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JURIDICIAL ANALYSIS OF LAW ENFORCEMENT BY THE ATTORNEY GENERAL IN REPUBLIC OF INDONESIA ON THE CORRUPTION CASE OF JIWASRAYA INSURANCE BASED ON LAW NUMBER 40 ON 2014 ABOUT INSURANCE

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ABSTRACT

The problem in this research is Law Enforcement by the Prosecutor's Office of the PT. Insurance Jiwasraya (Persero) which harms customers in terms of criminal law and the issuance of Law Number 40 of 2014 concerning Insurance Jo. Financial Fervices Authority Regulation Number 23/POJK.05/2015 concerning Insurance Products and Insurance Product Marketing is to find out the consequences of law enforcement in the Limited liability company Insurance Jiwasraya (Persero) which is detrimental to the Customer in terms of Criminal Law based on Law Number 40 of 2014 concerning Insurance. The process of collecting and presenting with this research is used a normative juridical approach which is research conducted by examining library materials or secondary data. Based on the results of the study, the conclusion in this study is to determine the consequences of law enforcement in the case of Limited liability company Insurance Jiwasraya that harms Customers in terms of Criminal Law based on Law Number 40 of 2014 concerning Insurance begins with conducting an investigation, then prosecution and implementing a decision, the fundamental problem in implementing this handling is an investigation issue, because it will determine the entire subsequent process. The authority of the Prosecutor as an investigator for the time being is specifically stated in Article 30 paragraph (1) letter d of Law Number 16 of 2004 concerning the Prosecutor's Office stipulating that the Prosecutor's Office has the task and authority to carry out investigations of certain criminal acts based on the law. The Prosecutor's Office has the duty to search for and collect evidence with which to make clear the corruption that occurred and to find the suspect.

Keywords: Investigation; Prosecution; Public Prosecution; Insurance

INTRODUCTION

Human life is essentially nothing eternal, the impermanent state that is nature results in a state that cannot be predicted or predicted in advance precisely, so that every human life does not give a sense of certainty, the uncertain situation can be manifested in various forms and events, such circumstances are generally always avoided. Uncertain circumstances for any human life can be events or events that cause insecurity known as risks.

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Man as a creature of God who is endowed with an advantage has the ability to find efforts to overcome the insecurity. Man with his mind seeks to overcome insecurity into a sense of security, from uncertainty to a certainty, so that man can avoid or overcome his risks, either individually or collectively. Attempts to overcome the nature of tangible as an uncertain state, the things done by man avoid or bestow it on others outside himself .(Suryati, 2017)

The phenomenon that often occurs in the insurance community is, the inhibition of the settlement of insurance compensation claims. The causes include, the absence of harmony between the information provided by the agent to consumers, the lack of consumer knowledge of insurance, the amount of compensation that is not in accordance with the promised, the evasion of insurance company responsibilities, and so on. Difficulties are more complex when insurance is double patterned. Problems in the settlement of dual insurance claims often occur due to bad faith from insurance companies.(Yudha, 2018)

Double insurance is insuring the same object on 2 (two) different insurance companies. Double insurance patterns in insurance laws, some are prohibited and some are allowed. Insurance is prohibited if insuring the same object with the full value, while that is allowed if the insured value is not full. This only applies to loss insurance. For some money insurance, among others, life and health insurance. The phenomenon of double insurance is widely offered by companies without seeing how the provisions and legal consequences will be borne by the parties.(Ningsih, 2020)

Based on a search of the perception of insurance companies and consumers, obtained preliminary data that, consumers' understanding of double insurance, because it wants to benefit more. Consumers assume that by following double insurance will get compensation from two sources of companies with full value, while according to the perception of the insurance company the intent of this double insurance is protection or *reimbursement* (refund) of costs covered by the insurance card on claims that are not covered *(cover*) by the main insurance card means, this additional insurance card is only as *backups*. or supporters of the costs that have been incurred if the first insurance

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company does not pay the entire claim, then the following insurance company will pay the rest.

Double *claim insurance* is actually used when the main insurance cannot win all costs billed by the hospital. Instead of bragging or spending your own money to cover all costs, *a double claim* facility can be the solution. Thus it can be said that the insurance will not reimburse medical expenses if the bill has been paid or covered by other insurance(Widiastuti, 2017).

Mismatch of information and understanding between received by consumers and insurance businesses, resulting in rejection of compensation claims, often also occurs due to excessive promotion of agents. This agent promotion is often triggered by the agent's interest in getting something or a certain position. The agent exceeds the authority beyond the offer that should have been given. The perception of agents and insurance business actors (*Principal*) Agents promote that double insurance has more advantages to the community. By using information that is not in accordance with the insurance company's SOP, the agent persuades consumers to be tempted by double insurance. The lure of the advantages of double insurance, more to the form of tactics to get more bonuses, to get certain positions, and so forth that are considered important for him. The lure of the benefits that can be obtained by consumers, among others, consumers will get compensation of 2 (two) times the insured, in the event of a loss or obstacle in the awarding of compensation. In fact, consumers become monthly business actors, because they throw each other responsibility to pay compensation claims. This shows the weakness of the mismatch between consumer perceptions and insurance businesses. Therefore, it is necessary to empower an understanding of double insurance to agents and consumers / insurance customers.

In accordance with the provisions of Article 26 Paragraph 1 letter d of Law No. 40 of 2014 on Insurance that, "insurance companies must meet the standards of business conduct that include provisions regarding the settlement of claims". *The principles of utmost Goodfait* and *indemnity* that will be used to dissect cases settle claims for damages double asurasi. The provisions of Article 251 of the Kuhd as the basis of the *principle of*

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utmost good fait will be expanded in connection with the article contains weaknesses and is discriminative. This weakness can be used as an alibi by the handler to avoid responsibility. In addition, this provision gives rise to injustice and uncertainty. When examined there is a gap between the scope of protection and the contents of the police. It should be noted that, the understanding of the insured is nothing but due to the lack of information from insurers about the scope of insurance protection. Another possibility is not studied the contents of the police.

The principle *of utmost good fait* is contained in Article 251 of the Kuhd, but this provision is *discriminatory*. Therefore, only place an obligation to the insured to provide information or information about the maateril facts of the insured object, while the obligation of the Insurer is not explicitly stated in the Article. If it is associated with the principle of indemnity, then the obligation to provide information from the insurer about the scope of protection, provides a balance of obligations both to the insured and the insurer. Whereas in the law the agreement is indemnity and obligator puts obligations to the parties in a balanced manner.

According to the provisions of Article 225 of the Code of Trade Law the insurance agreement must be made in writing in the form of a deed called a policy that contains agreements, special conditions that are the basis for fulfilling the rights and obligations of the parties (insurers and insured) in achieving insurance goals. This standard insurance policy is made unilaterally by business actors or insurers for economic reasons and time efficiency and accepted and used by the community. The position of the insurance company is higher than the insured. In such cases, the stronger positioned party often uses the opportunity to determine certain clauses in the standard contract, so that the agreements that should have been made or drafted by the parties to the agreement, are no longer found in the default contract because the format and contents of the contract are designed by the stronger parties(Korah, 2013).

Not equally strong the bargaining position between the parties causing inequality in the insurance agreement occurs because the one who designed the format and content of the contract is a party who has a stronger position, it can be ascertained that the

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contract contains clauses that benefit him, or alleviates or eliminates certain burdens or obligations that should be his usual burden known as the clause. exonation(Nasarudin, 2014; Supratikno, 2011). However, business actors cannot necessarily make a standard agreement as desired, as it is limited by article 18 paragraph (1) of Law No. 8 of 1999 on Consumer Protection which reads as follows:

1. Business actors in offering goods and/or services intended for trade are prohibited from making and/or including standard callusulas on each document and/or including standard kausula in each agreement if:
    a. Declare the transfer of responsibility to business actors;
    b. Stating that business actors have the right to refuse to hand back goods purchased by consumers. Stating that business actors have the right to refuse the handover of money paid for goods and/or services purchased by consumers;
    c. Declare the granting of power from consumers to business actors either indirectly or indirectly to take unilateral actions related to goods purchased by consumers in installments;
    d. Regulate the matter of proof of the loss of usefulness of goods or the use of services purchased by consumers;
    e. Entitle business actors to reduce the benefits of services or reduce the wealth of consumers who are the object of buying and selling services;
    f. Stating the consumer's submission to regulations in the form of new rules, tamabahan, continued, and/or advanced changes made unilaterally by business actors in the consumer period utilizing the services they purchased
    g. Stating that konsuemn authorizes business actors to sacrifice dependent rights, lien rights, or guarantee rights to goods purchased by consumers in installments.

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2. Business actors are prohibited from including standard clauses whose location or shape is difficult to see or cannot be read clearly or that expresses them is difficult to understand;
3. Any standard clauses set by business actors in documents or agreements that meet the provisions referred to in paragraph (1) and paragraph (2) are declared null and void;
4. Business actors are obliged to adjust the standard clauses that are contrary to the law.

In law number 40 of 2014 on insurance protection of policyholders is stipulated in Article 53 which reads:

a. Insurance companies and Sharia insurance companies must be participants in the policy guarantee program.
b. The implementation of the policy guarantor program as referred to in paragraph (1) is regulated by law;
c. When the policy guarantee program applies under the law as referred to in paragraph (2), the provisions regarding the Guarantee Fund as referred to in Article 8 paragraph (2) letter d and Article 20 are declared not applicable to insurance companies and Sharia insurance companies;
d. The law referred to in paragraph (2) was established for 3 (three) years since this law was enacted.

Lately since the presence of the Financial Services Authority which is usually which has the function of organizing an integrated regulatory and supervision system on the overall activities in the financial services sector. Financial Fervices Authority makes rules regarding the standardization of the use of standard clauses that must be contained in each insurance policy. This standardization is set forth in Financial Fervices Authority Regulation No. 23/POJK.05/2015 on Insurance Products and Insurance Product Marketing. In the Financial Fervices Authority Regulation regulates the matters that must be in each insurance policy set forth in article 11 which reads as follows:

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1) When coverage is effective;
2) Description of the promised benefits;
3) How to pay premiums or contributions;
4) Grace *period* payment of premiums or contribition;
5) The exchange rate used for the Insurance Policy with foreign currency if the payment of premiums or contributions and benefits is associated with rupiah currency;
6) The time recognized as the time of receipt of premium or contribution payments;
7) The company's policy is set if the payment of premiums or contributions is made past the agreed grace period;
8) The period during which the company is unable to review the validity of *the incontestable period* on long-term insurance products;
9) Cash value table, for insurance products marketed by life insurance companies that contain cash values;
10) Calculation of insurance policy dividends or similar, for insurance products marketed by life insurance companies that promise insurance policy dividends or the like;
11) Termination clauses of coverage, either from the company or from policyholders, insured or participants, including the terms and causes;
12) Terms and procedures for filing a claim, including relevant supporting evidence and required in the filing of a claim;
13) Procedures for settling claim payments;
14) Dispute resolution clauses which include settlement mechanisms within the court and outside the court and the selection of dispute resolution positions; and
15) The language used as a reference in the event of a dispute or difference of opinion, for an insurance policy printed in 2 (two) languages or more.

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In addition, Financial Fervices Authority also issued Regulation Number: 1/POJK.07/2013 on Consumer Protection of the Financial Services Sector. As a provision of the implementation of this Regulation, Financial Fervices Authority issued a Circular Letter of the Financial Services Authority Number 13/ financial services authority circular.07/2014 on the Standard Agreement.

Although Financial Fervices Authority has made rules regarding standardization that is so rigit in an insurance policy. But in reality, the Financial Fervices Authority regulations are still many that are not implemented in the insurance policy clause. For example, in this case a life insurance agreement on bumiputera joint soul asuansi or hereinafter called AJB Bumiputera there are several standard clauses that make the clause seem to have complied with the laws and regulations but escaped the attention of consumers.

Ideally in every standard agreement is still needed by the community for reasons of efficiency. On the other hand, the standard agreement is still acceptable in community association. Especially in this era of globalization, the strengthening of the terms of the agreement is inevitable. In terms of business actors, this standard agreement is a way to achieve efficient and fast economic goals.

Problem formulation is important in a study. Because with the formulation of the problem a researcher has identified the problem studied so that the target to be achieved becomes clear, directed and on target. How is Law Enforcement by the Prosecutor's Office on the Case of LC. Life Insurance That Harms Customers Reviewed From Criminal Law? And how is the comparison of the default clause in the insurance policy before and after the issuance of Law No. 40 of 2014 on Insurance Jo. Financial Fervices Authority Regulation Number. 23/ financial services authority regulations.05/2015 on Insurance Products and Marketing of Insurance Products?

METHODOLOGY

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This research is normative legal research or doctrinal legal research with a legal inventory approach, i.e. collecting norms that have been identified as legal norms. As normative legal research, the data source used in the form of secondary data, consists of primary, secondary and tertiary legal materials. Qualitative analysis of research data, namely comparing or applying applicable laws and regulations, the opinions of scholars (doctrines) and other legal theories. The conclusion of the study is deductive, namely the withdrawal of conclusions starting from the general to the special.(Ali, 2021; Bachtiar, 2021)

RESULTS AND DISCUSSION

1. Law Enforcement by the Prosecutor's Office on the Case of PT. Life Insurance (Persero) That Harms Customers Reviewed From Criminal Law

On October 10, 2018, Jiwasraya sent a letter to seven banks namely Standard Chartered Bank, Bank KEB Hana Indonesia, Bank Victoria, Bank ANZ, Bank QNB Indonesia, Bank Rakyat Indonesia and Bank Tabungan Negara. The contents state that Limited Company Insurance Jiwasraya cannot pay the due policy to 1,286 insurance policyholders spread across all seven banks, with a value of Rp802 billion. In the same month, the Minister of State-Owned Enterprises at the time, Rini M. Soemarno, requested an investment audit of Jiwasraya.

The audit results detected liquidity disruptions that caused the company to be unable to pay due claims worth Rp802 billion in November 2018. That figure then rose to Rp12.4 trillion at the end of 2019. The problem began when Jiwasraya management previously offered insurance products that promised high interest, beyond the standard of fairness of similar products in the market (product mispricing), as well as a long insurance protection period. One of them is the JS Savings Plan bancassurance product offered with a guaranteed return of 9% - 13% during the period 2013 - 2018, with a disbursement period every year. But JS Savings Plan's guaranteed return is greater than the deposit rate in the 2018 financial year (i.e. 5.2% - 7.0%), the yield on idA - idAAA level bonds (8.0% - 9.5%), and the growth of the composite stock price index (JCI) which is at the level of -2.3%. With higher returns from the growth of investment instruments

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in the market and the timeframe of products that can be disbursed each year, Jiwasraya continues to be exposed to market risks.

High interest makes the company must place investments in high risk instruments in order to achieve large returns. Unfortunately, the return on investments that are not achieved makes liabilities swell. As a result, to pay the claims fall, the company relies on the acquisition of new premiums so that over time it becomes a time bomb.

In order to target high return, the company's management also conducts investment activities rashly or without applying the precautionary principle. The findings of the company's investment activities presented at a joint hearing of Commission VI of the House of Representatives in December 2019 showed that the investments made were concentrated in low-quality stocks and stock mutual funds. A total of Rp5.7 trillion or 22.4% of financial assets owned by Jiwasraya are invested in shares. Of these, only 5% are LQ45 shares. Then, as much as Rp14.9 trillion or 59.1% of financial assets are invested in mutual funds. It's just that, of these, only 2% are managed by top tier investment managers in Indonesia.

The company is also known not to implement a management portfolio or portfolio guideline that regulates the maximum value of placement of funds on high risk assets. Therefore, weakened capital market conditions in FY 2018 caused most of Jiwasraya's assets to be unsalable (illiquid).

In addition, there are indications that management was previously actively engineering in terms of stock price formation or window dressing, to show more attractive profits. Buying and selling shares with mutual fund dressing is done by buying shares over price then sold at the negotiated price (above the acquisition price) to the investment manager, to then be bought back by Jiwasraya. This is evident from Jiwasraya's dominant investments in stocks and stock mutual funds – whose underlying assets are the same as direct stock portfolios.

Then, liquidity pressure arises from JS Savings Plan products. In 2018, customer confidence in the product began to decrease, thus lowering sales. Meanwhile, claims and benefits to be paid continue to run. There are not enough reserve assets to meet its obligations. Lapse rate (claims) continued to rise to 51%, then to 85%, thus suppressing

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the company's liquidity. In the end, the option of delaying the payment of the due policy becomes inevitable.

The insurance sector, especially life insurance, is one of the largest investors in the domestic financial market. Total investment expenditure issued by the sector reached more than Rp480 trillion spread across various investment instruments ranging from deposits, SBN, MTN, mutual funds, to stocks. More than Rp300 trillion of which is placed on mutual funds and stocks. (Data from the Indonesian Life Insurance Association as of September 2019).

Jiwasraya itself is the oldest insurance company, state-owned, and one of the top 10 insurance companies in Indonesia in terms of assets. The total amount of investments invested by Jiwasraya in the capital market reached Rp. 20.6 trillion (as of December 2018), which is divided into Rp. 5.7 trillion in stock investments and Rp14.9 trillion in mutual fund investments. The value reaches 81.5% of the company's total financial assets. Meanwhile, the company's assets had touched Rp45.68 trillion at the end of December 2017. However, it was drastically reduced to Rp36.23 trillion as of December 2018 and Rp25.68 trillion as of September 30, 2019 after the emergence of default cases. Meanwhile, liabilities continued to increase from Rp40.11 trillion (December 2017) to Rp47.03 trillion (December 2018), then Rp49.60 trillion (September 30, 2019) – due to an increase in claims debt. As a result, equity becomes minus, as does profit and solvency ratio. The company's audited financial statements for fiscal year 2019 recorded an equity deficit of Rp34.61 trillion. This happened because the asset position at the end of 2019 was worth Rp18.13 trillion, while its liabilities reached Rp52.74 trillion. The number of deficits continues to swell due to the main cause of JS Savings Plan products, continuing to record new maturity claims every day, while receipts are nil. Default is inevitable. Until February 17, 2020, total claims debt penetrated Rp16.7 trillion, of which Rp16.3 trillion was contributed by JS Savings Plan products.

2. Audits, Investigations and Legal Issues

In the period 2013-2018, the increase in sales of JS Saving Plan products has boosted premium income and provided large cash flow to Jiwasraya. However, behind it is precisely the potential for problems. In that period, the Financial Services Authority

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has asked Jiwasraya to evaluate the JS Saving Plan to be in accordance with the company's investment management capabilities. In 2015, Financial Fervices Authority directly examined Jiwasraya, with aspects of investment and coverage checks. The basis of the examination was a Audit Board of the Republic of Indonesia audit in 2015 that showed an alleged abuse of authority and reports of financial investment assets that exceeded reality. Audit Board of the Republic of Indonesia also highlighted the recording of obligations below their true value. In 2017, symptoms of the problem began to appear. Financial Fervices Authority gave the first warning sanction because Jiwasraya was late to submit the actuarial report 2017. However, Financial Fervices Authority accepts that Jiwasraya's 2017 financial statements are still positive. JS Saving Plan premium income. Reached Rp21 trillion, profit of Rp2.4 trillion or up 37.64% compared to the realization of 2016. The company's equity surplus of Rp5.6 trillion but a reserve reserve shortfall of Rp7.7 trillion premium because it has not taken into account the decline in assets. In April 2018, Financial Fervices Authority together with the board of directors discussed premium income that fell significantly due to lowered returns on JS Saving Plan products after an evaluation of the product.

Furthermore, on May 18, 2018, the Ministry of SOEs replaced the Directors of Jiwasraya as well as dismissed President Director Hendrisman Rahim and Finance Director Hary Prasetyo. Former Bri Director Asmawi Sham was included as president director along with a number of new directors, including Hexana Tri Sasongko who served as investment and IT director – and subsequently became president director, replacing Asmawi. The new board of directors reported the irregularities of financial statements in the company to the Ministry. Kap's audit results on the 2017 financial statements include correcting the interim financial statements that were originally recorded as a profit of Rp2.4 trillion to only Rp428 billion. the special district attorney's office of the capital Jakarta also began to sniff out the existence of alleged corruption in the sale of JS Saving Plan products.

Based on these allegations, the Prosecutor's Office issued a Warrant of Investigation of the Chief Prosecutor of special area of the capital Jakarta No: Print-4816/O.1/Fd.1/11/2018 dated November 27, 2018. At the end of June 2019, the

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Prosecutor's Office obtained preliminary evidence so that the process continues to the investigation stage. This is marked by the issuance of the Warrant of Investigation of the Chief Prosecutor of special area of the capital Jakarta No. : Print- 1611 / M.1 / Fd.1 / 06/2019 dated June 26, 2019.

Furthermore, the first hearing of the policyholder's lawsuit in the wanprestasi case due to the delay in payment of Jiwasraya's claim took place in the Central Jakarta District Court on October 16, 2019. A total of six plaintiffs filed a lawsuit with material claim value varying with total damages of Rp6.47 billion. The Ministry of SOEs then reported jiwasraya case to Kejagung in mid-November 2019, due to alleged corruption. At that time, the special district attorney's office of the capital Jakarta had examined dozens of witnesses and gathered evidence. The case is still continuing with the investigation stage. However, the special district attorney's office of the capital has not pocketed a single name of the suspect.

Attorney General's Office investigation into the Jiwasraya case said there was a violation of the precautionary principle in investing. On March 20, 2020, BPK released a calculation of state losses due to jiwasraya cases. The value reached Rp16.81 trillion consisting of Rp4.65 trillion due to stock investment and Rp12.16 trillion due to mutual fund investment. This number is higher than the initial estimate of Rp13.7 trillion. Jiwasraya's case was touted as a mega scandal because it dragged a number of names and corporations known to be active in the capital market. On January 14, 2020, Kejagung appointed Benny Tjokrosaputro (Bentjok) who is the Director of Hanson International, Heru Hidayat (President Commissioner of PT Trada Alam Minera Tbk / TRAM), Hary Prasetyo (Director of Jiwasraya Finance period January 2013-2018), Hendrisman Rahim (President Director of Jiwasraya period 2008-2018), and Syahmirwan (former Head of Investment and Finance Division of Jiwasraya) as suspects. One other individual suspect name, director of PT Maxima Integra Joko Hartono Tirto, was named as a suspect on February 6, 2020.

The six suspects allegedly enriched themselves and harmed the country's finances by using Jiwasraya-managed funds to make stock and mutual fund investments. The charges against the suspects are confirmed by the Report of The Results of Investigative

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Examination in the Framework of Calculating State Losses on Financial Management and Investment Funds in PT Insurance Jiwasraya (Persero) Period of 2008 to 2018 Number: 06 / LHP / XXI / 03/2020 set by BPK on March 9, 2020.

The report mentioned that there were irregularities that occurred in the Jiwasraya case, especially in terms of the management of stock and mutual fund investments. These deviations are carried out in several aspects, including:

a) **Jiwasraya stock and mutual fund management agreement**

Hary Prasetyo allegedly carried out a policy that was not transparent and unaccountable through an agreement with Joko Hartono Tirto and Heru Hidayat to arrange a transaction of placement of jiwasraya shares and mutual funds. Hari Prasetyo and Syahmirwan also agreed to accept Benny Tjokrosaputro's request to be able to sell his shares to Jiwasraya through a scheme arranged by Joko Hartono Tirto who is an affiliated party with Heru Hidayat. The agreement is known to Hendrisman Rahim as President Director of Jiwasraya.

b) **Stock investment management Stock purchase analysis**

PT Bank Pembangunan West Java and Banten Tbk. (BJBR), PT PP Properti Tbk. (PPRO), PT Semen Baturaja Tbk. (SMBR), and PT SMR Utama Tbk. (SMRU) were compiled by the Investment Division in formalities without being based on professional objective data in the Head Office Internal Memorandum (NIKP). The NIKP was approved by Hendrisman Rahim and Hary Prasetyo although it is known that the NIKP was formalized. In addition, Hendrisman Rahim and Hary Prasetyo still approved the purchase of BJBR, PPRO and SMBR, even though the share ownership has exceeded the provisions stipulated in the investment guidelines which are a maximum of 2.5% of the outstanding shares.

On the other hand, Hary Prasetyo allegedly ordered Syahmirwan to buy shares whose prices would be regulated. Furthermore, Syahmirwan assisted by Agustin Widhiastuti allegedly cooperated with certain parties affiliated with Heru Hidayat to conduct purchase / sale transactions of BJBR, PPRO, SMBR and SMRU shares with the aim of influencing prices so that in the end it did not provide

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investment benefits and could not meet liquidity needs to support the company's operational activities.

c) **Mutual fund investment management**

With the approval of Hary Prasetyo, Syahmirwan and Joko Hartono Tirto as parties affiliated with Heru Hidayat in collaboration with 13 investment managers (MI) formed a special mutual fund product for Jiwasraya. This is done so that the acquisition of financial instruments that become the underlying Jiwasraya mutual fund can be controlled by Joko Hartono Tirto. Analysts in the framework of mutual fund subscriptions are compiled by the investment division formally without being based on objective data and professional analysis in NIKP. The NIKP was approved by Hendrisman Rahim and Hary Prasetyo although it is known that the NIKP was formalized. In addition, the transaction of buying / selling financial instruments that became the underlying in 21 mutual fund products managed by 13 MI is controlled by Joko Hartono Tirto by involving other Heru Hidayat affiliated parties and allegedly it was done with the approval of parties related to Jiwasraya. Meanwhile, the shares purchased as underlying mutual funds are risky or illiquid stocks that ultimately do not provide investment benefits and cannot meet liquidity needs to support the company's operational activities.

d) **Conflict of interest**

The parties related to Jiwasraya allegedly received something in the form of funds, shares and other facilities from parties affiliated with Heru Hidayat and securities companies in cooperation with Jiwasraya.

As a result of a number of irregularities, bpk set state losses due to jiwasraya cases reached Rp16.81 trillion. The details are Rp4.65 trillion which is the acquisition value of BJBR, PPRO, SMBR, and SMRU shares. In addition, rp12.16 trillion which is the value of the acquisition of 21 mutual fund products in 13 investment managers after deducting the value of mutual fund participation units (redemption). In his indictment, Kejagung mentioned that the six individual suspects allegedly enriched themselves and harmed the state's finances, amounting

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to Rp16.81 trillion or at least around that amount. In addition to the six individual suspects, Kejagung also assigned 13 investment manager companies (MI) as suspects At the same time, Kejagung also appointed Deputy Commissioner of Capital Market Supervisory II Financial Fervices Authority period 2014 - 2017 Fakhri Hilmi as a suspect. Kejagung ensnared suspect Fakhri with a criminal article of corruption. Young Attorney General for Special Criminal Affairs in Kejagung Ali Mukartono stated that the 13 corporations were designated suspects because they were used as tools by six individual defendants for money laundering of corruption amounting to Rp12,157 trillion, or about 72.32% of the total state losses estimated at Rp16.81 trillion.

3. Law Enforcement and the Impact of Investment Cases

It cannot be denied that the jiwasraya case is closely related to errors in the management of investments that are considered not prudent. The Attorney General's Investigation into the Jiwasraya case in late 2019 - early 2020 said there was a violation of the precautionary principle in investing. On March 20, 2020, the Audit Board released a calculation of state losses due to Jiwasraya cases reaching Rp16.81 trillion, higher than the initial estimate of Rp13.7 trillion. The loss consisted of losses due to stock investments worth Rp4.65 trillion and due to mutual fund investments worth Rp12.16 trillion. Jiwasraya case law enforcement turned out to have an impact on actors in the capital market, especially those who were directly affected by the process of blocking, seizing and looting securities accounts and securities sub-accounts. As an initial effort to trace the financial management and investment funds of Jiwasraya in several companies in the period 2008 - 2018, Kejagung has blocked a number of Single Investor Identification from investors who own or buy securities related to Jiwasraya. Director of Investigation of the Special Criminal Prosecutor Febrie Adriansyah said a total of 212 SID securities accounts were blocked by the investigation team for allegedly related to the Jiwasraya corruption case.

The Ombudsman of the Republic of Indonesia in a letter dated February 10, 2021 addressed to the President of the Republic of Indonesia, the Chairman of the Supreme

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Court and the Speaker of the House of Representatives, mentioned that it had received a number of reports related to the process of blocking, seizing and looting securities accounts and securities sub-accounts. Market participants generally object to the blocking because it has an impact on the limited investment activities that can be done. After discerning the situation, the Ombudsman also took the view that cases of corruption in the financial management and investment fund jiwasraya has had a systemic impact on investors and customers of policyholders whose funds are placed in companies related to the Jiwasraya case. Therefore, the Ombudsman considers the need to regulate protection for investors and related customers. Among them is by first verifying and repairing data followed up by the separation of securities accounts and subefficiency accounts that are not related to the Jiwasraya case.

Aggressive enforcement by the attorney general's office on several cases of public fund management and investment is claimed to have caused unrest, especially among the business world and capital markets along with the increasing legal risks in running an investment management business. So far, jiwasraya case has had a significant impact on the capital market marked by the decline in the value of JCI and the reduced volume of stock transactions in the capital market.

In jiwasraya's case, the Attorney General's Office has conducted confiscation, blocking, asset forfeiture and other forced attempts.(Amanda & Jempa, 2021) So far many objections have been filed with the Tipikor Court over forced efforts that are generally based on the inattention of investigators in separating which assets are related or unrelated to the case being investigated. The objections came not only from the suspects, but also other third parties (in good faith) who were affected by the seizure, as experienced by the owner of the securities account and thousands of customers and insurance policyholders of PT Insurance Jiwa Wanaartha.

Failure to verify seized or seized assets will have a systemic impact on capital market investors and insurance business consumers. On the other hand, the practice of confiscation and asset forfeiture in jiwasraya cases filled by lawsuits from third parties has also opened up the fact that there are legal loopholes related to the impact and

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consistency of the verdict, as well as the law of events, which overall gives way to the increasing importance of the completion of the Asset Forfeiture Bill.

Increasing law enforcement against fraudulent practices in the capital market actually does not only occur in Indonesia. This is also the case in other countries including the United States, but the orientation of law enforcement and increased oversight and investigation by the U.S. Securities and Exchange Commission (SEC) are focused on efforts to prevent fraud.

Anti-fraud measures are carried out ranging from awarding whistleblowers, announcement of fraud and insider trading, renewal of valuation methods. Investment managers are required to exercise stricter controls to protect investor confidence. In Malaysia, after being hit by the 1MDB scandal, the Capital Markets Supervisory Commission also increased law enforcement by imposing more administrative sanctions than in previous years.

After the Jiwasraya case and other similar cases, it is also interesting to see if Indonesia will emulate Singapore which applies deferred prosecution agreements (DPAs) to corporations. DPAs are claimed to be more effective at improving compliance and corporate cooperation with law enforcement in case resolution.

4. Comparison of standard clauses in insurance policies before and after the issuance of Law No. 40 of 2014 on Insurance Jo. Financial Fervices Authority Regulation No. 23/POJK.05/2015 on Insurance Products and Marketing of Insurance Products

In law number 40 of 2014 on insurance protection of policyholders is stipulated in Article 53 which reads:

a. Insurance companies and Sharia insurance companies must be participants in policy guarantee programs.
b. The implementation of the policy guarantor program as referred to in paragraph (1) is regulated by law.

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c. When the policy guarantee program applies under the law as referred to in paragraph (2), the provisions regarding the Guarantee Fund as referred to in Article 8 paragraph (2) letter d and Article 20 are declared not applicable to insurance companies and Sharia insurance companies.

d. The law as referred to in paragraph (2) was established for 3 (three) years since this law was enacted.

Lately since the presence of the Financial Services Authority which is usually called Financial Fervices Authority which has the function of organizing an integrated regulatory and supervision system on the overall activities in the financial services sector. Financial Fervices Authority makes rules regarding the standardization of the use of standard clauses that must be contained in each insurance policy. This standardization is set forth in Financial Fervices Authority Regulation No. 23/POJK.05/2015 on Insurance Products and Insurance Product Marketing.

In the Financial Fervices Authority Regulation regulates the matters that must be in each insurance policy set forth in article 11 which reads as follows:

1) When coverage is effective;
2) Description of the promised benefits;
3) How to pay premiums or contributions;
4) Grace period payment of premiums or contribition;
5) The exchange rate used for the Insurance Policy with foreign currency if the payment of premiums or contributions and benefits is associated with rupiah currency;
6) The time recognized as the time of receipt of premium or contribution payments;
7) The company's policy is set if the payment of premiums or contributions is made past the agreed grace period;
8) The period during which the company is unable to review the validity of the incontestable period on long-term insurance products;

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9) Cash value table, for insurance products marketed by life insurance companies that contain cash values;
10) Calculation of insurance policy dividends or similar, for insurance products marketed by life insurance companies that promise insurance policy dividends or the like;
11) Termination clauses of coverage, either from the company or from policyholders, insured or participants, including the terms and causes;
12) Terms and procedures for filing a claim, including relevant supporting evidence and required in the filing of a claim;
13) Procedures for settling claim payments;
14) Dispute resolution clauses which include settlement mechanisms within the court and outside the court and the selection of dispute resolution positions; and
15) The language used as a reference in the event of a dispute or difference of opinion, for an insurance policy printed in 2 (two) languages or more.

In addition, also issued Financial Services Authority Regulation Number: 1/POJK.07/2013 on Consumer Protection of the Financial Services Sector. As a provision of the implementation of this Financial Fervices Authority Regulation, Financial Fervices Authority issued a Circular Letter of the Financial Services Authority Number 13/SEOJK.07/2014 on the Baku Agreement.

Although Financial Fervices Authority has made rules regarding standardization that is so rigit in an insurance policy. But in reality, the Financial Fervices Authority regulations are still many that are not implemented in the insurance policy clause. For example, in this case the life insurance agreement on bumiputera joint soul asuansi or hereinafter called AJB Bumiputera there are several standard clauses that make the clause as if it has complied with the laws and regulations but escaped the attention of consumers.

Ideally in every standard agreement is still needed by the community for reasons of efficiency. On the other hand, the standard agreement is still acceptable

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in community association. Especially in this era of globalization, the strengthening of the terms of the agreement is inevitable. In terms of business actors, this standard agreement is a way to achieve efficient and fast economic goals.

CONCLUSION

1. In the case of Jiwasraya, the Attorney General's Office has conducted confiscation, blocking, confiscation of assets and other forced attempts. So far many objections have been filed with the Tipikor Court over forced efforts that are generally based on the inattention of investigators in separating which assets are related or unrelated to the case being investigated. The objections came not only from the suspects, but also other third parties (in good faith) who were affected by the seizure, as experienced by the owner of the securities account and thousands of customers and insurance policyholders of PT Insurance Jiwa Wanaartha. Failure to verify seized or seized assets will have a systemic impact on capital market investors and insurance business consumers. On the other hand, the practice of confiscation and asset forfeiture in jiwasraya cases filled by lawsuits from third parties has also opened up the fact that there are legal loopholes related to the impact and consistency of the verdict, as well as the law of events, which overall gives way to the increasing importance of the completion of the Asset Forfeiture Bill. Increasing law enforcement against fraudulent practices in the capital market actually does not only occur in Indonesia. This is also the case in other countries including the United States, but the orientation of law enforcement and increased oversight and investigation by the U.S. Securities and Exchange Commission (SEC) are focused on efforts to prevent fraud.
2. In law number 40 of 2014 on insurance protection of policyholders is stipulated in Article 53 which reads:
    a. Insurance companies and Sharia insurance companies must be participants in the policy guarantee program.
    b. The implementation of the policy guarantor program as referred to in paragraph (1) is regulated by law.

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6) The time recognized as the time of receipt of premium or contribution payments;
7) The company's policy is set if the payment of premiums or contributions is made past the agreed grace period;
8) The period during which the company is unable to review the validity of the incontestable period on long-term insurance products;
9) Cash value table, for insurance products marketed by life insurance companies that contain cash values;
10) Calculation of insurance policy dividends or similar, for insurance products marketed by life insurance companies that promise insurance policy dividends or the like;
11) Termination clauses of coverage, either from the company or from policyholders, insured or participants, including the terms and causes;

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12) Terms and procedures for filing a claim, including relevant supporting evidence and required in the filing of a claim;
13) Procedures for settling claim payments;
14) Dispute resolution clauses which include settlement mechanisms within the court and outside the court and the selection of dispute resolution positions; and
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BIBILIOGRAPHY

Ali, Z. (2021). *Metode penelitian hukum*. Sinar Grafika.

Amanda, B., & Jempa, I. K. (2021). Penyitaan Aset Pelaku Tindak Pidana Korupsi Oleh Kejaksaan Tinggi Aceh Sebagai Upaya Pengembalian Kerugian Negara. *Jurnal Ilmiah Mahasiswa Bidang Hukum Pidana*, *5*(4), 569–576.

Bachtiar, S. H. (2021). *Mendesain Penelitian Hukum*. Deepublish.

Korah, P. A. (2013). Kedudukan Nasabah dalam Perjanjian Baku yang Dilakukan oleh Bank. *Lex Privatum*, *1*(1).

Nasarudin, M. I. (2014). *Aspek hukum pasar modal Indonesia*. Kencana.

Ningsih, S. H. (2020). *Pengaruh Akad Insurance, Besaran Premi Dan Risiko Terhadap Minat Nasabah Insurance Syari'ah Dalam Perspektif Ekonomi Islam (Studi Kasus Pada Insurance Allianz Syari'ah Bandar Lampung)* [PhD Thesis]. UIN Raden Intan Lampung.

Supratikno, H. (2011). *Ekonomi Nurani VS Ekonomi Naluri*. Yayasan Pustaka Obor Indonesia.

Suryati, S. (2017). Akibat Hukum Polis Insurance Kendaraan Bermotor Yang Hanya Ditandatangani Oleh Perusahaan Insurance. *Jurnal Dosen Universitas PGRI Palembang*.

Widiastuti, I. (2017). Pelayanan Badan Penyelenggara Jaminan Sosial (BPJS) Kesehatan di Jawa Barat. *Public Inspiration: Jurnal Administrasi Publik*, *2*(2), 91–101.

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Yudha, M. K. (2018). *Penolakan Klaim Insurance Kendaraan Yang Dioprasionalkan Sebagai Grabcar Menurut Prinsip Utmost Goodfaith* [PhD Thesis]. Fakultas Hukum Universitas Pasundan.