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Juridic Review Concerning Supervision of Financial Services Authorities in Insurance Companies Based on Law Number 40 of 2014 Concerning Insurance

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ABSTRACT

The development of the insurance business in Indonesia is growing rapidly along with the increasing number of people who want to transfer the risks they will face to the insurance company. Risk in insurance is the uncertainty of the occurrence of an event that can cause economic losses. There are many changes in the Insurance Law, one of which is about regulation and supervision. The regulation and supervision in the old law was carried out by the Ministry of Finance, while the new law was supervised by the OJK. The Financial Services Authority carries out supervision so that non-bank financial service institutions fulfill their promises to customers. In order to achieve this goal, a supervisory system is needed that can provide an early indication of the potential failure of non-bank financial services institutions. The method used in this research is descriptive analytical with a normative juridical approach. Data collection techniques through literature review are complemented by field studies to obtain primary data to support secondary data. Data analysis was carried out qualitatively. The results of the study state that the Financial Services Authority can take necessary actions including appointing a statutory manager, the appointment is made if the management of the insurance company is considered detrimental to consumers so that management is needed that can represent the interests of OJK and consumers. One of the tasks of the statutory manager is to save the wealth of the insurance company. Supervision is carried out periodically and/or at any time. The scope of OJK supervision is all aspects of the insurance business operator or certain aspects of the insurance business activity. As for some suggestions that the author would like to convey is that OJK is expected to conduct socialization to the public in general and insurance companies in particular. It is intended that the public and insurance companies understand the functions and duties of statutory managers. Weak supervision in the insurance sector caused by a lack of supervisory staff at the OJK institution, so that OJK often misses the point in conducting supervision. So that the OJK does not fall short in supervising, the OJK should improve its performance by adding more supervisors for the insurance industry. This is intended so that no insurance company commits fraud that results in harming the community.

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1. Introduction

Insurance is one of the supporters of the pace of the economy in Indonesia. Insurance is an indicator of a country's prosperity, which is seen through the number of policyholders and the amount of funds that have been collected from the public through premium payments. The role of insurance as a service product is relatively slow in its development because insurance products are less attractive to consumers to buy (un-sought goods). However, it is undeniable that insurance plays an important role in a number of industrial and trade activities. The use of insurance is increasingly felt by individuals and companies in using insurance in life (Alfi et al., 2017).

Insurance as an institution for transferring and sharing risks has positive benefits for the community, companies and for the development of the country. For the community, someone who closes an insurance agreement will feel at ease because he gets protection from the possibility of being hit by a loss. For companies, a company that transfers its risks through insurance agreements will be able to increase its business and dare to raise bigger goals. For the development of the country, the premiums collected in an insurance company can be cultivated and used as funds for development efforts. The results will be enjoyed by the community.

After the enactment of Law Number 21 of 2011 concerning the Financial Services Authority (hereinafter referred to as the OJK Law), there have been many changes in every sector of financial institutions. The supervision of financial institutions, both banks and non-banks, was initially carried out by several institutions, becoming supervision carried out by a single institution, namely the Financial Services Authority. Rearrangement of the organizational structure of institutions carrying out regulatory and supervisory duties in the financial services sector which includes the banking sector, capital market, insurance, pension funds, financing institutions, and other financial service institutions. This arrangement is carried out so that a more effective coordination mechanism can be achieved in dealing with problems that arise in the financial system so as to better ensure the achievement of financial system stability (Astrie & Suriaatmaja, 2022).

The regulation and supervision of all financial service activities must be carried out in an integrated manner. In addition to the foregoing considerations, Law Number 23 of 1999 concerning Bank Indonesia as amended, most recently by Act Number 6 of 2009 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2008 concerning Second Amendment to Law Number 23 1999 concerning Bank Indonesia becoming a Law (hereinafter referred to as the BI Law), also mandates the establishment of a supervisory agency for the financial services sector which includes banking, insurance, pension funds, securities, venture capital and finance companies, as well as other agencies that manage the management of the financial services sector. public funds. The financial services sector supervisory agency mentioned above is essentially an independent institution in carrying out its duties and its position is outside the government. This institution is obliged to submit reports to the Supreme Audit Agency (hereinafter referred to as BPK) and the House of Representatives (hereinafter referred to as DPR).

The Financial Services Authority was established with the aim that all financial service activities in the financial services sector are organized in an orderly, fair, transparent and accountable manner, and are able to realize a financial system that grows in a sustainable and stable manner, and is able to protect the interests of consumers and the public. With this objective, OJK is expected to support the interests of the national financial services sector, thereby increasing national competitiveness. In addition, OJK must be able to safeguard national interests, including human resources, management, control and ownership in the financial services sector, while taking into account the positive aspects of globalization. OJK was formed and based on the principles of good governance, which include independence, accountability, responsibility, transparency, and fairness (Dewi et al., 2021).

The Financial Services Authority carries out its duties and authorities based on the following principles (1) The principle of independence, namely being independent in making decisions and implementing the functions, duties, and authorities of the OJK, while still in accordance with the applicable laws and regulations (2) The principle of legal certainty, namely the principle in a state of law that prioritizes the basis of laws and regulations and justice in every OJK implementation policy (3)

The principle of the public interest, namely the principle that defends and protects the interests of consumers and society and advances the general welfare and (4) The principle of transparency, namely the principle that open oneself to the public's right to obtain correct, honest, and non-discriminatory information regarding the operation of the OJK, while still paying attention to the protection of individual and group human rights, as well as state secrets, including secrets as stipulated in laws and regulations.

The development of the insurance business in Indonesia is growing rapidly along with the increasing number of people who want to transfer the risks they will face to the insurance company. Risk in insurance is the uncertainty of the occurrence of an event that can cause economic losses. The forms of risk include pure risk, speculative risk, particular risk and fundamental risk. Pure risk is a risk that results in only 2 kinds: loss or break even, for example theft, accident or fire. For the community in general, the risks that may befall themselves and or their nuclear families are transferred to other parties, in this case the insurance company (Diba et al., 2020).

But it should also be realized that an insurance company is an institution or rather as a business entity, of course it cannot be separated from business calculations, meaning that the insurance company is willing to take over the risk in return for payment of a premium from the value of the risk to be borne. Avoiding risk is the reason for the birth of insurance institutions where insurance is a future demand because it contains the following benefits, making the community or company safer from the risk of loss that may arise, creating company efficiency (business efficiency), as a safe saving tool from economic turmoil and as a source of income (earning power) based on financing the business.

The rapid development in the insurance industry is not matched by the statutory regulations, Law Number 2 of 1992 concerning Insurance Business (hereinafter referred to as the Insurance Business Law) is no longer sufficient to deal with problems that exist in the insurance industry. Seeing this, OJK and members of the legislature replaced the Insurance Business Law with Law Number 40 of 2004 concerning Insurance (hereinafter referred to as the Insurance Law). Efforts to create an insurance industry that is healthier, more reliable, trustworthy, and competitive are generally carried out, either by stipulating new provisions or by improving existing provisions. There are many changes in the Insurance Law, one of which is about regulation and supervision. The regulation and supervision in the old law was carried out by the Ministry of Finance, while the new law was supervised by the OJK (Hanafi & Revyanti, 2020).

The Financial Services Authority carries out supervision so that non-bank financial service institutions fulfill their promises to customers. In order to achieve this goal, a supervisory system is needed that can provide an early indication of the potential failure of non-bank financial services institutions. These indications can be obtained accurately if OJK obtains adequate information regarding the condition of non-bank financial service institutions. One way to obtain this information is through direct examination (Ichsan & Suriaatmadja, 2019).

In carrying out its functions and duties, OJK may assign other parties for and on behalf of OJK to carry out some of the duties and functions of OJK supervision. The Financial Services Authority may take actions it deems necessary, including appointing and stipulating the use of statutory managers. The appointment of a statutory manager is carried out if the management of a financial service institution is deemed to be detrimental to the interests of consumers, so a manager who can represent the interests of OJK and consumers is needed. Based on the description above, the author feels the need to find out more about the supervision of the Financial Services Authority on the insurance industry, as well as how to apply the laws and regulations governing the supervision of insurance companies.

2. Methods

This study uses a normative juridical approach, which is a method in normative legal writing by using the main source of secondary data or library materials, while for the approach the researcher uses an analytical descriptive, which is understanding and aims to obtain a complete description (description) of the legal situation in question. applies in a certain place or regarding existing juridical phenomena or certain legal events that occur in the community, besides that this research also describes a legal regulation in the context of legal theories and their implementation and analyzes the facts carefully about the Supervision of the Financial Services Authority in the Insurance Industry Based on Law Number 40 of 2014 concerning Insurance and based on applicable legal provisions. The data collection method carried out by the researcher is in the form of data collection by means of library research through an assessment of legislation, literature, writings of legal experts, lecture materials related to research. While the data analysis used in this study is a qualitative data analysis, namely analyzing the laws and regulations that apply as positive law. This qualitative analysis method was chosen so that interpretation can be carried out using data interpretation methods known in legal science, so that it can answer all the legal problems posed in this study, then a logical, systematic discussion is carried out without using statistical formulas (Laida et al., 2021).

3. Results and Discussion

3.1 Application of Legislation Regulating Supervision of Insurance Companies

Insurance is one of the supporters of the pace of the economy in Indonesia. Insurance is an indicator of a country's prosperity, which is seen through the number of policyholders and the amount of funds that have been collected from the public through premium payments. The role of insurance as a service product is relatively slow in its development because insurance products are less attractive to consumers to buy (un-sought goods). However, it is undeniable that insurance plays an important role in a number of industrial and trade activities. Furthermore, the meaning of insurance is also contained in Article 246 of the Commercial Code (hereinafter referred to as KUHD) which reads, insurance or coverage is an agreement whereby the insurer binds himself to the insured by receiving a premium to provide compensation to him due to loss, damage or loss of expected profits. which he may suffer as a result of an event (uncertain event). The definition of insurance in the Insurance Business Law is contained in Article 1 number 1, Law Number 2 of 1992, concerning Insurance Business (Latanya et al., 2020).

As for the source of insurance law, it is the basis of strength or the basis on which insurance operations are based. In general, in Indonesia today, insurance agreements are regulated in two codifications, namely the Civil Code and the Civil Code. In addition, since 1992, Law no. 2 of 1992 concerning Insurance Business. For more details, the legal basis for insurance agreements in Indonesia, among others, is the Civil Code (KUHPerdata). Book III Chapter I on engagements in general and Book III Chapter II on engagements born of contracts or agreements.

The use of insurance is increasingly felt by individuals and companies in using insurance in life. Insurance as an institution for transferring and sharing risks has positive benefits for the community, companies and for the development of the country. For the community, someone who closes an insurance agreement will feel at ease because he gets protection from the possibility of being hit by a loss. For companies, a company that transfers its risks through insurance agreements will be able to increase its business and dare to raise bigger goals. For state development, premiums collected in an insurance company can be cultivated and used as funds for development efforts (Nurrosis & Rahayu, 2020).

The Financial Services Authority was formed with the aim that all financial service activities are carried out in an orderly, fair, transparent and accountable manner, as well as being able to realize a financial system that grows sustainably and stably, and is able to protect the interests of consumers and the public. In order to protect the interests of consumers, OJK may take necessary actions, including appointing and stipulating the use of statutory managers. The appointment of a statutory manager is carried out if the management of an insurance industry is deemed to be detrimental to the interests of consumers, so a manager who can represent the interests of the OJK and consumers is needed.

In principle, statutory managers exercise the authority of OJK, among others, in the form of efforts to save the business continuity of financial service institutions, take over all authority and management functions of financial service institutions, cancel or terminate agreements, and transfer portfolios of assets or businesses from insurance. Article 8 letter g and article 9 letters e and f of the OJK Law state that the OJK can establish regulations regarding the procedures for determining statutory managers at financial service institutions as well as appointing statutory managers and stipulating the use of statutory managers (Ridho, 2020).

A statutory manager is an individual or legal entity determined by the OJK to carry out the authority of the OJK as referred to in the OJK Law. OJK can appoint and place the use of statutory managers to take over all the powers and functions of the board of directors, board of commissioners, and/or supervisory board of sharia insurance. The appointment and stipulation of statutory managers is carried out based on the Insurance Law. Appointment and stipulation on the use of statutory managers based on the provisions of the Insurance Law, or the sharia reinsurance company provides information to OJK that according to its considerations the company is estimated to be unable to fulfill its obligations or will stop paying off maturing obligations.

The appointment and determination of the use of statutory managers is regulated in the Financial Services Authority Regulation Number 41/POJK.05/2015 concerning Procedures for Determining Statutory Managers at Financial Services Institutions (hereinafter referred to as POJK Statute Managers) in Article 2 paragraph (3) which reads, the appointment and determination of the use of a statutory manager in addition to being carried out based on the provisions of the Insurance Law, can also be carried out if based on the assessment of the OJK, the insurance company meets the following criteria, the financial condition of a financial service institution may endanger the interests of consumers, the financial services sector, and/or shareholders, the operation of the business activities of a service institution Financial services that are not in accordance with the provisions of laws and regulations in the financial services sector and financial service institutions have been subject to sanctions for limiting business activities (Rivaldo & Wahasusmiah, 2022).

The Financial Services Authority may reactivate some or all of the inactive directors, commissioners, and/or sharia supervisory boards after the use of statutory managers ends. In the event that OJK reactivates part of the board of directors, board of commissioners, and/or sharia supervisory board after the use of a statutory manager ends, OJK will issue a written order to the insurance company to hold a general meeting of shareholders to appoint the board of directors, board of commissioners, and/or sharia supervisory board. If OJK does not reactivate all directors, board of commissioners, and/or sharia supervisory board, OJK will issue a written order to the statutory manager to hold a general meeting of shareholders to appoint a new board of directors, board of commissioners, and/or sharia supervisory board prior to the use of a statutory manager. end. The Financial Services Authority appoints an individual or legal entity as the Statutory Manager.

In carrying out the powers, functions and duties of the statutory manager, the statutory manager may take the following steps, save the continuity of certain insurance companies, cancel or terminate the agreement made by the insurance company with a third party that is detrimental and/or according to the statutory manager may be detrimental to the interests of the insurance company and / or consumers and transfer part or all of the wealth or business portfolio and / or a collection of funds from the insurance company which according to the statutory manager can prevent greater losses for the insurance company; and/or statutory managers may request parties who are currently or have served as members of the board of directors, members of the board of commissioners, members of the sharia supervisory board, employees of insurance companies, and/or other parties who have certain information and/or documents related to insurance business activities. to provide information and/or documents to the statutory manager. The parties mentioned above are required to provide certain information and/or documents related to insurance business activities to the statutory manager.

3.2 The Role of the Financial Services Authority (OJK) in Supervising Insurance Companies in Indonesia

Prior to the enactment of the Insurance Law, supervision of the insurance industry was carried out by the Minister of Finance. As stated in Article 10 of the Insurance Business Law. The old law stipulated that the guidance and supervision of the insurance business included financial health for general insurance companies, life insurance companies, and reinsurance companies consisting of solvency level limits, self-retention, reinsurance, and investment. The solvency level limit is a measure of the financial health of insurance companies and reinsurance companies. This solvency level limit is the difference between wealth and liabilities, the calculation of which is based on certain calculation events according to the nature of the insurance business (SAFRINA, 2018).

Retention itself in this case is part of the responsibility that is the burden or responsibility itself according to the level of financial capacity of the insurance company or reinsurance company concerned. After the ratification of the Insurance Law, the regulatory and supervisory duties are taken over by the OJK. The regulation and supervision of insurance business activities is not only focused on the financial health of the company, but supervision is also carried out on aspects of governance and business behavior of the insurance company.

According to this law, the Minister of Finance only stipulates general policies in order to develop the use of insurance and reinsurance to support the national economy. General policies set by the Minister of Finance include foreign ownership of insurance companies, capacity building for insurance, sharia insurance, reinsurance, and domestic sharia reinsurance, as well as the provision of fiscal facilities to individuals, households, and/or micro, small and medium enterprises. . The type of OJK's supervision of the insurance industry is risk-based supervision. Integrated risk-based supervision aims to promote common interests, both business actors and consumers, the existence of consumers themselves is important for business continuity in the insurance industry (Lestari, 2012).

The presence of consumers can increase business activities. If consumer confidence increases, the insurance industry will continue to grow. So that consumers as a long-term investment. Therefore, the importance of integrated risk-based supervision is so that business activities in the insurance industry sector can run well. This is because companies engaged in the insurance industry sector are subsidiaries of the parent company, which is usually a bank. Companies engaged in the insurance sector are subsidiaries of the parent company engaged in banking. However, not a few of their parent businesses are not banking. The risk-based monitoring system is welcomed by the Indonesian General Insurance Association (AAUI). Moreover, if there are companies that are affiliated with other companies, it will facilitate the integrated supervision. Indeed, there is a need for risk-based supervision at OJK to see a joint risk or a financial business group. If the supervision differs from one company to another, it is feared that the problems experienced by one company could spread to other companies. The existence of the same monitoring system makes it easier to create the same parameters.

As for the implementation of the supervisory function of the insurance industry, OJK has the authority to approve or refuse to grant an insurance business license, revoke an insurance business license and approve or refuse to provide registration statements for actuarial consultants, public accountants, appraisers, or other parties providing services to insurance companies. Meanwhile, inspections at the OJK office are carried out only on certain aspects of the implementation of the insurance company's business activities. An inspection at the OJK office can be followed up with an inspection at the insurance company's office if the data, documents, and/or information provided by the insurance company cannot provide a sufficient basis for OJK employees and/or other parties appointed by the OJK who conduct the inspection at the office. OJK to draw conclusions on the results of the examination at the OJK office and/or the response of the insurance company being examined to the conclusion of the examination results at the OJK office (Simbolon, 2019).

The Financial Services Authority may assign other parties for and on behalf of the OJK to conduct inspections. Other parties referred to are bodies, institutions, institutions, or people, both from within and outside the OJK. These parties include public accountants, actuarial consultants, loss appraisers, civil servant investigators and/or Indonesian National Police investigators. For audit purposes, members of the board of directors, members of the board of commissioners, or the equivalent members of the board of directors and members of the board of commissioners in a legal entity in the form of a cooperative or joint venture, sharia supervisory board, company actuaries, internal auditors, other employees, shareholders, controllers, affiliated parties , and the party receiving the transfer of part of the functions in business operations for the benefit of the insurance company must provide information and/or data, the opportunity to view all books, records, documents, and physical facilities related to its business activities and other matters required by the examiner. Including those who have served as officials mentioned above.

The insurance company and/or controller of the insurance company, sharia insurance company, reinsurance company, or sharia reinsurance company must comply with the written order given by the OJK. A written order cannot be used as an excuse by the party entering into an agreement with the insurance company to cancel or reject the agreement, avoid the obligations specified in the agreement, or do anything that may result in a loss for the insurance company. The party referred to above has the right to obtain compensation from the insurance company if it suffers a loss caused by a written order given to the insurance company. OJK. The regulation of procedures for examining LKBN is regulated in the Financial Services Authority regulation Number 11/POJK.05/2014 concerning Direct Examination of Non-Bank Financial Services Institutions (hereinafter referred to as POJK direct examination), contained in Article 8 which contains the following, direct examination is carried out by the examiner based on a direct inspection warrant issued by the OJK, the examiner is required to submit a direct inspection warrant to the insurance company (Verayanthi & Kurniawan, 2021)

Prior to an in-person inspection, OJK submits a direct inspection notification letter to the insurance company, the examiner and the insurance company may hold a meeting to discuss the temporary direct inspection report. The meeting must be completed no later than 30 (thirty) working days from the date the insurance company receives the letter of submission of the temporary direct inspection report. If there is no meeting to discuss the interim direct inspection report, the final direct inspection report must be submitted no later than 15 (fifteen) working days after the end of the insurance company's response to the provisional direct inspection report.

However, in the event that there is a meeting in the context of discussing the temporary direct inspection report, the submission of the final direct inspection report must be made no later than 15 (fifteen) working days from the date of the meeting. After the final direct inspection report has been submitted, the insurance company must take follow-up steps according to the recommendations contained in the inspection report. The inspection report issued by the OJK may contain an obligation for insurance companies to submit a report on the implementation of the follow-up steps to the inspection result to the OJK. If the report on the results of the inspection does not specifically mention the deadline for the reporting obligation, the insurance company is required to submit a report on the implementation of the follow-up on the results of the inspection at least every month. The obligation to report on the implementation of follow-up measures ends if OJK judges that the insurance company has implemented follow-up measures. The OJK assessment is submitted to non-bank financial service institutions by letter. OJK monitors the follow-up implementation of insurance companies as part of supervisory activities for insurance companies (Solihat, 2021).

The Financial Services Authority has the authority to give administrative sanctions to insurance companies if the company does not carry out its audit obligations to the OJK, the sanctions are given based on the type and level of violations committed by the insurance company. The sanctions consist of written warnings, fines, namely the obligation to pay a certain amount of money, the obligation for the board of directors or the equivalent at a Non-Bank Financial Services Institution to undergo a fit and proper test. If the insurance company cannot overcome the difficulties it faces, OJK may revoke the business license of the insurance company, sharia insurance company, reinsurance company, or sharia reinsurance company. The Financial Services Authority may ask the competent authority to block part or all of the assets of an insurance company, sharia insurance company, reinsurance company, or sharia reinsurance company that is being subject to sanctions for limiting business activities because it does not meet the solvency level provisions or its business license is revoked. The revocation of the block on part or all of the assets is carried out after obtaining approval from the OJK (Putri & Rahayu, 2019).

The Financial Services Authority may disable the board of directors, the board of commissioners, or the equivalent of the board of directors and the board of commissioners in a legal entity in the form of a cooperative or joint venture, and/or a sharia supervisory board, if the insurance company has been imposed with a sanction for limiting its business activities, the company is unable to fulfill its obligations or will stop paying off maturing obligations, conduct business activities that are not in accordance with the provisions of the Insurance Law or the insurance company facilitates and/or commits financial crimes. Then OJK may appoint a statutory manager to take over all the powers of the board of directors, board of commissioners, or the equivalent of the board of directors and board of commissioners in a legal entity in the form of a cooperative or joint venture, and/or the sharia supervisory board to run the insurance company until the time limit determined by OJK.

4. Conclusions

Based on the description in the discussion section that has been described in the previous chapter, the authors then draw the following conclusions, the Financial Services Authority can take necessary actions including appointing a statutory manager, the appointment is made if the management of the insurance company is deemed detrimental to consumers so that management is needed that can represent the interests of the OJK and consumers. One of the tasks of the statutory manager is to save the wealth of the insurance company. The statutory manager is responsible for all his actions and decisions while managing the insurance company. The statutory manager ends if OJK judges that it is no longer needed. In addition, the financial services authority as an independent institution has the duty and authority to supervise the insurance industry. Supervision is carried out periodically and/or at any time. In supervising the insurance industry, OJK carries out a type of risk-based supervision. OJK has the right to appoint other parties to carry out part of its authority to other parties. The scope of OJK supervision is all aspects of the insurance business operator or certain aspects of the insurance business activity.

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