unit link products. This case is commonly known as misinterpretation, and it is not first time this case is being happen in community. Around 2020, the number of consumer complaints regarding unit links to OJK was 593 complaints, most of which were due to wrong sales. OJK noted on June 20, 2021, there are about 40% of the total 2,600 complaints received related to the difficulty of policyholders in paying their claims. Most of complaints is unit link insurance products.

Prudential Indonesia's Chief Marketing and Communications Officer, Luskito Hambali also responded to the customer's complaint. He stated that Prudential Indonesia had provided direct and transparent explanations to these parties both verbally and in writing. The Prudential Indonesia also propose to resolve complaints through the Financial Services Sector Alternative Dispute Resolution Institution (LAPS SJK) in accordance with applicable regulations. They also assured that Prudential have been running this company compatible with good corporate governance and complied with the rights of policyholders based on the insurance policies they have taken. In addition, they also emphasized that every Prudential's activities had appropriate with compatible law, especially the regulation of OJK. Since January until June 2021, Prudential had paid for the

claims and insurance policies include unit linked insurance which a total of IDR 8.1 trillion.

On the other hand, according to the statement of Kathryn Monika Parapak as Chief Marketing Officer of PT AIA Financial, in purchase transaction policy term, nowadays the company has always tried to ensure that the customer has received an explanation from marketer about the product purchased, in including having a welcome conversation with the customer in certain time. The customers have to learn about those policies well. She also emphasized that all marketers of PT AIA Financial had followed inhouse training process and Indonesian Life Insurance Association (AAJI) certification, then they have product knowledge well and able to market all products in accordance with applicable regulations. She also stated that PT AIA Financial requires marketers to market products according to customer needs and ensure that customers have been provided with an explanation of the products purchased, including benefits, risks and insurance costs. The objective of this research is to find out the arrangement of mis-selling cases on unit linked insurance products based on Law No. 40/2014 regarding insurance policy and to analyze the legal protection of mis-selling cases on unit linked insurance products based on Law No. 40/2014 regarding insurance policy. Meanwhile, according to the statement of Handojo G. Kusuma as a President Director of PT AXA Mandiri Financial Services, his company has complied with all existing regulations and rules. He also emphasized that the company provides re-explanation of the products to be purchased and they also regularly communicates with customers. Therefore, he hoped that PT AXA Mandiri and other insurance companies can continue to educate and socialize all existing insurance products, then the community are not misunderstanding about this case even though it is his company and entire insurance companies problem.

RESEARCH METHODOLOGY

The type of research in this research used normative type combined with qualitative methods and a juridical or statutory approach. Normative legal research is commonly known as document study, uses qualitative methods in analyzing data, and uses secondary data sources, such as regulations, court decisions, books, legal theory, and doctrine (Efendi, Jonaedi & Ibrahim, 2016). Meanwhile, according to Sugiyono statement that descriptive qualitative method is a method that collecting data research by using words rather than number (Sugiyono, 2019).

Then, according to Bachtiar, statute approach is review all laws and regulations related to the legal issue under discussion (Bachtiar, 2018). The data collection of this research are analyzing mis-selling cases of unit linked insurance products in terms of Law No. 40/2014 concerning insurance policy; using primary and secondary legal source collection techniques through inventory procedures

and identification of laws and regulations; the last is classification and systematization of legal sources related to research problem statements.

RESULT AND DISCUSSION

The Arrangement of Mis-Selling Cases on Unit-Linked Insurance Products Based on Law No. 40/2014 Regarding Insurance Policy

Law No. 40/2014 concerning insurance policy does not explicitly explain investment-based insurance. However, Article 5 states that the expansion of the insurance business scope is further regulated in the Financial Services Authority (OJK) Regulation. Additionally, Article 57, paragraph (1) explains that the regulation and supervision of insurance business activities are conducted by OJK. This means that OJK has the authority to supervise and regulate insurance business activities to prevent events that could negatively impact the financial sector, especially the community financial sector, including unit-linked insurance.

The legal basis for regulating and supervising unit-linked insurance is outlined in OJK Regulation No. 23/POJK.05/2015 concerning Insurance Products and Product Marketing, as well as in Financial Services Authority Regulation No. 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector.

Understanding rights and obligations is essential in resolving default issues in unit-linked insurance products. The following are the rights and obligations that must be adhered to by every insurance customer:

1. The right to obtain information or transparency regarding all matters related to the benefits and guarantees of insurance products.
2. The right to have their opinions and complaints heard regarding the services provided by the insurance company.
3. The right to obtain compensation for any event that affects the customer.
4. The obligation to pay insurance premiums according to the agreed insurance period.
5. The obligation to comply with all provisions stated in the insurance policy.

OJK, as an independent institution aimed at protecting consumers and public interests in the financial services sector, has issued Financial Services Authority Regulation (POJK) No. 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector. Based on these provisions, OJK has established facilities and mechanisms for customer complaint services in the financial services sector.

Insurance companies must prepare working papers when offering unit-linked insurance, use open-ended questions in welcome calls, ensure all costs are

included in the fund progress report, provide detailed calculations of premium returns, and include historical investment performance data in illustrations.

Dispute Resolution Mechanisms

Disputes can be resolved through judicial (litigation) and extra-judicial (non-litigation) procedures. Out-of-court settlements are conducted through arbitration institutions such as the Indonesian Insurance Mediation and Arbitration Board (BMAI). Another alternative for insurance dispute resolution, separate from BMAI, is through the Consumer Dispute Settlement Agency (BPSK). Policyholders may also resolve disputes independently.

OJK plays a role in protecting consumers in the financial services sector through OJK Consumer Services, commonly known as Financial Consumer Care (FCC). OJK Consumer Services provides information, assistance, and complaint-handling services through various access points, such as letters, emails, the OJK website, contact center 1500-655, and facsimile. According to OJK Consumer Services statistics, the most common consumer complaints relate to:

1. Investment returns that do not align with initial explanations.
2. Difficulties in obtaining detailed information from companies.
3. Discrepancies in filling out data in SPAJ (Life Insurance Request Letter).
4. Unilateral termination of policies by insurance companies.
5. Difficulties in claim disbursements or outright refusal to disburse claims.

Customers experiencing mis-selling or other issues with investment-based insurance policies can also access the Consumer Education and Protection Reporting Information System (SiPEDULI). OJK Circular Letter No. 2/SEOJK.07/2014 mandates financial service businesses, including life insurance companies, to report service and complaint settlements internally to OJK via SiPEDULI.

Financial Literacy and Inclusion Initiatives

The Consumer Education and Protection Reporting Information System (SiPEDULI) is a reporting application supporting Financial Services Businesses (PUJK) in implementing financial literacy and inclusion programs. These initiatives are mandated under:

1. SEOJK No. 30/SEOJK.07/2017 (financial literacy improvement activities).
2. SEOJK No. 31/SEOJK.07/2017 (financial inclusion improvement activities).

PUJK includes various financial institutions such as general banks, rural banks (BPR), securities traders, investment managers, pension funds, insurance

companies, financing companies, venture capital firms, mortgage institutions, and guarantee companies, operating conventionally or under sharia principles.

Financial literacy and inclusion activities must be reported annually and included in the FSB (Labor Solidarity Forum) business plan and realization report. The scope of financial literacy activities is divided into:

1. Financial education: Includes socialization, workshops, consultations, mentoring, outreach programs, simulations, and community training.
2. Infrastructure development: Includes human resource training (trainers and facilitators) and development of information and communication technology facilities.

Financial inclusion activities focus on:

1. Expanding access to financial institutions: Ensuring financial products or services align with consumer needs and financial capabilities.
2. Reporting financial inclusion activities: The initial reporting of such activities began in 2018.

Prohibition of Selling Unit-Linked Insurance from Non-Performing Companies

OJK prohibits banks from selling Insurance Products Linked to Investments (PAYDI) or unit-linked insurance from underperforming insurance companies, particularly those that have unresolved customer disputes. OJK has strengthened regulations on unit-linked insurance by taking firm action against financial service providers who violate rules and by barring banks from selling unit-linked products from non-compliant insurance companies.

To address disputes, insurance companies may offer premium returns through mediation facilitated by LAPS (Alternative Dispute Resolution Institution). If internal dispute resolution between the customer and the insurance company fails, arbitration through LAPS or legal action may be pursued.

Insurance Dispute Settlement by LAPS

The Insurance Act (UUP) authorizes OJK to regulate and supervise insurance institutions. Law No. 21/2011 aligns with Article 5 of the OJK Law, which mandates OJK to integrate regulatory and supervisory functions across all financial services sectors.

Before the Insurance Law and OJK Regulation were implemented, consumer disputes were governed by Law No. 8/1999 on Consumer Protection, which allowed dispute resolution through courts or BPSK (Consumer Dispute Settlement Board). BPSK, established under the Consumer Protection Act (UUPK), specializes in resolving consumer disputes. However, alternative dispute resolution for insurance-related disputes is managed by LAPS, recognized under POJK regulations (Fauzi, 2019).

Consumers should ensure they fully understand unit-linked insurance products before purchasing. This includes asking agents for a detailed explanation of benefits, costs, and risks, and carefully reviewing all policy provisions.

According to researchers, insurance is primarily designed to protect policyholders from risk. When combined with investment, it may result in suboptimal outcomes.

CONCLUSION

Arrangements for victims of mis-selling cases involving unit-linked insurance products are governed by Law No. 40/2014, as outlined in Article 5 and Article 57, Paragraph (1). These articles expand the scope of the insurance business and are further regulated by the Financial Services Authority (OJK) through OJK Regulation No. 23/POJK.05/2015 and No. 1/POJK.07/2013. These regulations provide guidelines for consumers affected by mis-selling of unit-linked products, allowing them to seek assistance from OJK Consumer Services, also known as Financial Consumer Care (FCC), and the Consumer Education and Protection Reporting Information System (SIPEDULI). Additionally, dispute resolution can be pursued through mediation via the Alternative Dispute Resolution Institution (LAPS). Legal protection for mis-selling cases of unit-linked insurance products under Law No. 40/2014 is divided into two types: (1) Preventive Legal Protection – This protection is outlined in Article 26, Paragraph (2), which states that further provisions on the standard of business conduct, as mentioned in Paragraph (1), are regulated by the Financial Services Authority. The relevant regulations include OJK Regulation No. 1/POJK.07/2013 and OJK Regulation No. 23/POJK.05/2015, particularly in Chapter V on consumer protection. Article 53, Paragraph (2) mandates that companies marketing unit-linked insurance products (PAYDI) must establish, implement, and develop policies and procedures for assessing the suitability of insurance products with the needs and profiles of potential policyholders, insured individuals, or participants (customer risk profile assessment). (2) Repressive Legal Protection – This protection is regulated under Articles 53, 54, and 59 of Law No. 40/2014, which outline procedures for enforcing consumer protection, regulation, and supervision. These provisions include the availability of complaint facilities and mediation mechanisms. The regulations are further detailed in OJK Regulation No. 1/POJK.07/2013, Chapter III, which governs complaints and the Financial Services Authority's role in providing complaint resolution facilities, specifically in Articles 40, 41, and 42.

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