

**COMPARATIVE ANALYSIS STUDY ON POLICYHOLDER
PROTECTION FOR INSURANCE COMPANY
EXPERIENCING DEFAULT OF CLAIMS IN INDONESIA
AND THE UNITED KINGDOM**

A Bachelor Degree Thesis



By :

ALIF WIDHI PRADANA

Student Number: 15410470

**INTERNATIONAL PROGRAM
FACULTY OF LAW
UNIVERSITAS ISLAM INDONESIA**

2020

**COMPARATIVE ANALYSIS STUDY ON POLICYHOLDER
PROTECTION FOR INSURANCE COMPANY
EXPERIENCING DEFAULT OF CLAIMS IN INDONESIA
AND THE UNITED KINGDOM**

A Bachelor Degree Thesis

Submitted in Partial Fullfillment of the Requirement to obtain Bachelor's Degree
(Tier-1) at Faculty of Law

Universitas Islam Indonesia

Yogyakarta



BY :

Alif widhi Pradana

Student Number : 15410470

**INTERNATIONAL PROGRAM
FACULTY OF LAW
UNIVERSITAS ISLAM INDONESIA**

Yogyakarta

2020



**COMPARATIVE ANALYSIS STUDY ON POLICYHOLDER
PROTECTION FOR INSURANCE COMPANY EXPERIENCING
DEFAULT OF CLAIMS IN THE INDONESIA AND THE UNITED
KINGDOM**

Telah diperiksa dan disetujui Dosen Pembimbing Tugas Akhir untuk diajukan
ke depan TIM Penguji dalam Ujian Tugas Akhir / Pendaran
pada tanggal 11 November 2020

Yogyakarta, 11 Oktober 2020
Dosen Pembimbing Tugas Akhir,




Budi Agus Riswandi, Dr., S.H., M.Hum.



**COMPARATIVE ANALYSIS STUDY ON POLICYHOLDER
PROTECTION FOR INSURANCE COMPANY EXPERIENCING
DEFAULT OF CLAIMS IN THE INDONESIA AND THE UNITED
KINGDOM**

Telah Dipertahankan di Hadapan Tim Penguji dalam
Ujian Tugas Akhir / Pendararan
pada tanggal 11 November 2020 dan Dinyatakan LULUS



Yogyakarta, 11 November 2020

Tim Penguji

1. Ketua : Budi Agus Riswandi, Dr., S.H., M.Hum.
2. Anggota : Ratna Hartanto, S.H., LL.M.
3. Anggota : Abdurrahman Al-Faqih, S.H., M.A., LL.M.

Tanda Tangan



Mengetahui:
Universitas Islam Indonesia
Fakultas Hukum
Dekan,

Dr. Abdul Jamil, S.H., M.H.
NIK. 904100102

SURAT PERNYATAAN
ORISINALITAS KARYA TULIS ILMIAH/TUGAS AKHIR MAHASISWA
FAKULTAS HUKUM UNIVERSITAS ISLAM INDONESIA
BISMILAAHIRRAHMAANIRRAHIM

Yang bertandatangan di bawah ini:

NAMA : Alif Widhi Pradana

NIM : 15410470

Adalah benar-benar mahasiswa Fakultas Hukum Universitas Islam Indonesia Yogyakarta yang telah melakukan penulisan Karya Tulis Ilmiah (Tugas Akhir) berupa skripsi dengan judul :

COMPARATIVE ANALYSIS STUDY ON POLICYHOLDER PROTECTION FOR INSURANCE COMPANY EXPERIENCING DEFAULT OF CLAIMS IN INDONESIA AND THE UNITED KINGDOM

Karya ilmiah ini saya ajukan Kepada Tim Penguji Dalam Ujian Pendarasan yang diselenggarakan oleh Dakultas Hukum UII.

Sehubungan dengan hal tersebut, dengan ini saya menyatakan :

1. Bahwa Karya Tulis Ilmiah ini adalah benar-benar hasil karya sendiri yang dalam penyusunannya tunduk dan patuh terhadap kaidah, etika, dan norma-norma penulisan sebuah karya tulis ilmiah sesuai dengan ketentuan yang berlaku.
2. Bahwa saya menjamin hasil karya ilmiah ini adalah benar-benar asli, bebas dari unsur-unsur yang dapat dikategorikan sebagai perbuatan plagiarism.
3. Bahwa meskipun secara prinsip hak millik karya ilmiah ini adalah pada saya, namun untuk kepentingan yang bersifat akademik dan pengembangannya, saya memberikan kewenangan kepada Perpustakaan Fakultas Hukum UII dan Perpustakaan di lingkungan UII untuk mempergunakan karya ilmiah saya ini.

Selanjutnya berkaitan dengan hal di atas (terutama pernyataan butir nomor 1 dan 2 saya anggap menerima sanksi baik administratif, akademik ataupun pidana, jika saya terbukti secara kuat telah melakukan perbuatan yang menyumpang dari pernyataan tersebut. Saya juga akan bersikap kooperatif untuk hadir, menjawab, membuktikan, dan melakukan pembelaan terhadap hak-hak saya serta menandatangani Berita Acara terkait yang menjadi hak dan kewajiban saya, di depan Majelis atau Tim Fakultas Hukum UII yang ditunjuk oleh pimpinan fakultas, apabila tanda tanda plagiat disinyalir terjadi pada karya ilmiah saya ini. Demikian surat pernyataan ini saya buat dengan sebenar-benarnya dalam kondisi sehat jasmani dan rohani, dengan sadar serta tidak ada tekanan dalam bentuk apapun dan oleh siapapun.

Yogyakarta, 13 Oktober 2020
Yang Membuat Pernyataan,


Alif Widhi Pradana
NIM: 15410470

Scanned with CamScanner

CURRICULUM VITAE

1. *Name* : Alif Widhi Pradana
2. *Place and Date of Birth*: Grobogan, 22 April 1997
3. *Gender* : Male
4. *Religion* : Moslem
5. *Address* : Jl Kepodang II no 12 RSS Sambak Indah,
Purwodadi, Kab . Grobogan
6. *Phone Number* : 081227807941
7. *E-mail* : Alifdana70@gmail.com

EDUCATION

Formal

1. 2002 – 2003 : TK Tunas Simpang, Purwodadi
2. 2003 – 2009 : Elementary school 12 Purwodadi
3. 2009 – 2012 : Junior school 1 Purwodadi
4. 2012 – 2015 : High school 1 Purwodadi
5. 2015 – present : Faculty of Law , International Program,
Universitas Islam Indonesia

Non-Formal Education

1. 2015 – 2016 : English Café
2. 2015 – 2016 : Elti Gramedia English Course

Organization and Committee

1. 2015 : Member of KOMAKA (Komunitas Mahasiswa Merdeka)
2. 2015 : Member of JCI

Achievements

1. 2012 : The 1st Winner Threuple music festival band competition
2. 2013 : The 2nd Winner nasyid competition junior high school level

Competence

1. English Competence (CEPT : 740)
2. Soft skill in ms word, ms excel and ms powerpoint

MOTTO

“The king’s crown was forged by blood”

-Myself

“Your love makes me strong your hate makes me unstoppable”

- Cristiano Ronaldo

DEDICATION

I, Alif Widhi Pradana, Dedicate this wonderful yet hard working Thesis to :

ALLAH SWT,

Who gave us this wonderful life on Earth

My Precious Family,

Bapak & Ibu

Dra. Rini Rachmawati & Ir Budi Prihantoro

My Little sister

Widya Dehannisa

My dearest grandmother

Hj. Rustinah

All my support system

For the support and endless love

The Republic of Indonesia and Universitas Islam Indonesia

ACKNOWLEDGEMENT

Assalamualaikum Warrahmatullahi wabarrakatuh

First of All, I want to say my best gratitude to Allah SWT because of His permissions I can finish this flawless thesis and overcome many problems when I try to finish this awesome and flawless thesis. I should recognize that this thesis is not as easy as I thought. With all of my power inside of my heart I can resolving all of obstacles.

This thesis is made for the readers who want to make a little step in conducting life plan investment with insurance. I hope that many people will understand how to make a simple and clear understanding about insurance in Indonesia.

I hope this thesis will give an enlightenment for insurer who involved into insurance market for make a good management insurance practice and insured will make a precaution step when they want to make an investment in the insurance.

All grateful and thankyou in making this Thesis, also belong to :

1. *Rini Rachmawati and Budi Prihantoro*, both of my parents and my everything, especially for my mom who always support me and give me everything that I need to reach success. You are the best mom that God ever made.
2. *Widya Dehannisa* , my little sister you are good and nice .
3. *Hj Rustinah* , my lovely grandmother that will be my best grandmother in my life a always proud to her .
4. *Mr Abdurrahman Al Faqih* , *SH, L.LM* , my lecturer that support me in making this flawless thesis.

5. *Haekal Asyari , my language advisor that put his 100% ability to check my grammatical error and typo with details , thanks for hard work.*
6. International program batch 2015 *Sinta , Sbong , Kevin , Nabila , Anshar , Rafi , Vava , Yudha , Adel , Tisha , Lala ,Anang , Adinda , Sasan*
7. KKN batch 61 desa Ringinputih , thanks for support and attention
8. KKN batch 61 unit 308 , to *Presiden , Novia, Rikado , Lisna , Candra , Fafa , Rahmad , Agie* . All of support is very important .
9. IP FH UII alumni and seniors thank you for the collaboration and cooperation in class.
10. IP FH STAFF *mba vera and ma gita* thank you for the attention and your hospitality is the best

ABBREVIATION

PRA	: Prudential Regulation Authority
FCA	: Financial Conduct Authority
FSCS	: Financial Service Compensation Scheme
OJK	: Otoritas Jasa Keuangan
AJB	: Asuransi Jiwa Bumiputera
POJK	: Peraturan Otoritas Jasa Keuangan
FSMA	: Financial Service and Market Act

ABSTRACT

The condition of insurance in Indonesia can be categorized as wildly chaotic because the rights of insurance policyholder cannot be secured by insurance company in Indonesia. Jiwasraya and Bumiputera default case is clear evidence of the incompetence insurance company in managing insurance business in Indonesia. As a comparison, United Kingdom capable to manage insurance industry and be able to protect the rights of insurance policyholder. This study aims to compare the protection of insurance policyholders in Indonesia and the United Kingdom. The research method that is used in this study is a normative research method through a comparative way that compares two different legal systems. This study is carried out through a qualitative approach. This study's results are that Indonesia and the United Kingdom have similarities and differences in the protection of insurance policyholders. Through Law number 40 of 2014 concerning insurance and Otoritas Jasa Keuangan (OJK) decision regulation, Indonesia has governed the provision of insurance policyholder protection in the insurance company's condition failed to pay an insurance claim. The mechanism is by using Financial health Planning and Insolvency procedures through the bankruptcy of an insurance company that is regulated under Law no 37 of 2004. Whereas, in the United Kingdom, the legal basis of insurance policyholder protection is Financial Services and Market Act. FSCS must secure insurance claims when the insurance company has a financial problem paying insurance claims toward the policyholder.

Keywords: Insurance policyholder, claims, policyholder protection funds

Table of Contents

COVER	1
THESIS PAGE APPROVAL PRE FINAL EXAMINATION	3
ORIGINALITY STATEMENT	5
CURRICULUM VITAE	6
MOTTO.....	8
DEDICATION.....	9
ACKNOWLEDGEMENT	10
ABBREVIATION	12
ABSTRACT	13
Table of Contents.....	14
CHAPTER I: INTRODUCTION	16
A. Context of the Study.....	16
B. Problem Formulations	27
C. Research Objectives	27
D. Originality of Research.....	27
E. Theoretical Review	31
F. Research Method.....	35
G. Definition of Terms.....	36
H. The Outline of the Thesis	38
CHAPTER II: GENERAL OVERVIEW.....	39
A. Insurance.....	39
B. Default Firms and Guarantee Scheme on Insurance Company	51
1. Default.....	51
2. Guarantee Scheme on Insurance Company.....	53
C. Policyholder Protection Schemes.....	56
1. Definition	56
2. Function	56
3. Coverage	57
4. Eligible Claimant.....	58
5. Compensation	59
6. Relevant Person	59

7. Limitations on Compensations	59
8. Funding Methods	60
9. Islamic Perspective on Insurance	62
CHAPTER III: COMPARATIVE ANALYSIS STUDY ON POLICYHOLDER PROTECTION FOR INSURANCE COMPANIES EXPERIENCING DEFAULT OF CLAIMS IN INDONESIA AND THE UNITED KINGDOM	65
A. Similarities and Differences	65
B. Implementation Insurance Policyholder Protection in Indonesia	131
C. Factors That Cause Similarities and Differences Policyholder Protection Towards Default Insurance Company in Indonesia and United Kingdom.....	132
CHAPTER IV: CONCLUSION AND RECOMENDATION	133
A. Conclusion	134
B. Recommendation	134
BIBLIOGRAPHY	136

CHAPTER I

INTRODUCTION

A. Context of the Study

Good financial health generally means that an entity is solvent enough and has ample cash to continue to operate (in short to medium term) without significant concern about its ability to fulfil its obligations. It enables a company to retain the stakeholder's trust and invest in its business to generate future growth. Consequently, financial health is essential not only to the owners and employees of an entity but also to other stakeholders such as the government as a client. When economic health decreases and a company experiences more incredible financial difficulty, the risk of failure and failure to maintain services' delivery rises. Specific condition is when a company has a dilemma on financial known as financial distress. Financial distress is a state when the debtor has a problem in paying the debts in due time. Characteristics of a company suffering from financial distress is when a company is not profitable and has insufficient cash flow. Revenue of the company that suffering financial distress will also be affected. A company has a minimum standards budget that must be realized as a budget on the initial company planning. Moreover, the company debt is relatively high following the equity ratio of a company. Suppose a company has a high debt-to-equity ratio on its balance sheet. In that case, it will likely have a higher financing costs, and its revenues and cash flow will become more vulnerable to any downturn in results. Furthermore, the main consequences of company financial distress are deferment of creditor payment. If a company is

financially depressed, it will often default to paying its creditors longer than they are due to be paid contractually. Where trade creditors are rising as a share of selling costs, this can suggest financial distress.¹ Financial distress means the company's obligations to investors are broken or difficult to fulfil. It will directly be linked to the leverage decision of the organization. Nonetheless, economic distress means difficulties arising from the organizational inefficiencies of the company. It does not have any direct link to the power of the company. On the other hand, a financially distressed business may have a viable real asset operation, and thus not economically distressed. On the other hand, an all-equity firm can be financially distressed, but can never be financially distressed as there are no investors involved. Such a corporation may even go out of business and liquidate even if it is not bankrupt. Therefore, it is the cost of financial distress, not economic distress, that is key to discussing how costly corporate bankruptcies are. It is often tempting to point news stories of economically distressed companies as evidence of an imminent recession's causal effect on the loss in productivity or a decrease in demand for goods. The critical factor is whether an equivalent, but not otherwise financially troubled, firm (due to low financial leverage) will face similar deterioration in its operating performance.² In overcoming company financial distress, the company can impose two options, such as solvent restructuring options and insolvency options. Solvent

¹ Government Commercial Function, Central Government Guidance On Corporate Financial Distress, 2019, pg 8

² Lemma W Senbet and Tracy Yu Wang, Corporate Financial Distress and Bankruptcy: A Survey, 2012, pg 7

restructuring options consist of various methods such as a turnaround plan, improving liquidity, debt for equity swap, and selling assets. Firstly, in the turnaround plan company undertakes a detailed review of itself and its industry to understand its current financial situation and the factors that cause its underperformance (operational or financial). The management team arranges a series of plans to address any problems it finds and returns it to profitability/cash generation over a while (usually 1-2 years). This turnaround plan could include the disposal or wind-down of unprofitable business units and contracts. Guarantee stability, consumers can be forced to renegotiate contracts for higher prices and more favourable terms for the manufacturer. Where departments receive these approaches from vendors, they will involve their business teams as early as possible and consider any procurement regulation, the consequences of state aid, and other matters. Secondly, another action that can be imposed by a distressed company is improving liquidity. The company usually can extend the fulfilment of performance to the creditor for a particular time the most effective way to enhancing liquidity by injecting additional cash for the company. Additional cash is pumped into the company enough to meet the anticipated shortfall. Ideally, the owners would do this, but it can provide in combination with the borrowers (or sometimes by only them). If this is in the form of debt, the overall borrowing level will increase, so it is crucial to arrange. Moreover, the distressed company can also use other methods to offer a lender with debt for equity swap options. The last way that can save the company business is by selling the assets. To raise cash, the company can sell valuable,

strategically, or non-core assets/business units. Selling the assets can then either be used to repay current borrowings or to meet future cash requirements.³ Furthermore, when the solvent procedure cannot help overcome the company distress condition, company procedures' insolvency will be conducted automatically. Insolvency is the condition when the company cannot pay its debt to the creditor in due time.⁴ Insolvency procedures are initiated with administration steps. The administration has designed to keep an insolvent company running. Simultaneously, the insolvency practitioner (the administrator) decides the most appropriate course of action (e.g., selling the company as a wind-down business). The administration is only useful if there are sufficient funds available to cover the operating costs and the continuing work capital requirements of those business sections that the administrator wants to proceed. The administrator may raise funds from the sale of assets, from cash available in the company, or from creditors offering money to support the operation in the hope of a better return from an administration than the alternative of liquidating the business.

The administration is only useful if there are sufficient funds available to cover the operating costs and the continuing work capital requirements of those business sections with whoever the administrator wants to proceed. The administrator may raise funds from the sale of assets, from cash available in the company, or from creditors offering money to support the operation in the hope

³ Government Commercial Function, Op.cit, pg 13

⁴ Price water house coopers, Insolvency, in Brief, A guide to insolvency terminology and procedures, pg 9

of a better return from an administration than the alternative of liquidating the business. The company can also make a voluntary arrangement with the creditor to reduce or reschedule the payment of debts. Last step that can be imposed by the company with the liquidation process. Liquidators have the main job of saving the assets and selling the company assets to pay creditors' debts.⁵ The liquidation process's major problem is when the sold assets for paying the company's debts, are still not enough or the condition of a company that its assets are lower than liabilities known as negative equity. Negative equity will drive the company to the insolvency process.⁶ Companies that suffer negative equity lost their entire net worth after financial losses year after year. In principle, the company would go to bankruptcy as the company no longer has resources to cover the obligations, but the company is still doing business instead. In many cases, book assets does not equate to their market value, since it is possible to be significantly higher due to mainly to intangible costs. Insurance company in running insurance business should be applying Risk-Based Capital regulations. Risk-Based Capital (RBC) tests a business to maintain the minimum amount of capital based on its level of risk. RBC guidelines ensure that financial institutions have enough liquidity on hand to support their activities and write reporting while protecting corporate shareholders, creditors, and clients. Insurance companies use the RBC formula to determine the minimum capital required to hold to avoid interference by the

⁵ Government Commercial Function, Op.cit, pg 15

⁶ Sara Urionabarrenetxea et al., Negative equity companies in Europe: theory and evidence, VGTU Press, Lithuania, 2016, pg 308

regulator. RBC formula's leading risk factors are asset risk, risk underwriting, and other risks. Asset risk refers to the potential loss of financial assets, such as lower stock-market investment performance relative to client expectations. The underwriting risk refers to the risk resulting from the incorrect underwriting by insurance companies, such as inaccurate insurance policy evaluations. Certain risks include everything else, such as interest rate risk, which relates to the potential loss of a debtor's default on his financial obligations and allows the insurance company to make the payments necessary.⁷

Many insurance companies failed to pay the claim towards their insurance policyholder at due time. Three famous cases are being the focus of this research. The companies stated as insolvent or bankrupt because a debtor insurance company cannot pay the insurance claim. It means the insurance claim is transforming into a loan. The insurance company also has a debt that more significant than the total wealth of assets.⁸ An insurance company who fails to pay claim are PT Asuransi Jiwa Bakrie, PT Asuransi Jiwa Bumiputera and PT Asuransi JiwaSraya. Bakrie insurance case happened in 2008 the investment-based life insurance product, Diamond Investa, is estimated to cost up to Rp340 billion. However, until the OJK revoked the business license, its outstanding liabilities were still Rp260 billion.⁹ The operational support of PT Asuransi Jiwa

⁷ Dong Shin Seol et al., Risk-Based Capital for Illinois based insurance companies, the University of Illinois at Urbana-Champaign, 2018, pg 2

⁸ Prof.DR. Sutan Remy Sjahdeini, Sejarah, Asas dan Teori Hukum Kepailitan Memahami Undang-undang No. 37 tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran, Pranamedia Group, Jakarta, pg 156

⁹ <https://www.cnnindonesia.com/ekonomi/20190410163803-78-385018/nasabah-bakrie-life-akan-temui-ojk-ungkit-kasus-gagal-bayar> (Accessed July 18th 2019 time 20.39)

Bakrie was withdrawn in 2016 with decision letter-number KEP-76 / D.05/2016.¹⁰ One of the victims is Eveline, who serves as Dwi Karsa and one other company. He claimed to invest Rp 3.6 billion in company funds in Diamond Investama insurance. Bapepam, which is now in the form of becoming OJK, said that it failed to pay Diamond Investa Rp. 500 billion. To overcome this problem; Bakrie Life reached an agreement that it would repay its obligations. But the instalments made by Bakrie Life are problematic. Not all policyholders have their funds returned. In 2016, OJK revoked Bakrie Life's operational permit.¹¹

Another case is Jiwasraya; postponement of payments made for 711 bancassurance product policies worth Rp 802 billion. Investment errors are causing difficult company liquidity so that they can fail to pay the policy. There are seven banks that market the Jiwasraya bancassurance product named JS Proteksi Plan, issued five years ago. The seven banks are the National Savings Bank (BTN), Standard Chartered, KEB Hana Indonesia Bank, Bank Victoria, ANZ Bank, QNB Indonesia Bank, and Bank Rakyat Indonesia (BRI). The liquidity pressure that made Jiwasraya fail to pay the bancassurance policy occurred because of an investment error. In the period of 2007 to 2012, Jiwasraya placed its funds in stock reposition. In September 2019, losses rose to Rp 13.7

¹⁰ <https://www.ojk.go.id/id/berita-dan-kegiatan/pengumuman/Pages/Pencabutan-Izin-Usaha-Perusahaan-Asuransi-PT-Asuransi-Jiwa-Bakrie.aspx> (Accessed October 6th 2019 time 12.16)

¹¹ <https://www.cnbcindonesia.com/investment/20190410133150-21-65737/curhat-nasabah-yang-11-tahun-digantung-bakrie-life> (Accessed October 6th 2018 time 12.39)

trillion. Then in November 2019, Jiwasraya changed the negative equity of Rp27.2 trillion.¹²

The last case is Bumiputera. In January 2018, Bumiputera Bersama Life Insurance (AJB) claimed to have delayed claims within 1-2 months. The main reason is that there are no premiums produced by AJB Bumiputera. After all, the production has transferred to Bhinneka Life. The appearance of the name Bhinneka Life originated from the failure of the agreement between AJB Bumiputera and PT Evergreen Invesco Tbk (GREN). Initially, GREN indeed became one of the investors who were ready to help AJB Bumiputera. However, the agreement was cancelled because GREN initially promised a 40% net profit from the premium production formed by a new subsidiary, PT Asuransi Jiwa Bumiputera of Rp. Sixteen trillion in 12 years, but reality, only Rp. 1.7 trillion, which was fulfilled. The Financial Services Authority (OJK) continues to ask the management of PT Asuransi Jiwasraya (Persero) to carry out the restructuring efforts contained in the Financial Restructuring Plan (RPK) submitted since early 2018. The RPK mandated by the Directors and Commissioners of Jiwasraya and obtained shareholder approval, in this case, the Ministry of SOEs, submitted to the OJK.¹³

Meanwhile, the plan provided by Bumiputera insurance is to give the right to manage customer funds to third parties to guarantee security. It also includes the Financial Restructuring Plan (RPK) submitted to the Financial

¹² <https://money.kompas.com/read/2020/01/09/063000926/simak-ini-kronologi-lengkap-kasus-jiwasraya-versi-bpk?page=all> (Accessed on March 3rd, 2020 time 15.33)

¹³ <https://www.liputan6.com/bisnis/read/4155614/ojk-kembali-tagih-rencana-penyehatan-keuangan-jiwasraya> (Accessed January 31th time 10.45)

Services Authority (OJK).¹⁴ The planning that was offered by Bumiputera and Jiwasraya is stated in the Financial Service Authority Regulation Number 71/POJK.05/2016 on health financial insurance and reinsurance companies in article 50–57. Based on the Financial Service Authority (OJK) regulation, the insurance company has many ways to overcome the default problem, as stipulated in the OJK regulation. As we know, in the running business of insurance in Indonesia, risk-based capital that allowed minimum is 100%. Ideally, the insurance company can be fulfilled the risk-based capital until 120%.¹⁵ The Financial Services Authority (OJK) then took over the management of AJB Bumiputera 1912 as a rescue effort by restructuring its internal.¹⁶ Moreover, Jiwasraya was taking over with restructuring by OJK. The insurance company considered it was necessary to improve policies relating to customers and insurance companies' capability.¹⁷ Bakrie life was sanctioned in the form of revoking business licenses contained in Law Number 21 of 2011 concerning OJK and the Board of Commissioners' Decree KEP-76 / D.05 / 2016 concerning Revocation of Business License for Insurance Companies.¹⁸

¹⁴ <https://www.jatimtimes.com/baca/207993/20200121/134400/bumiputera-minta-maaf-sebut-bukan-gagal-bayar-seperti-jiwasraya> (Accessed January 31th time 10.49)

¹⁵ Article 3 Financial Service Authority regulation number 71/POJK.05/2016 concerning health financial insurance and reinsurance companies

¹⁶ <https://ekonomi.kompas.com/read/2018/05/24/070000926/upaya-ojk-selamatkan-ajb-bumiputera-1912?page=all> (Accessed July 18th, 2018 time 21.05)

¹⁷ <https://www.inews.id/finance/keuangan/ojk-dorong-restrukturisasi-asuransi-jiwasraya/444061> (Accessed July 18th, 2018 time 21.08)

¹⁸ <https://www.cnnindonesia.com/ekonomi/20190410163803-78-385018/nasabah-bakrie-life-akan-temui-ojk-ungkit-kasus-gagal-bayar> (Accessed July 18th, 2018 time 21.13)

The legal basis that used for insurance policyholder in Indonesia stated on article 27 financial ministry decision No. 422/KMK.06/2003 concerning insurance companies' operation and reinsurance companies that obliged to the insurance company to pay the claims no more than 30 days since the insurance agreement agreed by the insurer and insured. Protection of policyholders in Indonesia can be found in the regulation of POJK Number: 1/POJK.07/2013 on the protection of consumers on the financial sector that obliged insurance company to compensate the policyholder in case of insurance company conducting a mistake.¹⁹ Law No. 37 of 2004 on Bankruptcy and Debt Suspension of Payment Obligation also mentioned insurance policyholders' rights as a creditor. In case of insurance company does not fulfil the obligation to pay a claim, the regulation stated that either debtor or creditor could file for bankruptcy to distribute the company's assets. Article 2(5) in the condition of the debtor is an insurance company appeal only can be claimed by the finance ministry.²⁰ As time goes by; the regulation renewed with provision Law No. 40 of 2014 about insurance law, especially in article 50(1) that mentions Financial Service Authority (OJK), the only authorized body who can appeal for bankruptcy.²¹ In practice, the insurance claim compensation pays lately only regulated on bankruptcy act No.37 of 2004. Moreover, the rights of insurance policyholders as a consumer in matters of assets distribution regulated on POJK

¹⁹ Article 38 POJK Number: 1/POJK.07/2013 about the protection of consumer on the financial sector

²⁰ Article 2 verses (5) law no 37 of 2004 about PKPU

²¹ Law no 50 verses (1) law no 40 of 2014 about insurance

No.28/ POJK.05/2015 concerning Dissolution, Liquidation and Bankruptcy Insurance Companies, Sharia Insurance Company, Reassurance company, and Sharia Reassurance Company. Article 53 law no 40 of 2014 also regulated about insurance guarantee institution that will protect policyholder funds.

In the United Kingdom, there is a particular institution that has a primary role in protecting policyholders. Together with two significant bodies that regulate and control the insurance market. Those are the Prudential Regulator Authority (PRA), which is part of the Bank of England, promotes the safety and soundness of insurers and the protection of policyholders, and Financial Conduct Authority (FCA) regulates the activity firms that involve in United Kingdom insurance and the integrity of the UK's financial markets.²² FSCS is a non-profit-making independent body created under the Financial Services and Markets Act 2000 (FSMA). Levies on authorized financial services firms fund it.²³ The latest news FSCS delivered compensation to 14.000 insurance policyholders according to the bankruptcy of Alpha Insurance.²⁴ FSCS has to pay a claim a customer £ 473 million to 425,760 customers of default firms.²⁵

²² <https://www.abi.org.uk/data-and-resources/tools-and-resources/regulation/> (Accessed October 29th, 2019 time 13.02)

²³ <https://www.fscs.org.uk/about-fscs/organisational-information/mission-and-aims/> (Accessed October 29th, 2019 time 13.09)

²⁴ <https://www.fscs.org.uk/failed-firms/alpha/> (Accessed on February March 3rd, 2020 time 15.53)

²⁵ <https://www.fscs.org.uk/about-us/> (Accessed on March 3rd, 2020 time 16.02)

B. Problem Formulations

1. What are the differences and similarities between Indonesia and United Kingdom in protecting insurance policyholders?
2. How is the implementation of insurance policyholder protection in Indonesia?

C. Research Objectives

1. To compare the protection of policyholder protection for insurance companies experiencing default claims in Indonesia and the United Kingdom.
2. To analyse the implementation of insurance policyholder protection in Indonesia.

D. Originality of Research

The title and problem statement in this study are truly original, in the sense that no previous research has been done by anyone. The several studies that have been researched and approved with this research as follow:

1.	Title: Legal protection for JS insurance customers. Extra income protection in terms of law number 2 of 1992 concerning insurance business (the study of PT. Asuransi JiwaSraya).
	Name: Septiana Wahyu Triwidyanti
	Type of Writings: Thesis
	Institution: Universitas Negeri Semarang

	<p>Problem Statement :</p> <ol style="list-style-type: none"> 1. How is legal protection for JS insurance customers Protection Extra Income in Law Number 2 of 1992 about Insurance Business? 2. What are the advantages and disadvantages of JS insurance products Protection Extra Income compared to other insurance products managed by PT BNI Life Insurance? 3. What are the obstacles encountered in protecting insurance customers based on Act Number 82 of 1992 concerning Insurance Business, and what are the efforts to overcome these obstacles?
	<p>Conclusion :</p> <ol style="list-style-type: none"> 1. Insurance product JS. Protection Extra Income give protection for its consumer by giving the rights of critical illness. In practice, not all consumers got their rights, as mentioned in the provision. 2. The advantages for the consumer that was using JS. Protection Extra Income is additional deposit value cumulatively as stipulated on the program (annually) 2. The handicaps on delivering legal protection are two; both parties conducting breach of contract, and there is no specific legal protection for the consumer that stipulated on law no 2 of

	1992 about insurance. Moreover, consumers of insurance only can use law no 8 of 1999 about consumer protection.
--	---

2.	Title: Legal protection for insurance policyholders for insurance companies that are bankrupt according to law no 37 of 2004 concerning bankruptcy and postponement of debt payment obligations to PT Asuransi Bumi Asih Jaya Pekanbaru Branch.
	Name : Asika Eunika Sormin
	Type of Writings : Thesis
	Institution : Universitas Riau
	Problem Statement : 1. What is legal protection obtained by policyholder inside Insurance legislation? 2. What is the responsibility of insurance company inside policy return to the insured as the holder policy of the insurance company bankrupt?
Conclusion : 1. Insurance company PT Bumi Asih Life Insurance Jaya was bankrupt because he has two or more debt and is not pay until bankruptcy. 2. Corporate responsibility stated insurance bankruptcy payment of its claim made payment through property	

	<p>distribution, which is managed by a curator, according to these creditors' positions, according to Article 52 paragraph (1) Law Number 40 2014 concerning insurance. The insurance company should be responsible for the goals of insurance policyholders, making an insurance policy.</p>
--	---

3.	Title: Legal Protection Towards Consumer Insurance Company Bumiputera Palembang
	Name: Herwin Satria
	Type of Writings: Thesis
	Institution: Universitas Muhammadiyah Palembang
	<p>Problem Statement:</p> <ol style="list-style-type: none"> 1. How is the legal protection of insurance consumer Bumiputera Palembang if bankruptcy happens? 2. What is the legal consequences insurance agreement between consumer Bumiputera Palembang if bankruptcy happens?
<ol style="list-style-type: none"> 1. As mentioned in the bankruptcy act, the legal protection used for Bumiputera Palembang for the consumer is implementing bankruptcy procedures. 	

	<p>2. Bumiputera Palembang has obligations to recover the insurance company's rights, as mentioned in the bankruptcy act and agreements.</p>
--	--

E. Theoretical Review

Insurance or coverage is a form of contract or agreement called a policy. It states that one party called an insurer agrees, as compensation, for compensation or known as a premium, will pay an agreed amount of money to another party (the insured; insured) to compensate for a loss, damage, or injury to something valuable in it. The insured person has an insurable interest, which is called a risk resulting from an event called hazard or peril. The premium can pay in one amount at a time or in instalments; the contract can be valid for a certain period or until an event occurs; the risk can be property, property, wealth, or profit, income, or human life.²⁶

Implementation of the insurance agreement is defined as a period in which the parties must fulfil the insurance agreement (rights and obligations), as stated in the insurance policy. Payment of insurance premiums is the insured's obligation, and vice versa is the right of the insurer. Simultaneously, payment of compensation money is an obligation of the guarantor and the insured's right to receive it. Implementation of achievement in the form of payment of compensation by the guarantor to the insured will only be realized if certain agreed events occur and harm the insured. Besides the main conditions in the form of certain events, other

²⁶ Mulhadi, S.H.,M.Hum, Dasar-Dasar Hukum Asuransi , PT RajaGrafindo Persada,Depok,2017,pg 2

conditions must also complete so that the guarantor carries out his achievements, namely due to a causal relationship, defects or decay of objects, and his own mistakes.²⁷ Fulfilment of achievement is the essence of an agreement. In carrying out these achievements, there are times when the debtor cannot carry out the performance of obligations.

A well-designed structure for consumer protection can reduce the power and knowledge imbalances between consumer and financial institutions. A financial sector must provide the customer with:

a Transparency

by providing full, transparent, sufficient, and comparable information on the cost, terms, and conditions (and inherent risks) of financial products and services

c. Choice

by ensuring equal, non-coercive, and rational practices in the selling and selection of financial product and service

c Redress

by offering an affordable and expeditious channel for complaint resolution and dispute resolution

d. Privacy

by maintaining control over access to personal financial information.²⁸

²⁷ Mulhadi, Op.cit, pg 70

²⁸ Rodney Lester, Consumer Protection Insurance Primer Series on Insurance Issue 7, The World Bank, 2009, pg 2

According to Law No. 40 of 2014, legal protection for Indonesia's insurance policyholders is only implemented when an insurance company experiences bankruptcy/liquidation. The article that protects policyholders is article 52, paragraph (1), (2), and (3). Meanwhile, the protection of policyholders mandated in Law No. 40 of 2014 article 53 concerning the policy guarantor. As consumer protection, OJK as an institution through Law no. 21 of 2011 about the Financial Services Authority in article 30 to take specific actions against financial service institutions that harm consumers and file a lawsuit against these financial institutions to recover the assets that have been harmed by the financial services.²⁹

Moreover, on the law, No. 21 of 2011 about financial service authority explained that principles that applied by financial service authority in running an obligation as financial regulatory bodies such as:

- a. The principle of independence
- b. The principle of legal certainty
- c. The principle of public interest
- d. The principle of openness
- e. The principle of professionalism
- f. The principle of integrity
- g. The principle of accountability³⁰

²⁹ Law no 21 of 2011 about OJK

³⁰General explanation law no 21 of 2100 about financial services authority

The most relevant principle is supposed to be applied to this thesis, according to Law No. 21 of 2011 concerning OJK is the *principle of public interest* in which the OJK must fully protect the protection of insurance policyholders as Indonesian society as the ruling body. Jazim Hamidi provides indicators or elements in the principle of public interest, namely: for national, national and state interests, development interests, community interests, and there is a basis for the laws and regulations.³¹ The principle of public interest is a crucial position in the administration of government. This principle is essential for government officials as public servants, which must prioritize public welfare by carefully understanding and accommodating the community's hopes and desires. This principle requires that in carrying out government tasks, the government (apparatus) always prioritizes the public interest rather than personal interests or certain groups' interests. Public interest overcomes personal interests; it does not mean personal interests are not recognized as individual human beings' nature.

OJK, as a financial supervisory body in Indonesia, has not been able to guarantee the security of consumers of financial services, especially in the insurance field. In the fact that the insurance company's payment claims are not timely. OJK has not been able to fulfil the rights of insurance policyholders with timely payment claims. Indonesia's insurance law has not been able to bring equality of insurance producers and consumers to fulfil contractual obligations

³¹ Jazim Hamidi, Makalah External Review atas Penjelasan Hukum AUPB, Jakarta, November 2015, pg 5.

with no deadline for payment of insurance claims. The absence of a policy guarantor institution (LPP) is also as mandated in article 53 of the Insurance Act No. 40 of 2014.³²

F. Research Method

Type of Research

The type of research is normative research; therefore, it will be concept law as the norm of positive Law.

Research Approach

This research's approach uses a normative juridical approach and comparative approach; the normative approach means that the use statute approach. It means that understanding and finding protection of policyholders used policies and regulations of insurance law. A comparative approach is carrying out to see how other countries, especially the United Kingdom, regulate in protecting policyholders in the company experiencing default.

Data Sources

The data sources of this research used secondary data which consist of:

1. Primary Legal Materials

Primary legal materials used in this research are from laws and regulations:

- a. Insurance law no 40 of 2014
- b. Law no 37 of 2004 about Bankruptcy and Debt Suspension of Payment

³² Law no 40 of 2014 about insurance

c. POJK Number: 1 / POJK.07/2013 about Consumer Protection in Financial Sector
d. POJK Number: 28 /POJK.05/2015 concerning Dissolution, Liquidation and Bankruptcy Insurance Companies, Sharia Insurance Company, Reassurance company, and Sharia Reassurance Company. Financial Services and Markets Act 2000

2. Secondary Legal Materials

This research's secondary legal materials are from books, journals, articles, and news, either hardcopy or softcopy.

G. Definition of Terms

Regulation

Regulation is rules made by a government or other authority to control the way something is conduct or the way behave.³³

Insurance

Insurance is a form of contract or agreement called a policy. It states that one party, called an insurer, agrees that compensation, for compensation or known as a premium, will pay to several other insured parties.³⁴

Policy

An insurance policy is a policy or insurance agreement. Any name, another document that is inseparable with insurance agreement, also included evidence

³³ <https://www.collinsdictionary.com/dictionary/english/regulation> (Accessed on November 11th, 2019 time 11:24)

³⁴ Mulhadi, Dasar-Dasar Hukum Asuransi, Depok, PT Raja Grafindo Persada, 2017, pg 2

insurance membership for group liability, between the insurer and insurance policyholder (insured).³⁵

Policyholder

Policyholder is a party who bind itself based on an agreement with the Insurance Company, Sharia Insurance Company, reinsurance company, or sharia reinsurance company to get protection or management of risks to themselves, the insured, or other participants.³⁶

Insured

The insured is the party that faces the risk as stipulated in the insurance agreement or reinsurance agreement.³⁷

Insurer

The party who bears the risk.³⁸

Premium

Premium is the amount of money set by the Insurance company or reinsurance company and approved by the Policyholder to be paid based on an insurance agreement or agreement reinsurance or a fixed amount of money based on statutory provisions underlies the mandatory insurance program for benefit.³⁹

Breach of Contract

³⁵ Article 1 point 1 Financial Ministry Decision Number 422/KMK.06/2003 about Implementation Insurance Business Company and Reinsurance Company.

³⁶ Law no 40 of 2014 about insurance

³⁷ Ibid

³⁸ Prof. Abdulkadir Muhammad, S.H., Hukum Asuransi Indonesia, PT Citra Aditya Bakti,1999,pg7

³⁹ Law no 40 of 2014 Insurance law

A debtor is a default when he or she by deed or by a similar action has been declared defective, or for his alliance, if it specifies, that the debtor should treat as default by the time specified.⁴⁰

Damage

Money that is paid to someone by a person or organization who has been responsible for causing them some injury or loss.⁴¹

H. The Outline of the Thesis

This research will be compiled systematically into 4 (four) chapters with the following details:

Chapter I is an introduction which consists of these following parts: Background of the study, Problem formulations, Research Objectives, Theoretical Review, Research method and outline of the thesis

Chapter II is General Overview on Insurance, Protection Policyholder Scheme, Default firm, and Guarantee Scheme

Chapter III is findings. This chapter contains comparative analysis on the protection of insurance policyholder on Indonesia and United Kingdom

Chapter IV is a closure which contains with of the Conclusion and recommendation which will be obtained by the previous analysis that has done.

⁴⁰ Article 1238 Indonesia Civil Code

⁴¹ <https://dictionary.cambridge.org/dictionary/english/damage>
(Accessed on November 18th, 2019 time 11:27)

CHAPTER II

GENERAL OVERVIEW

A. Insurance

1. Definition

Insurance based on law and economics perspective is a powerful form of risk management used for avoiding the possibility of an uncertain event that can cause a loss. Insurance is an equitable transfer (fair) based on the risk of loss, from one entity to another. In other words, Insurance is a system created to protect person, group, or business activity towards financial loss risk with sharing or spreading risk with payment of premium.⁴²

Article 246 Commercial Code stated Insurance as:

*“Agreement, whereas insurer collecting premium which bounded himself towards insured for releasing insured from a loss because of lose, detriment or lacks of profits that expected by a person because an uncertain event.”*⁴³

Moreover, based on Insurance law, no 40 of 2014 article 1 definition of Insurance explained as:

“Insurance is an agreement between two parties, that is company insurance and insurance policyholder, which is the basis for the acceptance of the premium by the insurance company in return for:

⁴² Mulhadi, Dasar-Dasar Hukum Asuransi, Rajawali Press, Depok, 2017, pg 1

⁴³ Article 246 Indonesian Commercial Code

- a. Giving a reimbursement to the insured (insurance policyholder) because of loss, damage cost incurred, lost profit, or legal responsibilities to the third party that might be insured suffered or insurance policyholder because of an uncertain event.
- b. Giving payment is based on the death of insured or the payment based on his life insured with benefit, the amount has determined and based on the results of the fund agreement.

44

Based on *Mehr and Cammack*, stated in their book:

*“insurance is a tool for decreasing a financial risk with combining amount of unit risk for individual loss collectively can be predicted. A loss that can be predicted shared and distributed proportionally among units on composite.”*⁴⁵

2. Characteristic, Purpose, and Function of Insurance

a. Characteristics

There are three schools of thought that tried to give a view about the characteristics of insurance. First school argues insurance on a relationship insured and insurer, means insurance is a transfer (movement) of risk. Based on first schools of thought, insurance is a transfer of pure Risk from insured to the insurer. The main business from the insurer is bearing Risk with acceptance of a fee. Acceptance of fee distinguished with another bearing risk.⁴⁶

⁴⁴ Article 1 law no 40 of 2014 Insurance Law

⁴⁵ Mehr, R.I. and Cammack, E, Principles of Insurance quoted from Mulhadi, Dasar-Dasar Hukum Asuransi, RajawaliPress, Depok, 2017, pg 4

⁴⁶ A. Hasyim Ali, Pengantar Asuransi, quoted from Mulhadi, Dasar-Dasar Hukum Asuransi, RajawaliPress, Depok, 2017 pg 27

Understanding of Risk-based on Carl Olsson (2002) is *“Risk is the uncertainty of future outcome(s). This a short and simple statement that suggest that Risk is something that happened in the future but cannot be predicted exactly today because there is uncertainty.”* Meanwhile, Emmet and Therese (1995) explain Risk-based as *“Risk is a condition in which there is possibility of an adverse deviation from a desire outcome that is expected or hoped for”*.⁴⁷

According to Harsono and Mehr, Risk is classified into two; Pure Risk and Speculative Risk. In other hands, Gunanto divided Risk based on its characteristics, Direct Risk, Indirect Risk, Risk of liability and Risk that appear from other action.

Pure Risk is an uncertainty of event towards object if the event is happening, will causing loss or damage, e.g., loss because of a building fire or incapability of working because of an accident.

Speculative Risk is the uncertainty of event towards an object if the event is happening, it can cause a defect, but in another party, it can be cause an advantage, e.g., Monetary action of the government.

Direct Risk is physical Risk such as harm or loss things of someone.

Undirect Risk is a loss that simultaneously happens with the emergence of other loss. E.g., fire building of a factory despite the building is harm there is another loss such as the distribution of the product.

⁴⁷ Triyono Utomo and Praptono Djuned, “Analisis Beberapa Metode Reasuransi (Studi Kasus Pada Asuransi PT XYZ), quoted from Mulhadi, Dasar-Dasar Hukum Asuransi, RajawaliPress, Depok, 2017, pg 27

Risk of liability is indirect Risk that must be bear of the company because causing loss to the party although without any legal violations. E.g., drug factory fault on making a drug an make a terrible effect on a consumer and company must be responsible although there is no legal violation.

Secondary schools ignored the transfer aspect and focussed on technique aspect. *Prof. Mehr and Cammack* defined insurance as a social tool for decreasing Risk with combining proper and opened units towards Risk so that individual losses in collectively can be able to predict. Then, the losses can be borne collectively by people who are involved. Third schools, argues with combining two schools of thought. Professor willet defined insurance as social tools for collecting funds to overcome an uncertain capital loss that is implemented through the transfer of Risk from many individuals to someone or a group of people. ⁴⁸

b. Purpose

According to Prof. Ny. Emy Pangaribuan Simanjuntak, insurance has a purpose of transferring any risk that appears because of the uncertain event to the party whom taking its risk to compensate.⁴⁹

Moreover, there are four purposes of insurance such as:

1.) Risk Transfer

Economically, material loss or fatalities or physical disabilities would be affecting the way of life or the heirs. Insured as a party who is threatened

⁴⁸ Ibid, pg 29-31

⁴⁹ Prakoso S.H, et al., Hukum Asuransi Indonesia, Bina Aksara, Jakarta, pg 7

will bear the risk that can happen anytime for decreasing or eliminating the risk burden insured looking for a solution if there is another party who wants to take overburden risk and a party who is appointed for taking over can give a contra achievement known as premium.

2.) Payment of Damages

In case of an unpredictable event that happens and causes a loss, insured can ask for payment of damages that is equal with the total of loss. In practice, a loss that appears is partial, not all of a loss is a total loss. Furthermore, insured makes insurance for getting compensation to prevent unexpected events.

3.) Payment of Compensation

Loss insurance or life insurance is held based on a voluntary agreement between the insurer and insured. In other hand, law regulated compulsory insurance means insured has bounded with the insurer because of law order, not because of agreement. Life insurance can be called social security insurance. Purpose of social security insurance is protecting people from unpredictable events such as an accident that is causing death or body deformity. With paying some contribution (premium), insured has a rights protection from risk.

4.) Welfare of Members

If several people gather in society and pays some contribution to its society, the society has a position as an insurer whereas the member of society has a position as insured. In case there is an unexpectable event that causing

death or loss for the members (insured), society will pay some of the money to the member (insured). Wirjono Prodjodikoro called this insurance similar to “*Cooperative society*”. This kind of insurance categorized as mutual insurance (*onderlinge verzekering*) that has the purpose of realizing member welfare.⁵⁰

c. Function

From a financial perspective, insurance understood as risk management. In another perspective, insurance has a function that classified into several functions such as:

3. Insurance Agreement

Insurance is one type of special agreement regulated on Indonesian Commercial Code. As an agreement, the valid requirements on Indonesian civil code must implement for insurance agreement. Remembering insurance is a special agreement, despite the valid requirements in the agreement, the special requirements on the Indonesian Commercial Code is also applied. Valid of requirements in agreements constituted in article 1320 of the Indonesian Civil Code. Based on the provision of the article 1320 Indonesian Civil Code, there are 4 (four) requirements of the validity of agreements such as consent from the party, the capability to act, fixed object and legal cause.⁵¹ Meanwhile , the

⁵⁰ Prof Abdulkadir Muhammad, *Hukum Asuransi Indonesia*, PT Citra Aditya Bakti, Bandung, 1999, pg 11-15

⁵¹ Article 1320 Indonesian Civil Code.

requirements that regulated on Indonesian commercial code is an obligation of the announcement that regulated in article 251 Indonesian Commercial Code.

a. Consent of Party

Insured and insurers agree to conduct an insurance agreement. The consent covers:

- a Things that become an insurance object;
- b Risk transfer and premium payment;
- c *Evenemen* and compensation;
- d Specific requirements of insurance;
- e Made in written form called an Insurance policy.⁵²

The consent between insured and insurer made freely means it is not under influence, coercion and oppression of other parties. Both parties have a consent deciding requirements insurance agreement according to the existed law. Article 24 verses (1) law no 40 of 2014 about insurance mentioned that “*Insurance coverage must be based on the principle of freedom of choice of the company insurance or sharia insurance company*”.⁵³ This provision is intended for protecting insured rights in order to be able to choose the insurance company freely as his insured.

b. Capability to act

Either insured or insurer should be capable or has a right to conducting legal action. The capability to act divided into two; subjective and objective.

⁵² Prof Abdulkadir Muhammad, Op.cit, pg 51

⁵³ Article 24 law no 40 of 2014 about insurance

Subjective means both parties are mature, sane, not under guidance or has a position as authority holder; and must be legal. Whereas, the objective means insured has a valid legal relationship with the object of insurance. Everyone has a right to make a legal relationship, except, someone stated as incapable for that matters (article 1329 Indonesia Civil Code). The person who categorized as an incapable person to make any legal relationship based on article 1330 Indonesian Civil Code are:

1. A minor;
2. A person under guidance;
3. Married woman on the matters that regulated on the law;
4. Generally, everyone by existed law prohibited from making any agreement.⁵⁴

As a parameter someone categorized as an adult, based on Indonesian civil code when its person has reached 21 years or has been married.⁵⁵

c. Fixed Object

The fixed object on insurance agreement is insurable; it can be in the form of property and interests attached to assets, also can be a human body or soul. The fixed object in the form of property and interest that attached founded on loss insurance. While the fixed object in the human body or soul can found on life insurance. Understanding of fixed object is the identity of the insurance object must be clear and fixed. If, in the form of assets, it must be

⁵⁴ Article 1330 Indonesian Civil Code

⁵⁵ Article 30 verses (1) and (2) Indonesian Civil Code

clear for the kinds, the amount and size, position, value and others. If, in the form of a human body or soul, it must be clear for identities such as name, age, family relationship, address and others.⁵⁶

d. Good Cause

The meaning of good cause is content of insurance agreement is not prohibited in law, not contradicted with the public order, and not contradicted with morality. Example insurance that has no reasonable cause is insured object that prohibited by law to trade, ensure an object that insured has an interest in it, means only speculation similar to gambling.⁵⁷

4. Elements of Insurance

a. Definition of insurance policy

Insurance policy is a policy or insurance agreement, or by any name, also another document which is a single unit and inseparable with insurance agreement, also the evidence membership of insurance for coverage of the association, between insurer and insured.⁵⁸ The policyholder is a party that binds himself based on an agreement with the insurance company, sharia insurance company, reinsurance company, sharia reinsurance company for obtaining protection or management of risk to himself, insured or another

⁵⁶ Mulhadi, Op.cit, pg 47.

⁵⁷ Prof Abdulkadir Muhammad, Op.cit, pg 54

⁵⁸ Article 1 number 1 Keputusan Menteri Keuangan Republik Indonesia Nomor 422/KMK.06/2003 tentang Penyelenggaraan Usaha Perusahaan Asuransi dan Perusahaan Reasuransi

member. Otherwise, insured defined as a party that bears a risk as provided on insurance agreement or reinsurance agreement.⁵⁹

b. The function of Insurance Policy

Article 255 of the Indonesian Commercial Code stated that insurance must create written on the minutes called as policy. From the provision, it is not enough to conclude that insurance is a formal agreement, also to assume policy as the one of the only proofs of insurance agreement. It caused systematically, provision article 255 Indonesia Commercial Code to relate with article 257 and article 258 Indonesian commercial code.

c. Insurance Object

1.) Understanding of Insurance Object

The object in the agreement can be defined as everything that is needed by subject; important things become a goal in agreeing. In other words, the object on the legal relationship is an agreement as a mandatory thing towards a party (the debtor), and vice versa is a right towards another party (the creditor).⁶⁰ Referring to the article 268 Indonesia Commercial Code, mentioned matters that can be insured is object and all interest which can be valued with money (*op geld waarderbaar*), can submit to various kind of dangers (*aan gevaar on derhevig*), and cannot be excluded by law.

⁵⁹ Mulhadi, Op.cit, pg 57

⁶⁰ R. Wirjono Prodjodikoro, Asas-asas Hukum Perjanjian quoted from Mulhadi, Dasar-Dasar Hukum Asuransi, RajawaliPress, Depok, 2017 pg 75

d.Types of Insurance Object

1.) Insurance Object

The object of insurance is a property that has economic value and can be valued with the sum of money. Commonly, the object of insurance is always in the form of tangible such as a house, hotel, car, aeroplane, and others intangible. An object of insurance has a relationship with interest theory which in general known as insurance law. Based on interest theory, on the object of insurance is adhere subjective right that intangible. Because the object of insurance might break, lost, destroyed, or diminished in value; also, subjective rights can be the same. On the literature of insurance law, this subjective law is called as interest. Characteristic of interest is absolute, means it should exist on its object and following the existence of the object. The interest must be already existing on insurance object at the time of insurance agreement is made or at least at the time of unexpectable, which causing the loss is happen (*evenemen*). This provision is known as insurable interest regulated on article 250 Indonesian commercial code that stated as:

*“If someone insures for himself or someone who is at experience insured by third party, at the time of coverage does not have an interest in the insured fines, the guarantor is not obliged to compensate”.*⁶¹

⁶¹ Article 250 Indonesian commercial code

2. Insurance Premium

Based provision article 246 Indonesia Commercial Code, the premium is an insured obligation for paying to the insurer as contra performance from the compensation that will be given by the insurer to him. This statement is strengthened by provision article 256-point (7) Indonesia commercial code that states policy must be containing insurance premium concerned. The insurance premium is an essential requirement on insurance agreement. Moreover, Law No. 40 of 2014 article 1 (29) mentioned that premium is a sum of money set by the insurance company or reinsurance company and agreed by insurance policyholder that must be payed as insurance agreement/ reinsurance agreement or a sum of money set by regulations.⁶²

3. Event

Event or risk (*evenemen fortuitous event*) is an event based on ordinary human experience that cannot be predicted when it is happening, although that event must be happening soon. Unexpected event (*evenemen; onzeker voorval*) is one of the elements that must be existing to settle insurance agreement, as the nature of insurance as conditional agreement. This matter strengthens by article 256 Indonesia commercial code stated that insurance policyholder must mention the risks that is borne by insurers/insurance company.⁶³

⁶² Article 1-point (29) law no 40 of 2014 about insurance

⁶³ Article 256 Indonesia commercial code

4. Insurance money

In the insurance agreement, it must decide the total value of money that is agreed upon by the insurer and insured. Article 256 (4) Indonesia commercial code mentioned that insurance policy must decide on a sum of money that must be written on the insurance agreement. Article 304 (5) also mentioned that on life insurance, the total valuation of insurance money would decide, the sum of money that will be paid by insured, when the unexpected event is not happening.

B. Default Firms and Guarantee Scheme on Insurance Company

1. Default

Default on the firms is a failure to do something which is required by law.⁶⁴ Moreover, specific definition of default is categorized into two; **Bankruptcy** and **Negative Equity**. Generally, bankruptcy refers to a situation in which a corporation is legally unable to pay its creditors. It should be remembered that between payment problems that arise and a business that is legally declared bankrupt typically there is a significant delay in time. The editor developed some parameters for the timing of default in response to the problem in time-limited times and due to an absence of more relevant information, in particular, a company in bankruptcy, beginning in the earliest year in the following year is considered as bankrupt:

- a. negative equity

⁶⁴ <https://victorialawfoundation.org.au/sites/default/files/resources/Legal-glossary.pdf> (Accessed on February 13th 2020 time 10.14)

- b. the absolute value of the company's annual net profit margin is more significant than one; i.e. an indication of heavily biased economic activity
- c. the company starts to publish its annual financial information in a discontinuous manner; or if none of the above applies
- d. the last year for which financial statements are available.⁶⁵

Negative equity is a default accounting view. An opposing equity firm does not have enough assets to cover its liabilities. Negative equity as such, however, does not necessarily indicate a loss and legal bankruptcy of the company. The asset and liability book prices are not inherently a fair value. A company balance sheet does not indicate if the company has enough liquid assets to cover its liabilities by its due date. Negative equity, therefore, is a vital sign of distress rather than the *de facto* declaration of default.⁶⁶ Based on Price Water House Cooper, in his writing *Insolvency in Brief: A guide to insolvency terminology and procedure*, define insolvency as “*when individuals or companies have insufficient assets to cover their debts or are unable to pay their debts because they believe that they are insolvent*”.⁶⁷ In the same article as mentioned above, Price Water House Coopers explains what is meant by corporate insolvency:

"A company becomes insolvent if it lacks sufficient assets to cover its debts and/or is unable to pay its debt on due dates".

⁶⁵ Aaron Hazak & Kadri Mannaso, Indicators of Corporate Default – An EU Basic Empirical Study, Working Paper Series, 2007, pg 7

⁶⁶ Ibid, pg 7

⁶⁷ Price Water House Coopers, *Insolvency in Brief: A guide to insolvency terminology and procedure*, cfm <http://www.pwc.co.uk/assets/pdf/insolvency-in-brief.pdf>. (accessed on January 26th 2020, time: 15.13)

The debtor has been in an insolvent condition only if the total value of his obligations (debt) has been more significant than the value of his assets. The situation of the debtor is called *balance sheet insolvency*. Meanwhile, the opposite of insolvency balance sheet is *cash-flow insolvency*, which is the debtor's financial condition that does not have enough liquidity to pay its debts when due because the debtor's cash inflow is smaller than the cash outflow even though the value of cash outflow its assets are still more significant than the value of its liabilities.⁶⁸ In Article 2 paragraph (1) of the UUK-PKPU, it does not included as a condition for bankruptcy to be bankrupt is the situation of debtor financial insolvency. The debtor is insolvent only if the amount of the value of the obligation (debt) is greater than the total value of the asset.

2. Guarantee Scheme on Insurance Company

Guarantee scheme has become the preferred instrument for meeting many of the financial policy goals. The recent financial crisis has emphasized the use of guarantee as a policy instrument to promote stability. However, an agreement exists even during regular times which guarantee specific financial claims. Many of these reflect the pursuit of specific financial policy goals other than promoting financial stability, such as protecting the consumer or manipulating the distribution of credit to achieve desired results. The main finding of this thesis is that financial guarantee arrangement, including those offering protection against the risk of a counterparty not paying to the other party on institutional failure or for any purpose, have become an interference mechanism

⁶⁸ Prof.DR.Sutan Remy Sjahdeiny, Op.cit, pg 129

for choosing to tackle the various policy objectives referred to in above. As a result, the frequency of such structures in the last few decades has undergone a marked increase.⁶⁹

Many countries have some form of insurance policyholder compensation agreement that safeguard the rights of insurance policyholders and claimants in the event of insurance companies are unable to meet their contractual obligations. These plans may offer protection either by charging premiums to policyholder beneficiaries or by obtaining insurance contracts to continue. For countries where such scheme occurs, they may be limited in terms of scope (for example, covering only very particular types of non-life insurance policies) or exist only for either life insurance or general (property or casualty) insurance. These arrangements in a few countries span all lifetimes.⁷⁰

The insurance policyholder funds protection should prioritize for protecting the claims of the policyholder. There are several reasons that insurance policyholder funds protection should be prioritizing by the government, such as:

b. Protection of non-professional policyholder

Insurance company shareholders are policyholders. Creditor typically extend credit after debtor's reputation has been tested and are responsible for their lending decisions; i.e., they must agree to negative consequences.

Nevertheless, it is too difficult to expect complete acceptance of that duty by non-professional policyholders, usually individuals. The main reason is

⁶⁹ Sebastian Schich and Byoung-Hwan Kim, Guarantee Financial For Financial Promises: How widely Should the safety Net be Cast?, OECD Journal Financial Market Trends Volume-2011-issue 1, 2011,pg3

⁷⁰ Ibid, pg 9

that there is a considerable amount of asymmetry between these policyholders and insurers about insurers financial soundness. Insurance companies financial and administrative situation is much more complicated than ordinary companies. It is hard to expect non-professional policyholder to test an insurance company reputation properly. Also, their financial capacity appears to reduce. Therefore, if such policyholder is given full liability as a creditor of insurance companies, they will refrain from purchasing insurance which would dissuade the insurance market from growing.⁷¹

b. Maintenance of Public Confidence

The insurance industry relies on the confidence of the public in the business, which is currently vulnerable. Protection funds for policyholders will help to maintain public confidence in the insurance business and thereby help sustain the industry healthy development.⁷²

c. Development of Competitive

Markets The creation of policyholder security funds also leads to competitive market development. The policyholder security funds are creating a seamless exit mechanism to help market conditions for inept insurers.⁷³

d. A Level Playing Field Across Sector

Protection funds for policyholders are a vital tool in ensuring a level playing field for insurance companies and banks. The insurance and

⁷¹ Takahiro Yasui, Insurance and Private Pensions Compendium For emerging Economies, OECD,2001, pg 3

⁷² Ibid, pg 4

⁷³ Ibid, pg 5

banking markets have converged during the few last years. In many countries cross-selling is becoming increasingly common. Banks are selling financial derivatives at the product level that nearly guarantee certain risks and insurance companies, mainly, life insurance companies, are providing goods with significant save elements. Insurance companies and banks continually compete directly with each other. This growth in the financial markets is creating a movement towards regulatory integration between the two financial industries, though that is not evident at the moment. The recent trend to create a centralized financial supervisory authority and consolidated supervision demonstrate this change. In that sense, it argued that insurance, according to the protection network as bank depositor will cover insurance policyholder and insurance companies in order to compete with the banks should have the same backup that deposit insurance.⁷⁴

C. Policyholder Protection Schemes

1. Definition

Policyholder protection scheme guarantees payments made according to insurance contracts at or in full at specified rates in an insurer failing or revoking insurer license.⁷⁵

2. Function

There are 4 (four) function or the role of policyholder protection scheme such as:

⁷⁴ Ibid, pg 5

⁷⁵ OECD, Policyholder protection schemes: Selected considerations, OECD Working papers on finance, insurance, and private pensions no.31,2013, pg 8

- a. Encouraging the continuity of insurance
- b. Providing financial assistance to an insolvent insurer or individual planning to buy or sell insurance policies from an insolvent insurer
- c. Assisting with portfolio transfers
- d. Operating as a liaison entity in the condition when cannot find an insolvent insurer immediate buyer.⁷⁶

3. Coverage

By definition, a broad range of insurance products should be covered by the policyholder protection funds (i.e., general funds). Various insurance divisions are divided into two sectors: Life Insurance (Health Insurance) and Non-Life Insurance (property and casualty). Given the different nature of the two industries (especially the former is usually a long-term enterprise, while usually, the latter is a short-term one) and reflects the segregation policy in most countries, the existing funds are only one out of two sectors. A life insurance policy will compensate the deceased person with a sum of money. The payment is known as the profit of death. Most people buy life insurance to protect those people who depend on them. Others buy life insurance to leave their spouse, children, grandchildren, and charities a cash gift when they die.⁷⁷ Health insurance, bearing the risk of incurring the medical cost and associated financial costs, is one-

⁷⁶ Ibid, pg 4

⁷⁷ Mike Smith, Life Insurance: The Different Types of Policies, Virginia Cooperative Extension publication 354-143, Virginia Polytechnic Institute and State University, 2005, pg1

way people care for their medical needs in different countries.⁷⁸ Purchasing health insurance reduces the costs and unpredictability of a patient's health care expenses. The consumer pays for the policy on health insurance and is then (partly) reimbursed for future health care expenses.⁷⁹ Moreover, Non-Life insurance is all the forms of insurance other than Life Insurance that the insurers offer to indemnify the insured from any liability of the countable amount of loss or harm. Nonlife Insurance is divided into 4 (four) kinds, such as fire insurance, car accident insurance, marine, transport Insurance, and miscellaneous Insurance.⁸⁰

4. Eligible Claimant

Some funds do not allow corporations to ask for compensation for their claims to limit the protection by policyholder protection funds to those who need it. In the UK scheme, only individuals and partnerships made up of individuals are eligible for safety, except for compulsory insurance for which corporations also have the right. Under the Financial Services Compensation Scheme, this requirement for compensation is likely to be changed, incorporating various financial services customer protection schemes, including the Policyholders Protection Scheme, to include small businesses but exclude large partnerships.⁸¹

⁷⁸ Anita Ho, *Health Insurance*, Springer Science + Business Media Dordrecht, 2015, pg 1

⁷⁹ Carol Rapaport, *An introduction to Health Insurance: What should A Consumer Know?*, Congressional Research Service, 2015, pg 1

⁸⁰ <http://www.oic.or.th/en/node/89364> (Accessed on February 19th, 2020 time 11.06)

⁸¹ Takahiro Yasui, *Op.cit*, pg 10

5. Compensation

Compensation may also be justified as an incentive to sue or to complain to victims.⁸² FSCS explains compensation as Money loss due to the results of the actions of the companies against the insured claimed.⁸³

6. Relevant Person

At the time the action or omission was made, a person concerned is a person who was the target of a claim:

- (1) participant company; or
- (2) a designated representative from a participant company.⁸⁴

7. Limitations on Compensations

In insurance insolvency, most of the current policyholder security schemes have certain restrictions on the pay-out that the funds promise to pay for claims. It aims to reduce the moral hazard issue by allowing policyholders to share risks to encourage them to make wise choices when selecting insurers. On the Financial Service Compensation Scheme mentioned that it will protect 100% of insurance policyholder funds in several kinds of insurance such as:

a. Compulsory Insurance

: Third-party motor and Employer's liability

⁸² Jonathan Baron & Irana Litov, Intuitions about penalties and compensation in The Context of Tort Law, Journal of Risk & Uncertainty, Kluwer Academic Publishers,1993, pg 19

⁸³ FSCS, How Do I Complain about Compensation? : A guide to claiming with the financial service compensation scheme, 2010, pg 4

⁸⁴ Section 6.2.1 R, COMP: Relevant Person and Successor in Default, FCA Handbook

b. Long-term Insurance

: whole life insurance, Term life insurance, and critical illness insurance Insured personal pensions, annuities, and Income protection insurance

c. Professional Indemnity Insurance

: Professional indemnity insurance is a kind of business insurance that firms can take out to protect the services or advice (although it is not compulsory insurance). Suppose the firm's client alleges it has provided a negligent courtesy or has made a mistake that led to financial loss. In that case, professional indemnity insurance can cover its legal costs and compensation payments.

d. Policyholders suffer the death or incapacity of injury, sickness, or infirmity; then, the claim arises.

: Financial Service Compensation Payment will only protect 90% of claims in other kinds of insurance, such as Pet, Travel, Home, Dental, Health, Motor first party, Warranty, Public Liability, and Property.⁸⁵

8. Funding Methods

Protection funds for policyholders usually are funded through contributions collected from (or levied on) member companies. The contributions of the respective member companies must be assessed fairly and organized so that

⁸⁵ <https://www.fscs.org.uk/what-we-cover/#!/synthetix/article/qed00321> (Accessed on February 19th, 2020 time 12.22)

the companies are not burdened excessively. Most of the way to collect funds for the projects is by two means: pre-and post-funds. In the former case, member companies annually receive the contributions to create a fund for future insolvency proceedings. Once disbursed to protect an insolvent company's policyholders' interests, funds are invested in stable and liquid assets in the schemes, typically government bonds. In the latter case, contributions are only needed when the fund has to pay the policyholders, and therefore no funds or pools of money are accrued in the schemes. There are some benefits of pre-funding. First of all, it helps resolve insolvency situations relatively quickly, as the funds are always able to reimburse policyholders. Contributions are particularly significant when dealing with a more prominent insurer's bankruptcy, for which a considerable amount of funds must be mobilized within a short period. Furthermore, the presence of sufficient funds to support policyholders guarantees the visibility of a safety net and thus leads to maintaining public trust in the sector. Nonetheless, it can be claimed that ready-to-use funds can induce customer, corporate, and supervisor moral hazard behaviours. Moreover, because of its visibility, the lack of sufficient funds may adversely affect public confidence.

Third, pre-funding can provide better predictability for member companies concerning future financial burdens. Post-financing has varying benefits. Second, until an insolvency case comes out, it needs practically no administration costs (such as fund management costs for the pre-funded scheme) and is, therefore, less costly. Second, post-financing allows member

firms to retain funds until those funds become necessary immediately. The companies should be better off using the funds for their company than pooling them into a policyholder protection scheme that invests mostly insecure, but less profitable, properties.⁸⁶

9. Islamic Perspective on Insurance

In *takâful* insurance (Islamic insurance) that runs is the concept based on a business transaction agreement in the form of help please (contract *takâfuli*), which makes all participants as a family who bear one another each other in the face of risk, that is we know as sharing of risk, as said the God who commanded us for *ta'âwun* (please help) who in the form of *al-birri wa al-taqwa* (kindness and piety) and forbid *ta'awun* on the form of *al-itsmi wa al-'udwan* (sin and hostility).⁸⁷Qs Al Maidah [5]: 2 as basis of religion for implementing insurance recited as:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ ۗ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ ۗ

The meaning: “And please help you in (doing) virtue and piety, and do not help in committing sins and transgressions. And fear Allah, verily Allah is severely tortured “[al-Mâidah / 5: 2].

In islamic history, from the practical side of takâful basics among fellow Muslims has taken place. For example, in the "aqila" system, as practiced among

⁸⁶ Takahiro Yasui, Op.cit, pg 14

⁸⁷ Muh. Fudhail Rahman, Asuransi Dalam Perspektif Hukum Islam, Al – ADALAH Vol .X, No 1, UIN Syarif Hidayatullah, Jakarta, 2011, pg 28

Muslim Makkah (Muhajirin) with Madinah (Ansar). Help helping is one attitude visible among other good attitudes radiating from the "Islamic Brotherhood". The Messenger of Allah (saw) also drew how should the Islamic ummah be it blends together, like a building.

مَنْ فَرَّجَ عَنْ مُسْلِمٍ كُرْبَةً مِنْ كُرْبِ الدُّنْيَا، فَرَّجَ اللَّهُ عَنْهُ كُرْبَةً مِنْ كُرْبِ يَوْمِ الْقِيَامَةِ، وَاللَّهُ فِي
(عَوْنِ الْعَبْدِ مَا دَامَ الْعَبْدُ فِي عَوْنِ أَخِيهِ)

"Whoever releases from a Muslim a difficulty in the world, Allah will release trouble from him on the Day of Resurrection; and Allah always helps His servant as long as he (likes) helping his brother." (Narrated by Muslim from Abu Hurairah). Fatwa of the Indonesian Ulama Council (MUI) NO: 21 / DSN-MUI / X / 2001 concerning sharia insurance guidelines stated (*Ta'min, Takaful or Tadamun*) is efforts to protect each other and help between a number of people / parties through investments in the form of assets and / or *tabarru* 'which provides a return pattern for face certain risks through a contract in accordance with sharia. ⁸⁸ The transaction of insurance also should not contain *gharar* (fraud), *maysir* (gambling), usury, *zhulm* (persecution), *risywah* (bribe), illicit and immoral goods. *Tijarah* contracts (akad *tijarah*) are all forms of contract that are performed for commercial purpose. *Tabarru* contract (akad *tabarru*) is all forms of contract that are performed with the aim of virtue and help, not merely for commercial purposes. On the sharia insurance premiums explained as the liability of Insurance participants to provide an amount of funds to the insurance company in accordance with agreement in the contract (akad). Claims are insurance participant rights that must be given by insurance company in accordance with the agreement in the contract (akad). In a *tijarah* agreement (*mudharabah*), the company acts as

⁸⁸ fatwa of the Indonesian Ulama Council (MUI) NO: 21 / DSN-MUI / X / 2001 concerning sharia insurance guidelines

mudarib (manager) and participants act as *Shahibul Mal* (policyholder); In the *tabarru* agreement (grant), participants give a grant will be used to help other affected participants disaster. While the company acts as a party who manage a grant funds.⁸⁹

⁸⁹ Ibid

CHAPTER III
COMPARATIVE ANALYSIS STUDY ON POLICYHOLDER
PROTECTION FOR INSURANCE COMPANIES EXPERIENCING
DEFAULT OF CLAIMS IN INDONESIA AND THE UNITED KINGDOM

A. Similarities and Differences

- Indonesia
 - i. Authority Body

One of the authorized institutions and functions in providing legal protection is the Financial Services Authority (OJK) as stipulated in Law No. 21 of 2011, Article 55 paragraph (1) stating that: "As of December 31, 2012, the functions, duties, and authority of regulating and supervising financial service activities in the capital market sector, insurance, pension funds, financial institutions and financial institutions others moved from the Minister of Finance and the Capital Market and Financial Institution Supervisory Agency to the FSA.⁹⁰ When disputes or disputes arise between insurance policyholders and insurance companies, according to their functions, duties, and authorities, the financial service authority carries out a mechanism for resolving consumer disputes through the courts or litigation and settling disputes outside the court or non-litigation.⁹¹

OJK was created to carry out all activities in the financial services sector:

⁹⁰ Article 55 law no 11 of 2011 about OJK

⁹¹ Fajrin Husain, *Perlindungan Hukum Terhadap Pemegang Polis Asuransi Menurut Undang-Undang no 40 tahun 2014 Tentang Perasuransian*, Lex Crimen Vol. V/ No.6/ Ags/ 2016

- a. Daily, equal, transparent, and accountable performance;
- b. Able to incorporate a financial system that is rising sustainably and stably; and

Able to protect the consumer and social interest.⁹² Moreover, Consumer protection based on the article applies the principle of:

- a. transparency;
- b. fair treatment;
- c. reliability;
- d. confidentiality and security of Consumer data/information; and
- e. handling complaints and resolving Consumer disputes in a simple, fast, and affordable way.⁹³

Insurance law No. 40 of 2014 mentioned in the article 26 verses (1) letter (G) that insurance company should meet standards business conduct, including provisions concerning handling complaints from insurance policyholders, insured, or participant.⁹⁴ Law No. 40 of 2014 on insurance, has more regulation and supervision by the Financial Services Authority (OJK), which is in Law No. 21 of 2011 concerning the service authority finance. The protection of consumer and society, financial service authority has a right for conducting prevention consumer loss covered:

- a.. Providing information and education to the community, sector characteristics financial services, services, and products;

⁹² Article 4 law no 11 of 2011 about Ojk

⁹³ Article 2 Peraturan Otoritas Jasa Keuangan, Nomor : 01/ POJK. 07/2013 Tentang Perlindungan Sektor Jasa Keuangan

⁹⁴ Article 26 verses (1) letter G law no 40 of 2014 about Insurance law

- b. Request Financial Services Institutions to stop its activities if the activity is potentially detrimental Public; and

Other actions deemed necessary are appropriate with the provisions of the legislation in the financial services sector.⁹⁵ Financial Services Authority Regulations (OJK), referred to in Article 26 paragraph (2) Law No. 40 of 2014, is Regulation Financial Services Authority Number: 1 / POJK.07 / 2013 concerning Protection Financial Services Sector Consumers, who formulate in Article 1 Number 1, that *"The financial services business actor is a bank General, Rural Credit Bank, Bank Custodian, Pension Fund, Insurance Company, Reinsurance Companies, Financial Institutions Pawn companies, and Companies Guarantees, both those carrying out activities his business conventionally and in a manner sharia."*⁹⁶

As mentioned in article 1 number: 1/ POJK.07/ 2013, financial business actors are required to maintain the security of customer deposits, funds, or assets that are the responsibility of business actors in financial services.⁹⁷ Furthermore, the financial business actor is liable for consumer losses resulting from errors and negligence, management, financial services provider employees, or third parties were working for the benefit of the financial business actor.⁹⁸

⁹⁵ Article 28 law no 21 of 2011 about Financial Services Authority

⁹⁶ Article 1 point 1 POJK No.1 / POJK.07/2013 protection of consumer in monetary service

⁹⁷ Article 25 Peraturan Otoritas Jasa Keuangan Nomor : 1/ POJK.07/2013/ Perlindungan Konsumen Sektor Jasa Keuangan

⁹⁸ Article 29 Peraturan Otoritas Jasa Keuangan Nomor : 1/ POJK.07/2013/ Perlindungan Konsumen Sektor Jasa Keuangan

b. Reporting Mechanism

The reporting mechanism stipulated in article 32 obliges the insurance company to have and implement services mechanism and complaint resolution for consumers.⁹⁹ Insurance company also should make a report to the Financial Services Authority (OJK) periodically on the existence of policyholder complaints and the follow-up of services and the resolution of the policyholder complaints referred to the Financial Services Authority, in this case, the Chief Executive who supervises the activities of Financial Services Business Actors.¹⁰⁰ Financial Service Business Actor must provide information regarding the status of complaint handling when the Consumer or Consumer Representative requests an explanation from a business actor regarding the Complaints filed.¹⁰¹ Furthermore, the Business actor must publish:

- a. a brief procedure for Complaint Services to Consumers or the public;
and
- b. handling Complaints received by a Business actor in annual reports, business actor websites, or other media officially managed by a business actor.¹⁰²

⁹⁹ Article 32 verses (1) Peaturan Otoritas Jasa Keuangan Nomor : 1/ POJK.07/2013/ Perlindungan Konsumen Sektor Jasa Keuangan

¹⁰⁰ Article 34 verses (2) Peaturan Otoritas Jasa Keuangan Nomor : 1/ POJK.07/2013/ Perlindungan Konsumen Sektor Jasa Keuangan

¹⁰¹ Article 18 Peraturan Otoritas Jasa Keuangan Nomor : 18/POJK.07/2018

¹⁰² Article 6 Peraturan Otoritas Jasa Keuangan Nomor : 18/POJK.07/2018

Moreover, based on Article 35, Financial Service Providers must immediately follow up and resolve complaints no later than 20 working days after the date of receipt of the complaint. Financial Services Business Actors can extend the period up to a maximum of the next 20 working days if there are certain conditions.¹⁰³

Certain conditions as referred to in paragraph (2) are a. the office of the Financial Services Institution that receives complaints is not the same as the office of the Financial Services Institution where the problem is reported, and there is

a communication obstacle between the two Financial business actor offices;

b. financial transactions complained of by the consumer require detailed research on the documents of Financial Services Business Actors; and

c. there are other things beyond the control of Financial Services Business Actors such as the involvement of third parties outside the Financial Services Business Actors in financial transactions conducted by Consumers.

A financial business actor must have a work unit and function to handle and resolve customer complaints. A financial business actor must appoint 1 (one) employee in each office of Financial Business Actors to handle the resolution of consumer complaints.¹⁰⁴

¹⁰³ Article 35 verses (1) and (2) Peraturan Otoritas Jasa Keuangan Nomor : 1/ POJK.07/2013/ Perlindungan Konsumen Sektor Jasa Keuangan

¹⁰⁴ Article 36 Peraturan Otoritas Jasa Keuangan Nomor : 1/ POJK.07/2013/ Perlindungan Konsumen Sektor Jasa Keuangan

After receiving a Consumer complaint, Financial Service Providers must:

- a. conduct internal examination of complaints competently, truthfully and objectively;
- b. conduct analysis to ensure the truth of complaints; and
- c. submits a statement of apology and offers compensation (redress/remedy) or improvement of products and services if the Consumer complaint is correct.¹⁰⁵

c. Compensation for Insurance Policyholder

Compensation, as intended, must meet the following requirements:

- a) some complaints contain claims for compensation relating to the financial aspects;
- b) Consumer complaints submitted are valid after Financial Business Actor has conducted research;
- c) there is a discrepancy between the product and service agreement with the product and service received;
- d) material losses;
- e) Consumers have fulfilled their obligations.

The compensation submission mechanism must fulfil the following:

¹⁰⁵ Article 38 Peraturan Otoritas Jasa Keuangan Nomor : 1/ POJK.07/2013/ Perlindungan Konsumen Sektor Jasa Keuangan

- a.) submitting a request for compensation accompanied by a chronology of event that explanation regarding the product and improper use of the service is accompanied by evidence;
- b.) application of no later than 30 (thirty) days from the discovery of products and services that are not following the agreement;
- c.) application is submitted with an application letter and can be represented by attaching power of attorney;
- d.) compensation only that has a direct impact on the Consumer and is at most equal to the value of the loss experienced by the Consumer.¹⁰⁶

d. Alternative Dispute Resolution for Insurance Policyholder

If not reaching an agreement to settle a complaint, the consumer can settle the dispute outside the court or through the court. Dispute resolution out of court is conducted through an alternative dispute resolution agency. Consumers can submit requests to the Financial Services Authority to facilitate the resolution of consumer complaints that have been harmed by actors in the Financial Business Actor.¹⁰⁷ Consumers can submit complaints that indicate disputes between Financial Services Business Actors and Consumers to the Financial Services Authority. Consumers or the public can submit complaints that

¹⁰⁶ Otoritas Jasa Keuangan, Modul Workshop Perlindungan Konsumen Di Sektor Jasa Keuangan, Jakarta, 2015, pg 33-34

¹⁰⁷ Article 39 Peraturan Otoritas Jasa Keuangan Nomor : 1/ POJK.07/2013/ Perlindungan Konsumen Sektor Jasa Keuangan

indicate violations of the provisions of the legislation's financial services sector to the Financial Services Authority.¹⁰⁸

The facility that provides by the Financial Services Authority explained in article 41 Regulation of Financial services authority number: 1/ POJK.07/2013 such as:

The granting of Consumer complaints settlement facilities by the Financial Services Authority is carried out on complaints that indicate disputes in the financial services sector as referred to in Article 40 paragraph (1) and must meet the following requirements:

- a. Consumers experience financial losses caused by:
 1. Financial Services Business Actors in Banking, Capital Market, Pension Funds, Life Insurance, Financing, Mortgage Companies, or Guarantees, a maximum of Rp. 500,000,000.00 (five hundred million rupiah);
 2. Financial Service Institutions in the field of general insurance at a maximum of Rp750,000,000.00 (seven hundred fifty million rupiahs);
- b. The consumer submits a written application accompanied by supporting documents relating to the complaint;
- c. Financial Service Institutions have made efforts to settle complaints, but consumers cannot accept the settlement or have passed the time limit set in this Financial Services Authority Regulation;

¹⁰⁸ Article 39 Peraturan Otoritas Jasa Keuangan Nomor : 1/ POJK.07/2013/ Perlindungan Konsumen Sektor Jasa Keuangan

d. the complaint filed is not a dispute in process or has been decided by arbitration or judicial institution, or other mediation institution;

e. complaints submitted are civil in nature

f. complaints submitted have not been facilitated by the Financial Services Authority; and

g. the submission of complaint settlement does not exceed 60 (sixty) working days from the date of the letter of the settlement of complaints submitted by Financial Services Business Actors to Consumers.¹⁰⁹

Article 1 of Law Number 30 the Year 1999 concerning Arbitration and Alternative Public Dispute Settlement Explains Arbitration is a way to settle a civil dispute outside the general court based on an arbitration agreement made in writing by the parties to the dispute.¹¹⁰

Elements, principles, and objectives of arbitration can be described as follows:

- 1.) There is an agreement to submit a dispute resolution, which occurred or will happen. The agreement must be stated in a written agreement, which is commonly known as *Pactum de Compromitendo* and the Compromise Deed.
- 2.) What can be resolved is disputes concerning personal rights that can be fully controlled, especially in trade, industry, and finance.

¹⁰⁹ Article 41 Peraturan Otoritas Jasa Keuangan Nomor : 1/ POJK.07/2013/ Perlindungan Konsumen Sektor Jasa Keuangan

¹¹⁰ Article 1 of law number 30 of 1999 concerning arbitration and alternative public dispute settlement

3.) The decision is final and binding.¹¹¹

The arbitration agreement contents are about anything that can be regulated or contained in the arbitration agreement. In general, the contents of the arbitration agreement are as follows:

- a. Commitments/agreements of the parties to resolve arbitration disputes.
- b. The scope of arbitration.
- c. Will the arbitration take the form of institutional or ad-hoc
- d. Rules of arbitration procedure that will apply (procedural law used)
- e. Place and language used.

Choice of substantive law.¹¹² Law No. 40 of 2014 also requires insurance companies to become part of the members of mediation institutions that function to resolve disputes between insurance companies and policyholders, insured, participants, or other parties entitled to receive insurance benefits. The mediation institution must be independent and partial. The mediation agency must also obtain written approval from the financial services authority. The mediation agreement is final and binding for the parties.¹¹³

¹¹¹ H. Zaeni Asyhadie and Budi Sutrisno , Pokok – Pokok Hukum Dagang, Depok , PT RajaGrafindo Persada, 2018, pg 263

¹¹² Ibid, pg 265

¹¹³ Article 54 law no 40 of 2014 concerning insurance

e. Sanction

Financial Service Institutions or parties who violate the provisions in this Financial Services Authority Regulation are subject to administrative sanctions, including but not limited to:

- a. Written warning;
- b. Fines are obligations to pay a certain amount of money;
- c. Limitation of business activities;
- d. Suspension of business; and
- e. Revocation of business activity permit

f. Eligible Claimant

Protection of insurance policyholders can also be found in Article 52 verses (1) that stipulated on law no 40 of 2014 about insurance that focuses on prioritizing the insurance policyholder in the insurance company's condition of bankrupt or liquidated. The position of insured or insurance policyholder is the highest among the other party. Moreover, based on article 52 (2), it also protects the insurance policyholder by utilizing insurance funds obtained from insurance policyholders to fulfil an obligation, insured, or other parties who have a right towards insurance benefits. Furthermore, the protection of insurance policyholders also strengthened by POJK Number 28/ POJK.05/ 2015 concerning about Dissolution,

Liquidation, and Bankruptcy Insurance Company, Reassurance Company, Sharia Insurance Company, and Sharia Reassurance Company. Article 24 explains about Rights of Policyholders, Insured, or Participants on the division of Company assets in Liquidation has a higher position than the rights of another party. Also, insurance funds insurance and reinsurance companies should be utilized to fulfil obligation towards insurance policyholder, insured, or another party who is entitled to insurance benefits. If the Insurance Fund is insufficient to pay all obligations to the Policy Holder, the insured, or other party entitled to benefits insurance, payment of the obligation in question is made proportionally.¹¹⁴ In law, there are two classes of creditors, namely preferred creditors and concurrent creditors. Preferred creditors consist of creditors holding guarantee rights and creditors with privileges. Each type of creditor has a different legal position as long as it concerns the priority of his right to pay debts from the debtor against other creditors. Called the preferred creditor because the creditor has the right of preference or the right to prioritize repayment of his receivables from the results of bankrupt assets rather than repayment of the other creditors Concurrent.

¹¹⁴ Article 24 POJK Number 28/ POJK.05/ 2015 concerning about Dissolution, Liquidation, and Bankruptcy Insurance Company, Reassurance Company, Sharia Insurance Company and Sharia Reassurance Company

To find out the creditors with guaranteed rights (the secured creditor) are certain because anyone who holds the guarantee rights recognized by law. Meanwhile, any receivables that are special privileges are determined by specific laws. Article 1132 of the Civil Code requires that every creditor has the same position as other creditors unless otherwise stipulated by law because he has a valid reason to take precedence over other creditors. With the phrase "*except if there are valid reasons among creditors than other creditors*," there are certain creditors who are given a higher legal position than other creditors.¹¹⁵

g. Continuation of policyholder insurance policy

Another protection provided by this regulation is switching the insurance policyholder that is still in force to other insurance companies by transferring the portfolio coverage to a life insurance company. To move the portfolio coverage to other life insurance companies, the liquidation team must first notify the transfer plan to Policy Holder, Insured, or Participant. The transfer of coverage portfolio must meet the following requirements:

- a. Conduct by a life insurance company or Islamic life insurance company with the same field effort, and

¹¹⁵ Prof.DR. Sutan Remy Sjahdeini, Sejarah,Asas, dan Teori Hukum Kepailitan Memahami Undang-Undang No.37 tahun 2004 tentang kepailitan dan penundaan kewajiban pembayaran,Jakarta,ranamedia Group,2016,pg13

b. does not cause life insurance companies or Islamic life insurance companies that accept the transfer of coverage portfolio violates provisions relating to financial health in force in the insurance sector.

In the case of a Policy Holder, Insured, or Participant refuse the coverage transferred to the company life insurance or other sharia life insurance companies, the liquidation team returns the premium or contribution accordingly with the remaining coverage period.¹¹⁶

Amount of payment claims of insurance benefits regulated on article 26. Payment of policy benefits is made on a basis full, except if the company's assets are smaller than company obligations, payments made on a basis proportional. As the principle of insolvency proceedings protects the creditor on the financial sector to get the debtor's assets with relatively and avoid the discriminatory action by another creditor.¹¹⁷

If conventional insurance or sharia insurance still valid (in force) at the time, the revocation of the company's business license is not transferred to another company. The payment of right insurance policy of Participants is carried out as follows: a. for conventional insurance or sharia insurance policy that does not have an element of savings, the amount calculated proportionally based on the remaining period of coverage at the date of revocation of the company's business license

¹¹⁶ Article 25 POJK Number 28/ POJK.05/ 2015 concerning about Dissolution, Liquidation, and Bankruptcy Insurance Company, Reassurance Company, Sharia Insurance Company, and Sharia Reassurance Company

¹¹⁷ Philip R Wood, Law and Practice of International Finance Principles of International Insolvency: Second Edition, Sweet and Maxwell, London, 2007, pg 4

(unearned premium), after deducting the share of the premium or contribution paid to the insurance brokerage company or insurance agent commission; b. for insurance policies that have an element of savings equal to the cash value at the time of the revocation of the company's business license.

Proceeds from the disbursement of assets other than the insurance fund are used to pay the company's obligations to the policyholders, insured, participants, or other parties entitled to insurance benefits, after deducting the salary owed and the cost of conducting the liquidation. Payment of company obligations to policyholders, insured, participants, or other parties entitled to insurance benefits is made if the insurance fund is not sufficient to pay all obligations to the policyholder, insured, participant, or other parties entitled to insurance benefits.¹¹⁸

h. Guarantee Fund

The regulation on guarantee fund has been stated in article 20 on law no 40 of 2014 concerning insurance. Guarantee funds must be owned by the Insurance or Reinsurance company as a requirement of the establishment insurance company.¹¹⁹ The nominee of the guarantee fund must be adjusted in the amount according to business development.¹²⁰

¹¹⁸ Article 27 POJK Number 28/ POJK.05/ 2015 concerning about Dissolution, Liquidation, and Bankruptcy Insurance Company, Reassurance Company, Sharia Insurance Company, and Sharia Reassurance Company

¹¹⁹ Article 8 verses (2) point (d) law no 40 of 2014 concerning insurance

¹²⁰ Article 20 verses (2) law no 40 of 2014 concerning insurance

The insurance company must establish the minimum guarantee fund of 20% from the minimum equity of the insurance company.¹²¹ The minimum nominee amount of equity in Indonesia is Rp. 100.000.000.000 (one hundred billion rupiahs) for the insurance company.¹²² Equity or net assets are the residual interest on an entity's assets that remains after its liabilities have been deducted.¹²³ The calculation of guarantee funds of insurance life company must set the guarantee funds in the amount of 2% from the back up of PAYDI (Produk Asuransi Yang Di Investasikan) / insurance product associated with investment added 5% from premium backup for a product other than PAYDI and the premium reserve, which is not yet an income. ¹²⁴

i. Policy Guarantee Program

Based on article 53 of law, no 40 of 2014 requires insurance company becoming a member of the policy guarantee program. The implementation of the policy guarantee program is regulated by law. The policy guarantee program, when it has been implemented, will automatically remove the provisions regarding guarantee funds as

¹²¹ Article 36 of Financial Services Authority Regulation Number 71 / POJK.05 / 2016 concerning Financial Health of Insurance Companies and Reinsurance Companies

¹²² Article 33 Financial Services Authority Regulation Number 71 / POJK.05 / 2016 concerning Financial Health of Insurance Companies and Reinsurance Companies

¹²³ Financial Accounting Standard Board, Original Pronouncement As Amended, Statement of Financial Accounting Concept No.6, 2008, pg 1

¹²⁴ Article 36 Financial Services Authority Regulation Number 71 / POJK.05 / 2016 concerning Financial Health of Insurance Companies and Reinsurance Companies

stipulated in article 8, paragraph (2) letter d, and article 20. The law regarding the policy guarantee program must be established no later than three years since law number 40 of 2014 concerning the insurance was enacted.¹²⁵

j. Financial Health Planning

Moreover, other protection that is offered by the Financial Service Authority provided in article 50 - 57 of Financial Service Authority regulation number 71/POJK.05/2016 concerning financial health insurance and reinsurance companies. Article 50 states that company who does not achieve the target of solvability risk until 100% should make a report of financial health planning (RPK) and be prohibited from sharing dividends or any reward to the shareholders. Financial health planning (RPK) should be reported on financial service authority (OJK) on a maximum of 1 month in target solvability risk is not achieved.¹²⁶ The financial restructuring steps that companies can take that do not meet the solvability risk target are as follows:

- a. asset or liability restructuring;
- b. additional paid-in capital;
- c. providing subordinated loans;
- d. increase in premium rates;

¹²⁵ Article 52 law no 40 of 2014 concerning insurance

¹²⁶ Article 51 Peraturan Otoritas Jasa Keuangan Number: 71/POJK.05/2016 concerning health financial insurance and reinsurance companies

- e. transfer of part or all of the insurance portfolio;
- f. merger of business entities; or
- g. other actions.¹²⁷

OJK, as an authority body, can impose the sanction when the company does not fulfil the obligation for conducting financial health planning with administration sanction such as :

- a. written warning;
- b. restrictions on business activities, for some or all business activities; or
- c. revocation of business licenses.¹²⁸

OJK can add additional sanctions in the form of:

- a. prohibition on marketing insurance products for specific business lines;
- b. revaluation the capabilities and propriety the controller, the board of directors, or board of commissioners, or equivalent in the company;
- c. prohibition for the company becomes a shareholder or equivalent to shareholders or controlling in a legal entity in a cooperative or joint venture, in an insurance company, or

¹²⁷ Article 51 verses (3) Peraturan Otoritas Jasa Keuangan Number: 71/POJK.05/2016 concerning health financial insurance and reinsurance companies

¹²⁸ Article 55 Peraturan Otoritas Jasa Keuangan Number: 71/POJK.05/2016 concerning health financial insurance and reinsurance companies

d. prohibition for shareholders, controllers, directors or board of commissioners, or the equivalent of shareholders, directors or commissioners of the company from becoming shareholders, controllers, directors, or board of commissioners, or the equivalent shares, directors or board of commissioners in a legal entity in the form of a cooperative or joint venture, in an insurance company.¹²⁹

k. Law no 37 of 2004 concerning bankruptcy

The requirements of bankruptcy statement based on law no 37 of 2004 concerning bankruptcy are debtor at least have two or more creditors and do not pay at least one debts that have fallen due and can be billed are declared bankrupt by the verdict Courts, both at their request and at the request of one or more its creditors.¹³⁰ The eligible institution that can be proposed for bankruptcy for the insurance company is financial service authority (OJK)¹³¹. Otherwise, the state-owned enterprise only can be proposed by the finance minister.¹³² In the debtor's condition is not stated as bankrupt by courts, an interim receiver/curator must be appointed for protecting the creditor's interest. There are 2(two) roles of interim curator:

¹²⁹ Article 55 verses (3) Peraturan Otoritas Jasa Keuangan Number: 71/POJK.05/2016 concerning health financial insurance and reinsurance companies

¹³⁰ Article 2 law no 37 of 2004 concerning bankruptcy

¹³¹ Article 50 verses (1) law no 40 of 2014 concerning insurance

¹³² Article 2 verses (5) law no 37 of 2004 concerning insurance

- a. Overtake the debtor company
- b. Payment to the creditor, transfer, or collateral of the debtor's wealth, which is in bankruptcy is the curator¹³³

In the management of bankruptcy assets, supervisory judges have a role in supervising the management and distribution of bankruptcy assets.¹³⁴ Supervisory judges also have the authority for hearing evidence and propose an investigation towards the company's bankruptcy.¹³⁵ Moreover, another party involved in the management of bankruptcy assets is the curator/receiver. The primary role of the curator is managing the bankruptcy assets.¹³⁶ Curator is divided into two such as *Balai Harta Peninggalan* or another curator.¹³⁷ Moreover, the curator has other obligations to report the condition of bankruptcy assets every 3(three) months to the supervisory judges. Before the judge decision creditor committee should be made, supervisory judges should match the loan in 14 days after the bankruptcy decision.¹³⁸ The creditor has an obligation to overflows the loan to the curator.¹³⁹ In the process of loan matching, there is no accord planning the property or assets of bankruptcy will be stated in the insolvency status.¹⁴⁰ The bankruptcy assets must be sold after the

¹³³ Article 2 verses (1) law no 37 of 2004 concerning insurance

¹³⁴ Article 65 law no 37 of 2004 concerning bankruptcy

¹³⁵ Article 67 law no 37 of 2004 concerning bankruptcy

¹³⁶ Article 69 law no 37 of 2004 concerning bankruptcy

¹³⁷ Article 70 law no 37 of 2004 concerning bankruptcy

¹³⁸ Article 113 law no 37 of 2004 concerning bankruptcy

¹³⁹ Article 115 law no 37 of 2004 concerning bankruptcy

¹⁴⁰ Article 178 law no 37 of 2004 concerning bankruptcy

insolvency status.¹⁴¹ The next steps that should be done in matching the creditor and paying the debtors loan.¹⁴² The Curator announces the bankruptcy settlement on the gazette of the Republic of Indonesia.¹⁴³ The curator is obliged to provide accountability regarding the administration and order, which he has done to the Supervisory Judge no later than 30 (thirty) days after the end of the bankruptcy.¹⁴⁴

- The United Kingdom
 - a. Authority Bodies

Instead of FSA, there is a new regulatory framework aimed at introducing a different culture and approach to regulation of the UK financial services industry, virtually ensuring that the industry as a whole is better to equip to deal with the crisis. FSA is replaced by two regulatory bodies: The Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA). The FCA also serves as the supervisor for the action all regulated and approved companies and individuals, while the Bank of England and the Financial policy monitors the PRA. FCA has three primary duty, such as protecting the consumer, enhancing the integrity of the UK financial system and to help competitive markets and promote significant competition in the interest of the consumer.¹⁴⁵ Meanwhile, PRA has a

¹⁴¹ Article 185 law no 37 of 2004 concerning bankruptcy

¹⁴² Article 202 law no 37 of 2004 concerning bankruptcy

¹⁴³ Article 202 verses (2) law no 37 of 2004 concerning bankruptcy

¹⁴⁴ Article 202 verses (3) law no 37 of 2004 concerning bankruptcy

¹⁴⁵ <https://www.fca.org.uk/about/the-fca> (Accessed on February 4th 2020 time 15.36)

general aim to promote the safety of soundness of the company it regulates. More details, the general duties of PRA held in chapter 2 concerning Prudential Regulation Authority on article 2B point (3) :

- a. Seeking to ensure the business of PRA-authorized person is carried on such a way to avoid any adverse effect on the stability of the UK financial system and;
- b. Seeking to minimize the adverse impact that the failure of PRA-authorized person might have on the strength of the UK financial system.¹⁴⁶

On the insurance matters based on regulation, PRA has a primary goal to help ensure a sufficient degree of protection for those who are or may become policyholders.¹⁴⁷

Furthermore, because of the transition in regulatory policy, companies will need to make substantial improvements. The regulator will bring more compliance actions in the FCA case, push for stricter penalties for breach of laws, pursue other instances and continue to seek criminal prosecution for insider trading and market manipulations. In the end, FCA will impose a much greater degree of transparency, to protect the interest of consumer when seeking a well-functioning market.¹⁴⁸

b. Reporting Mechanism

¹⁴⁶ chapter II concerning Prudential Regulation Authority on article 2B point (3) financial service act 2012

¹⁴⁷ chapter II concerning Prudential Regulation Authority on article 2C point (2) financial service act 2012

¹⁴⁸ <https://www.theglobaltreasurer.com/2013/04/30/breaking-down-the-new-fca-and-pra-regulatory-regimes/> (Accessed on February 4th 2020 time 15.47)

There are 6 (six) steps that must be conducted for the reporting mechanism based on FCA procedures:

1. Contacting the insurance firm

Insurance policyholder/claimant must contact the insurance firms. In the condition of no responses or the claims was refused, Ombudsman can adjudicate.

2. Verify the activity trading of insurers

The claimant must check does the insurance firms still trading either by calling or writing or checking the website. For details Companies, House can assist the claimant to verify.¹⁴⁹

3. Contact the FSCS

Before contacting the FSCS, the claimant must consider that the FSCS only give compensation for default insurer who cannot meet its obligation. Moreover, the claimant should verify the register number of insurance firms through Financial Service Register to make sure that FCA / PRA confirms the firm.¹⁵⁰ The FSCS will conduct an investigation of claimant claims that is dependent on the complexity of requests. For public life or life pensions, it will take 5 months, and for the whole life insurance, it will take 8 months.¹⁵¹

4. Claim on behalf of insurance policyholder / Individually

¹⁴⁹ <https://www.gov.uk/government/organisations/companies-house> (Accessed on February 21st 2020 time 19.09)

¹⁵⁰ <https://register.fca.org.uk/> (Accessed on February 21st time 19.25)

¹⁵¹ <https://www.fscs.org.uk/how-we-work/timescales/> (Accessed on February 28th 2020 time 20.47)

Many companies are offering to petition or claim compensation on your behalf, commonly known as claim handlers, claims firms or claims management firms (CMCs). CMC gather cases either by advertising or direct approach. Claims manager then either acts for the client to pursue a claim or as an intermediary between the claimant and the lawyers who may represent them. Claims managers make money from several sources referral fees from solicitors, commission on auxiliary services, after the event insurance and sometimes from loans to the client.¹⁵² Moreover, insurance policyholder can make a direct complaint to the FSCS website.

5. Understand the limits compensation

The amount limits of payment for insurance 90% to 100% of claims with no upper limit depending on the type of insurance covered.

6. Insurance on Default Conditions

Insurance policyholder must make sure that the insurance firms on the condition of default. In the states of insurance firms is not categorized default by the FSCS insured must contacting the FSCS through the FSCS website.¹⁵³

3. Financial Ombudsman Service Scheme

The Financial Ombudsman Service (FOS) was formed by the Financial Services and Markets Act 2000 (FSMA) to provide a non-Court process

¹⁵² Timothy Edmonds, Claims Management Companies Briefing Paper Number 060775, House of Commons Library, 20158, pg 4

¹⁵³ <https://www.fca.org.uk/consumers/claim-compensation-firm-fails> (Accessed on February 25th 2020 time 19.23)

for addressing disputes that could not be resolved by customers and financial services providers themselves. Financial Ombudsman Service approved has competent authority as ADR entity Financial Conduct Authority (FCA) in 2015.¹⁵⁴

Upon referring a case to the FOS, a plaintiff and the respondent will first mediate an arrangement. Nevertheless, if this is not practicable, the FOS has the power to grant up to £ 150,000 plus-at its absolute discretion-interest and costs if it finds it "fair and reasonable" The FOS may also recommend paying more for the service provider, but this recommendation is not binding.¹⁵⁵ Total amount of compensation to £ 150,000 is any complaint before April 1st 2019 and £ 350,000 for complaints by firms regarding actions or omissions on or after April 1st 2019 £ 160,000 for complaints by firms about acts or omissions before April 1st 2019, and after that date referred to FOS services.¹⁵⁶ The FOS system encompasses all undertakings governed by the FCA (the compulsory jurisdiction).

Financial Ombudsman Services has an authority to give compensation/awards to the claimant. Specifically, financial ombudsman

¹⁵⁴ <https://www.financial-ombudsman.org.uk/who-we-are/governance-funding/adr> (Accessed on February 21st 2020 time 19.01)

¹⁵⁵ <https://www.financial-ombudsman.org.uk/consumers/expect/compensation> (Accessed on February 21st 2020 time 18.53)

¹⁵⁶ <https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation> (Accessed on February 28th 2020 time 11.40)

services have 5 (five) kinds of awards that will give to the claimant such as ¹⁵⁷

- a. Money awards
- b. Awards for distress and convenience
- c. Interest awards
- d. Cost awards
- e. Directions

A complaint relating to an act or omission of an FCA regulated firm will be subject to the FOS if:

- (a) the complainant is eligible and wishes to make a complaint (Eligible Complainant);
- (b) the respondent is eligible to be a respondent (Eligible Respondent), and
- (c) the act or omission to which the complaint relates occurred at a time when Compulsory Jurisdiction rules were in force concerning the activity in question (Eligible Act).¹⁵⁸

FOS claimants also can bring the rejected complaints to the court if the claims did not proceed by FOS. For the independent claimants, costs and risk is high in the condition of FOS has a win for the reason of rejection.

The claimants can bring refusal to the high court or district court. ¹⁵⁹

¹⁵⁷ <https://www.handbook.fca.org.uk/handbook/DISP/3/7.html> (Accessed on February 28th 2020 time 11.41.)

¹⁵⁸ Section 226 verses (2) article 2, Ombudsman scheme, Financial Services and Market act 2000

¹⁵⁹ DR. Judith P Summer, Insurance law and financial ombudsman service, Informa UK Ltd, United Kingdom, 2010, pg 27

9. Financial Service Compensation Scheme

Financial Service Compensation Act triggered by the establishment of Policyholder Protection Act in 1975 and 1977 that has the primary purpose of protecting the fund of insured that cannot be paid by the insurers as the insurance contract provided ¹⁶⁰. In the case of insurer default, the UK has introduced a protection scheme to reimburse policyholder, formerly known as Policyholder Protection Scheme, the scheme was replaced in 2001 by the Financial Service Compensation Scheme (FSCS). The FSCS is the compensation scheme laid down in the Financial Service and Market Acts 2000. This acts as a last resort statutory fund for clients of financial service firms approved by the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA). Notably, there are two primary duty that must be conducted by the FSCS:

- a. To assess and pay compensation, following the scheme, to claimants in respect of claims made in connection with regulated activities carried on (whether or not with permission) by a relevant person; and
- b. To be allowed to levy levies on authorized persons or any class of authorized person to perform their expenses (including in particular fees or incurred or anticipated to incur in paying insurance,

¹⁶⁰ John Lowry et al., *Insurance Law: Doctrine and Principles Third Edition*, Bloomsbury publishing, UK, 2011, pg 23

borrowing or insuring risks).¹⁶¹ FSCS covers mainly policyholders who are individuals and small businesses.

FSCS covers six different types of business such as¹⁶²

- a. . Deposits
: such as money held in bank accounts including cash ISAs
- b. Insurance policies
: such as motor and home, or life insurance and pension plans
- c. Insurance broking
: including advice about insurance policies
- d. Investment business
: Including financial advice or investment products such as collective investment schemes
- e. Arranging and advice about home finance, such as mortgages
- f. Debt management, under specific criteria.

10. Mechanism of FSCS Compensation Claim

The FSCS only covers financial services firms that have been authorized by the Financial Conduct Authority (FCA) or the Prudential Regulation Authority (PRA) to do business in the UK. The complainant must check the firms first before reporting the financial

¹⁶¹ Article 213 point (3) part XV The financial service compensation scheme of Financial service and market act 2000

¹⁶² <https://uk.virginmoney.com/virgin/assets/pdf/FSCS-protecting-your-money.pdf> (Accessed on February 5th 2020 time 15.44)

case or dispute. The FSCS only gives compensation to the complainant in the condition of the firms has FCA or PRA authorization number, sometimes referred to as a Firm Reference Number (FRN).¹⁶³ The FSCS only can pay the compensation if the firms fail and cannot produce valid claims under the policy or return the policyholder insurance premium. Compensation of payment will be delivered to the claimant in the condition of insurance firms, or the successor has a financially difficult and unable to meet its obligation. Otherwise, insurance firms or successor still can pay its obligation if the FSCS will not pay the compensation. Moreover, the claimant has a chance to collect compensation from a related company or through Ombudsman mechanism (Financial Ombudsman Services) and will give compensation from the services of financial ombudsman services.¹⁶⁴ The insurance policyholder must ensure that they have not compensated for any costs except the FSCS scheme.¹⁶⁵

The FSCS must safeguard policyholders if, for example, an approved company has been put in temporary liquidation or administration and is unable to meet claims against it. In administration, the person who is eligible and authorized to be an administrator appointed to manage the business, and properties of a corporation to the creditors ' advantage. The nominated person must be an insolvency lawyer and

¹⁶³ Ibid (Accessed on February 5th 2020 time 15.50)

¹⁶⁴ Section 1.1.7 G COMP 1:Introduction and Overview FCA handbook rules

¹⁶⁵ <https://www.fscs.org.uk/how-we-work/t-and-c/ins-pay/> (Accessed on February 26th time 14.47)

has the rank of a court officer (whether the court appoints him or her or not). The goal of the administration is:

- a. to save a company as an ongoing concern
- b. to achieve a better price for the assets of the company or otherwise to recognize their worth more favourably for the shareholders as a whole than would be possible if the company were wound up (without first being in administration)
- c. to realize the value of the property in certain circumstances to make a sale to one.

When an administrator's appointment takes effect, an organization enters administration. An administrator may be named by:

- a. a court-made administration order;
- b. a floating charge holder, or
- c. a corporation or its managers.

Several effects caused by administration status, such as:

- a. All pending winding-up applications shall be dropped or suspended
- b. there shall be a moratorium on insolvency and other legal proceedings
- c. where an administrative receiver named, the administrator shall vacate office

d. where the receiver of part of the company's property has appointed, he shall go office (if the administrator so requests).¹⁶⁶

Suppose an insurer default, the designated insolvency practitioner or The FSCS will first contact the policyholders to clarify a policy or claim situation and what to do if they need immediate assistance. The task of the FSCS will be to ensure the payment of benefits due under covered policies and to try to arrange for all eligible policyholders to continue insurance. For example, this can be done by moving the failed insurer's current approaches to another insurance company, or by arranging the issue of new policies from another insurer (in replacement for existing systems). As an agency, the FSCS requires an insolvency practitioner to assign a run-off agent to assess claims and manage any premium claim returns. To ensure that pending cases handled as quickly as possible, the FSCS must liaise with the insolvency practitioner (and run-off agent). The FSCS performs routine investigations of more prominent insolvent insurance companies to ensure that claims managed efficiently and economically. When a claim or return premium is accepted, the designated run-off agent shall submit it to The FSCS to confirm its validity under the rules of the Scheme, and for payment. In broader failures of the insurance firm ('states'), the run-off agent must administer the eligibility test, and the FSCS will confirm eligibility at the time of payment. Depending on the urgency of the

¹⁶⁶ Companies house, liquidation and insolvency, GP08, 2014, pg 9

situation, payments are made either by check or electronic transfer, usually within five days of receipt of the payment request.

In the compensation payment, there is a ranking of the creditor. Based on Winding up act 2004, there are classification or priority of payment such as:

1. Preferential debts
2. Insurance debts
3. Other debts¹⁶⁷

In the compensation process, the default insurance company faced insolvent conditions. Insolvency practitioners (IP) value the liabilities of the company and recovers assets from their debtors. The penalties for an insurance company will include unpaid claims by the policyholders, which is where the FSCS comes in. If these policyholders qualify for the FSCS protection, the FSCS will work with the IP to ensure that the FSCS pay these claims as soon as possible.¹⁶⁸ Insolvency practitioners is an individual authorized under the Insolvency Act 1986 to act as a holder of an office concerning an individual or concerning a firm or partnership.¹⁶⁹ Generally, Insolvency practitioners are coming from two kinds of the profession such as solicitor or accountant.¹⁷⁰ Insolvency Practitioners has an authority to

¹⁶⁷ Article 21 of winding up act 2004

¹⁶⁸ <https://www.fscs.org.uk/what-we-cover/insurance/insurance-insolvencies/> (Accessed on February 26th 2020 time 11.55)

¹⁶⁹ Lorraine Conway, Regulation of Insolvency Practitioners (IPs) Briefing paper number 5531, House of Common Library, 2019, pg 4

¹⁷⁰ Roy Goode, Principles of Corporate Insolvency Law: Fourth Edition, Sweet and Maxwell, London, 2005, pg 28

act as liquidator, provisional liquidator, administrator, administrative receiver, nominee or supervisor of a voluntary agreement, and trustee of partnership.¹⁷¹ The FSCS determines relevant person in default condition with requirements such as :

- a. passing an agreement on the mutual winding up of creditors
- b. the decision by the Home State regulator of the person concerned that the person concerned is incapable of making charges against him and has no early prospect of being able to do so
- c. the appointment of a liquidator or administrator, or provisional liquidator or interim manager
- d. Making an order by court competent jurisdiction for liquidation of a company, for dissolution of the partnership, for a management company or association or bankruptcy of an individual
- e. Approval of a voluntary enterprise agreement, a voluntary partnership arrangement or an individual voluntary arrangement.¹⁷²

In the process of determining an insurance company in default, the FSCS has several procedures that must conduct, such as:

- a. Upon receiving a claim that is worth investigating.

¹⁷¹ Section 388 part XIII concerning insolvency practitioners of Insolvency act 1986

¹⁷² Section 6.3.3 R concerning default of relevant person COMP 6: Relevant Person and successor in default FCA handbook

- b. Will write to the person concerned at their last known address to notify them of the investigation and request information from them as to their ability to satisfy protected claims against them (for example, requesting completion of an asset and liability statement). The last known address will (where possible) be checked from the records of the regulator.
- c. On the matters of insurance company did not giving any response the FSCS will re-send the notification letter after 14-days from the first letter
- d. If the FSCS does not receive a response within seven days of the follow-up letter, the FSCS will reissue the first letter where possible and, if known, redirect it to an alternative contact address. This location may be a current working address or a former principal's home address, or an earlier business address.
- e. Suppose the FSCS does not receive a response from (or on behalf of) the person concerned within 14 days of the date of the follow-up letter sent under paragraph 2 (where no alternative contact address is available), or within 14 days of the letter sent under section 3. In that case, the FSCS shall assess the person concerned ability to satisfy potential claims against him after making reasonable inquiries (For instance, receiving Companies House accounts for a company or searching for bankruptcy and property for sole traders and partners).

- f. The FSCS will review objection or comment upon receiving any complaint or comment from or on behalf of the relevant person. Then (unless the FSCS needs more information at this stage) the FSCS will notify the person concerned in writing whether: the FSCS still intend to declare the person in default (if so, the FSCS will provide brief written reasons); or the FSCS has concluded that insurance company will not declare in default. If the FSCS intends to claim the insurance company default, FSCS will provide them with a further 14-day period to reply.
- g. Suppose the FSCS wishes to declare the person concerned in default and their response is still to object to this on the grounds of material fact related to the evaluation of their capacity to comply with protected claims against them. In that case, the FSCS will allow them to exercise their right to make verbal statements (also known as "oral representations") by attending an interview, conference or oral meeting.
- h. If the person concerned wishes to exercise their right to make spoken comments and FSCS offers them a meeting, interview or oral hearing to do so, then, when possible with their consent, the FSCS may set the exact procedure for that process at that time. The person concerned shall have the right (but not the requirement) to have legal (or other) representation. The method would have to be flexible and informal. The concerns to be

determined at an oral hearing will be restricted to those mentioned in written terms by the relevant person and applied to evidence that is important to the decision. The FSCS must affirm our decision after the conference, interview or oral hearing and provide written reasons for this.

- i. If the FSCS follow the procedure at paragraphs 1-5 above, and does not receive any response from the relevant person and decide that person pertinent to be in default, the relevant person may contact us before FSCS publish the default. If so, they will be entitled to raise any objection or make any comment within 14 days of contacting the FSCS. After receiving this comment or complaint, the procedure in paragraphs 6 to 8 will apply.
- j. Suppose the person concerned continues with his opposition after the meeting or interview or oral hearing. In that case, he may seek a judicial review of the decision which determines that his in default.¹⁷³

11. Coverage of the FSCS compensation Claim

Also, if the insurance policyholder mis-sold an insurance policy and lost the money from the failed firms, insurance policyholder was experienced fraud and the broker that sold the

¹⁷³ <https://www.fscs.org.uk/how-we-work/t-and-c/default-policy/> (Accessed on February 26th 2020 time 14.34)

insurance policy has gone out of business and cannot return the premium of money the FSCS also can pay the compensation to insurance policyholder. The FSCS cover several types of policies that includes the motor, home, pet, travel and payment protection insurance (PPI). Moreover, long-term insurance product such as life insurance or pensions also covered. The main target of the FSCS is to get continuity of cover for a policyholder with long-terms insurance with transfer the insurance policyholder to the new insurance provider.¹⁷⁴ Claimant must be getting 100% of any future benefit for the contract of long-term insurance, on terms of corresponding in all material respect. If the continuity of insurance policy cannot be running with transferring into new insurance providers, the FSCS will pay the compensation to depend on the type of policy that has by insurance policyholder such as:

- a. Motor insurance, Employers' Liability insurance and Professional Indemnity insurance: the entire claim relating to the third-party element of insurance, and 90% of any remaining elements of the claim.
- b. Death or incapacity of the policyholder due to injury, sickness or infirmity: the entire claim.

¹⁷⁴ <http://www.prerulebook.co.uk/rulebook/Content/Chapter/214567/16-01-2020#214568> (Accessed on February 5th 2020 time16.07)

- c. Home, pet, travel and payment protection insurance (PPI) and other general insurances: 90% of insurance policyholder claim.
- d. Pension savings or retirement income (i.e. via an annuity): if it provided under a life insurance contract, the FSCS would pay the entire claim.
- f. Endowment policies or investment bonds: these are long-term life insurance policies,

with a savings element, and the FSCS will pay the entire claim.

The FSCS will pay the compensation to the victim on 14 working days of the agreement the claim. In other hands, for payment of Payment Product Insurance (PPI) claims, it can finish with three (3) months of working days.

12. FSCS Funding Scheme

The FSCS is funded on a “**pay-as-you-go**” (i.e. raising levies as problems arise) and raises annual levies from approved companies depending on the cost anticipated to the incurred coming year. The levy consists of two cost elements: **Management expenses** and **compensation payment**.¹⁷⁵ The above are the running costs of the FSCS, whereas the latter is for the settlement of

¹⁷⁵ Article 223 Management expenses part XV Financial Service and Markets Act 200

claims. The FSCS comprises different funding classes according to the nature of business. The funding classes relevant to the insurance policies are “general insurance” and “life and pensions provision” which are contributed by the respective insurance business.¹⁷⁶ As the system of insurance in the United Kingdom that there is no decision to decide premium rates. Moreover, the tax collected from premiums paid for all of the kinds of insurance classes.¹⁷⁷ It is subject to an annual limit for the cost of an aspect of the management expenses, set by FCA and PRA after consultation with industry. Management expenses consist of two elements. The first is a levy on the base costs of running the compensation scheme in a fiscal year. It covers expenses not based on the level of activity of the compensation scheme, and therefore not due to any particular class. This category includes issues such as the salaries of the FSCS board members, the expenses of premises the FSCS occupies, and its audit fees. It would possibly also include the cost of any insurance cover issued by the FSCS against the possibility of paying claims in situations where the levy cap of the particular class to which the claim would otherwise be due exceeded its year-end levy limit. The second element of a management expenses levy is a specific cost levy for the “specifics cost” of administering the compensation

¹⁷⁶ <https://www.legco.gov.hk/research-publications/english/1718in08-policyholders-protection-schemes-in-selected-places-20180301-e.pdf> (Accessed on February 7th 2020 time 16.30)

¹⁷⁷ John Birds, Insurance Law in the United Kingdom: Fourth Edition, Kluwer Law International BV, Netherland, 2018, pg 36

scheme in a financial year. Such expenses are due to a class and include the salary costs of some the FSCS employee and the management of claims and legal and other professional fees. It may also include the expense of any insurance cover that the FSCS secures against the risk of the FSCS paying out claims in any particular class above a given level (but below the yearly cap for that class). The specific cost assigned to the class that is in charge of those expenses. Suppose the FSCS levies the specific cost levy, the levy assigned to the class responsible for those costs up to the applicable levy limits. The FSCS can include in a specific cost levy the actual cost which the FSCS expects to incur during the financial year of the compensation scheme to which the levy applies (including in respect of defaults not yet reported at the levy date). The amount that each participating company pays for the specific costs levy determined by reference to the amount of business carried out by the firm in the class to which the FSCS has assigned particular costs.

13. Relevant Class on Funding

In other hands, Insurance compensation costs related to the general insurance plan (Class B1) or the coverage of life and pensions (Class C1). The PRA requires that the levy shall be assigned to Class B1 or Class C1 up to its levy cap when the FSCS imposes an

insurance premium expenses levy. The PRA does not find that the FSCS use of borrowing facilities to provide liquidity until the next levy should affect the allocation of compensation costs, nor on the allocation of compensation costs. That is because at the time the FSCS introduces a levy, the distribution of a monetary expenses levy occurs.¹⁷⁸

The estimated sum to be paid each year for the cost aspect of compensation payment calculated. Subject to a cap. Based on the compensation payment expected to make. The arrangement detail as follows:

- a. The amount of the levy to be levied for the payment compensation : The estimated amount of the levy to be paid each year shall be determined by the greater of anticipated compensation payment within 12 months of the levy date or by one-third of anticipated compensation within 36 months of the levy date.¹⁷⁹

The FSCS will usually levy once in each financial year (and in respect of compensation costs, for expenditure expected in 12 months following July 1st in that year). The annual fee for all funding courses is declared in April by the FSCS during the usual course. Before the publication of the annual levy or any temporary levy, the FSCS shall enter into agreements with related stakeholders and trade bodies. The FSCS is published in February and confirmed in the April edition,

¹⁷⁸ Section 39 Compensation Costs Policy Statement Protection of Policyholder Bank of England

¹⁷⁹ Section 21.9 point (3) Policy Statement Protection of Policyholder Bank of England

the expected annual levy in the Plan and Budget. The FSCS publishes as early as possible information on any interim charges. The levies are payable at the next yearly levy for 12 months. For impact from July, the insurance expense levy raises to cover the duration up to June 30th each year.¹⁸⁰

The FSCS will also take into account claims already incurred and expected recovery of assets from failed insurers. For individual firms, their contribution levy calculated by reference to the share of their income (or similar parameters) as the proportion of the whole industry in respective of funding class.¹⁸¹ The rules of PRA require the FSCS to levy to participating firms. The PRA has granted the discretion of the FSCS to impose levies on the class of general insurance coverage (Class B1) and the class of life and pensions provision (Class C1). The FSCS may impose three types of levy on Class B1 and Class C1 insurance classes:

- a. A levy on management expenses (consisting of necessary cost levy and specific cost levy
- b. A levy on compensation costs
- c. A levy on management expenses in respect of the relevant scheme levy (i.e. a levy on the management expenses incurred by the

¹⁸⁰ Financial Service Compensation Scheme, FSCS Funding Policy – Levies and Recoveries, pg 3

¹⁸¹ Section 21.16 point Policy Statement Protection of Policyholder Bank of England

FSCS under part 15 A of the FSMA) the FSCS has discretion regarding the amount and duration of the levies that levied.¹⁸²

The tariffs that are imposed to the insurance company for management expenses and compensation cost are regulating with the formulation that has been set out by PRA. The calculation of levies imposed into two; Relevant net income and eligible liabilities. The ratio that imposes by FSCS is 75:25. Tariffs base for relevant net income is 75%, and tariffs base for eligible liabilities is 25%.¹⁸³

14. Delivering caps for compensation payment

: PRA has set annual limit an annual limit on the total amount which can be charged by the FSCS. The limit set concerning the companies planned competitiveness as well as past funding needs. The annual limit of £ 690 million is for the support class of life and pension coverage and general insurance service and £ 600 million respectively.¹⁸⁴ If the levy does not adequately cover the compensation costs, the FSCS may impose an interim levy to meet the costs or use other funding sources as commercial borrowing.

¹⁸² Section 32 Levies on Class B1 and C1 Policy Statement Protection of Policyholder Bank of England

¹⁸³ <http://www.prarulebook.co.uk/rulebook/Content/Chapter/214753/16-01-2020> (Accessed on February 27th 2020 time 14.43)

¹⁸⁴ Annex 1: Maximum Levy Limit point Policy Statement Protection of Policyholder Bank of England

If the levy on a class is insufficient, or is likely to be, to meet the compensation costs (or management costs) due for the same year from July 1st to June 30th, the FSCS will expect the interim levy (i.e. the added levy) raises in that fiscal year. This policy is in line with the idea that the industry should cover the FSCS expenses. Interim levies are forecast by the FSCS on the same basis as the annual levy. For a fact, the transitional fee is subject to a de minimis threshold due to the operating costs involved. Usually, the FSCS would not propose a temporary levy of less than £ 10 million to any class and should pay sums up to, say, £ 20 million, In particular, when the pay-out is due at the end of the financial year. This levy is review following the amounts to raised and the number of companies to levy.¹⁸⁵

The PRA expects the FSCS to usually bill once in each fiscal year to cover planned spending. For insurance expenses, the PRA requires the FSCS to charge a fee of more than the planned 12 – month duration expenditure or if greater, one-third of the projected expenditure within the 36 months following July 1st of that year. Nevertheless, where the compensation or actual costs incurred or expected to incurred exceed the sums retained or reasonably expected held to cover such costs, the FSCS may do one or more of the following at any time during the financial year:

¹⁸⁵ Financial Service Compensation Scheme, FSCS Funding Policy – Levies and Recoveries, pg 4

- a. Place a tax or management fee on temporary payroll costs; or
- b. Borrow, including from financial National Loan Funds; or
- c. Use the money collected from businesses.¹⁸⁶

The FSCS would usually enforce a levy instead of borrowing or using funds as defined in point c unless the latter options tend to prefer in the specific circumstances prevailing at the appropriate time; for example, resolving short-time liquidity issues or coping with a significant loss without waiting for a levy to be levied or collected.¹⁸⁷

15. Form and Method Compensation Payment

Usually, the FSCS must pay compensation directly to the claimant, but in some case, it may be acceptable for the FSCS pay the compensation to someone other than the applicant, or to make reduced or interim payments. Suppose the FSCS agrees that the compensation is payable (or any reimbursement or other sum is payable to the claimant by the FSCS). In that case, it shall pay the compensation to the claimant, or if the FSCS so decides, ordered by the claimant, unless specified that a claimant is entitled to a protected claim arising out of the circumstances, the condition described claims covered by the pensions. The FSCS shall pay any fee (and any refund or other amount owed to the complainant by the FSCS) to:

¹⁸⁶ Section 44 Exemption clause of Policy Statement Protection Policyholder Bank of England

¹⁸⁷ Section 45 Exemption clause Policy Statement Protection of Policyholder Bank of England

- c. The trustee of an occupational pension scheme; or
- c. A personal pension scheme or other product providers, or
- c. Both (1) and (2)

(And not to the claimant unless exceptional circumstance applies).¹⁸⁸

Where a claimant has a claim that falls within the scheme for the collection of investment, the FSCS can pay to:

- a. the participants and not to the claimant; or
- b. the collective investment scheme and (where different) not to the claimant; or
- c. any combination of the above.¹⁸⁹

The FSCS may pay compensation in whatever form, and by whatever method (or a combination thereof) it deems appropriate, including without limitation:

- a. by paying compensation (on such terms as the FSCS deems appropriate) to an authorized person with permission to accept deposits that agree to be able to the applicant in the same amount;
- b. by paying compensation directly to current deposits account (or for the benefit of) the claimant or, otherwise (or behalf of) the claimant, to the authorized person (but before doing so, the FSCS must take such measures as it deems necessary to verify the

¹⁸⁸ COMP 11: Payment of Compensation, Compensation Payment section 11.2.2 R FCA Handbook

¹⁸⁹ COMP 11: Payment of Compensation, Compensation Payment section 11.2.2A R FCA Handbook

existence of the account and inform the claimant of its intention to exercise power);

- c. by paying compensation to a company which make claims behalf of its customer if the FSCS satisfied that:
- d. the business of the person concerned in default has transferred to the company;
- e. each customer has a claim against the person concerned in default arising from a default customer money or safe custody assets held by the person concerned in default;
- f. clients for whom compensation is due to meet the requirements as qualifying claimant;
- g. the firm has agreed to pay or credit the account of each customer, without deduction, on such terms of the FSCS deems appropriate, that part of the compensation owed to him.¹⁹⁰

Where the FSCS is satisfied that compensation is payable in principle concerning any protected claim, but considers that immediate full payment would be unreasonable because the claimant's overall claim amount is uncertain, it may decide to pay the relevant lower sum in final settlement or to make payments on account.¹⁹¹ The FSCS can also make payments on account for the reimbursement or

¹⁹⁰ COMP 11: Payment of Compensation, Form and Method of Paying Compensation section 11.2.3A FCA handbook

¹⁹¹ COMP 11: Payment of Compensation, Reduced or Interim Payments section 11.2.4 R FCA Handbook

pay less in the final settlement if the reimbursement claimant has a reasonable prospect for recovery by any party, or requests compensation from any other person.¹⁹² Provision that stipulated on section 11.2.4R COMP regarding reduced or interim payments provides for insurance due for any covered claim. Of instance, this would happen if the FSCS deems it unwise, given the uncertainty of the interest a court could offer to a bonus provided for in a long-term insurance policy, to make payment in full. In such cases, the FSCS may make on account payment of compensation to the policyholder in respect of benefits under the contract whose value is not uncertain

16. Continuity long-terms insurance policies

Another form of protection policyholder is not only paying compensation to the insurance policyholder. Financial Service and Market Act also provide the provision that regulated about continuity long-terms insurance policies. FSCS will facilitate the transfer of the long-term policy to the authorized person. In the condition of continuity, long-term insurance policies under a protected contract of insurance with the relevant person. The mechanism of securing continuity long-terms insurance policies can conduct in the condition that relevant insurance is default or unable to meet the obligations. The FSCS also should secure transfer of business default relevant person

¹⁹² COMP 11: Payment of Compensation, Reduced or Interim Payments section 11.2.5 FCA Handbook

that consists of agreeing with long-term insurance contracts or any part thereof with another company. Benefits of insurance that stipulated on long-terms insurance policies also secured 100% by the FSCS in the condition of benefits in falls due or had already fallen due to eligible claimant.¹⁹³

17. Appeal on FSCS decision

When a claimant has several problems in the matters of FSCS decision, the FSCS provided various steps to take whenever the claimants asking for appeal:

a. Post Decision Query

: It will take five working days since the first appeal report sent to the FSCS

b. Post-Decision Review

: Claimants should bring any material evidence, and the FSCS will proceed the report of claimants on 2 (two) working days by Post Decision Reviewer, and the response will be delivering to the claimants on 20 (twenty) working days.

c. Escalated Post Decision Review

: This step of appeal will review the claimant's review and reviewing the previous decision that has been made in Post

¹⁹³ <http://www.prarulebook.co.uk/rulebook/Content/Chapter/214555/16-01-2020> (Accessed on February 27th 2020 time 15.05

Decision Review by an internal team of the FSCS. This process will take 2(two) days for reviewing and will respond in 20 (twenty working days)

d. Judicial Review

: When the claimants still unhappy with entire appeal procedures provided by the FSCS, claimants can continue to make a judicial review on the administrative court.¹⁹⁴

- Compensation payment: Alpha Insurance A/S policyholder case

This company sentenced bankrupt on May 8th 2019, the FSCS make a cooperation with the Alpha liquidator and CRL management to replace cover / continuing policy of insurance. CRL management will inform the successor company to continue the policy of insurance to the FSCS until March 29th 2019. FSCS give time for CRL management for 2(two) weeks for getting a new successor. Moreover, on April 15th 2019, the FSCS give time extension for CRL management to looking successor of the insurance policy. On May 23rd 2019 the time came, and CRL is unable looking for the new successor of Alpha Insurance after the FSCS gave extension time. The FSCS decided to issue payment of compensation to Alpha insurance policyholder with a total amount of £6.9 M to 14.000 policyholders on May 28th 2019. The FSCS is issuing compensation towards 14.000 insurance policyholder again because of the incapacity of CRL management looking successor. There are 6.500 of insurance policyholder that not getting the payment yet and will be proceeded by the FSCS and liquidator.¹⁹⁵

¹⁹⁴ <https://www.fscs.org.uk/how-we-work/what-to-do-if-youre-not-happy/> (Accessed on March 4th 2020 time 11.10)

¹⁹⁵ <https://www.fscs.org.uk/failed-firms/alpha/> (Accessed on March 4th 2020 time 15.34)

**Comparison Protection of Insurance Policyholder Towards Default
Insurer in Indonesia and United Kingdom**

INDICATOR	INDONESIA	UNITED KINGDOM
Authority	Financial Service Authority (OJK)	Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA)
Insurance Policyholder Protection Legal basis	-Law no 40 of 2014 concerning insurance -Law no 37 of 2004 concerning bankruptcy -POJK No.07/2013 Consumer Protection on Financial Services Sector - POJK Number: 28 /POJK.05/2015 concerning Dissolution, Liquidation and Bankruptcy Insurance Companies, Sharia Insurance Company,	-Insolvency act 1986 -winding up act 2004 -Financial services and markets act 2000 -PRA rules handbook -FCA rules handbook

	<p>Reassurance company and Sharia Reassurance Company</p> <p>-POJK no 71/POJK.05/2016 concerning health financial insurance and</p>	
Form of protection	<p>reinsurance companies</p> <p>-Alternative Dispute Resolution</p> <p>- Distribution assets of liquidation</p> <p>- Financial Healthy Planning (RPK)</p> <p>- Continuing policy insurance cover</p>	<p>-Alternative Dispute Resolution</p> <p>-Distribution assets of liquidation</p> <p>- Continuing policy insurance cover</p> <p>-Financial Service Compensation Scheme</p>

Reporting Mechanism	<p>Claimant must report to the insurer about the objection and insurance company must proceed the problems on twenty (20) working days.</p> <p>Insurance company also must publish the status of the report.</p>	<p>Claimant should contact the insurance firms for getting a status of the payments of the claim. Moreover, insurance policyholder must verify the trading activities of insurance firms in the website of company house UK. Claimant can make a direct claim to the FSCS through online website or using Claim Management Companies to represent claimant.</p>
Procedures of Policyholder Compensation Payment	<p>The insured can ask for compensation to the insurers. Moreover, in the condition of insurance company financially is distressed OJK as authority will recover the insurance company with Financial Healthy Planning (RPK).</p>	<p>Claimants will make a claim directly to the insurance company. The claimants must check the register number of insurance company through FCA / PRA.</p> <p>Moreover, claimants must verify whether the insurance company still</p>

	<p>When the condition of insurance company not getting better, insured / policyholder can submit a bankruptcy to the commercial court because of debtor / insurance company cannot fulfill the performance to pay insurance claim. The assets of insurance company will sell and distribute to the creditor.</p>	<p>trading or stopped trading.</p> <p>In the next step claimants can make a direct claim through the FSCS website or being represented by CMC (Claim Management Company). FSCS will investigate the case within period of 8 months. As a last statutory resort FSCS will not directly give compensation to the claimants. FSCS will try to continuing insurance policy to the successor. In fact, before insurance company in the insolvency condition its company should passing the solvency process to overcome the financial distressed condition such as turnaround plan, selling</p>
--	--	--

		<p>assets, improving liquidity and debt for equity swap.</p> <p>Furthermore, when insurance company cannot overcome the problems of financial distress insolvency steps will be used. The FSCS will make a coordination with Insolvency Practitioners to assess and distribute the assets to the insurance policyholder. In the condition the assets / property of insurance company insufficient the FSCS will distribute the cheque to the insurance policyholder as compensation payment.</p>
--	--	--

<p>Priority of debts / ranking of creditor</p>	<p>Based on priority of debts Indonesian law arrange payment of debts towards creditor such as:</p> <ol style="list-style-type: none"> 1. Preferred creditor 2. Separatist creditor 3. Concurrent creditor. <p>Accordance to liquidation / distribution of assets of insurance company that stipulated on regulation of financial authority Number 28/POJK.05/2015 Concerning Dissolution Liquidation and Bankruptcy Insurance company, Insurance Sharia Company, Reinsurance Company and Sharia Reinsurance</p>	<p>Winding up act regulated the provision of debt priority such as:</p> <ol style="list-style-type: none"> 1. Preferential debts 2. Insurance debts 3. Other debts
--	---	---

	company on law no 24 mentioned that rights of insurance policyholder are preferred than others creditor.	
Compensation limit	There is no compensation limit on payment. In the condition of the assets is not sufficient all of assets will be divided proportionally (<i>pari passu pro rata</i>)	<p>2. 100% protected:</p> <ul style="list-style-type: none"> - Compulsory insurance - Long term insurance - Professional indemnity insurance - Claim arising from the death or incapacity of the policyholder due to injury, sickness or infirmity <p>3. 90% protected:</p> <ul style="list-style-type: none"> - Pet - Travel - Home - Dental - Motor first party

		<ul style="list-style-type: none"> - Warranty - Public liability - Property <p>Based on winding up act the distribution of assets will be divided equally in condition of the company assets is not enough.</p>
Claimants	Creditor	Eligible claimant
Coverage	General Insurance, Life insurance and Reassurance	Basically, FSCS covers two major insurance class, long-term insurance product such as life insurance or pensions, the FSCS also cover several types of policies includes motor, home, pet, travel and payment protection insurance (PPI).

Time limit	For suspension of payment in bankruptcy act is 270 days and the trial process is 180 days.	Investigation will be processed in 8 months depending on the complexity and the distribution of payment will be conduct on 5 days since the IP make a command letter.
Business actor	Creditor	Relevant person
Funding Policyholder Protection Scheme Mechanism	The calculation of guarantee funds of insurance life company must set guarantee funds in the amount of 2% from the back up of PAYDI (Insurance products associated with the investment) added 5% from premium backup for product other than PAYDI and the	The tariffs that impose to insurance company for management expenses and compensation cost are regulate with the formulation that has been set out by PRA. The calculation of levies is imposed into two; Relevant net income and eligible liabilities. The ratio that imposes by the FSCS are 75:25. Tariffs

	premium reserve which is not yet an income	base for relevant net income is 75% and tariffs base for eligible liabilities is 25%. (B1 and C1 class)
Appeals of Policyholder	Cassation and Judicial review in accordance to legal remedies against a decision on the request for a bankrupt statement	<ol style="list-style-type: none"> 1. Post Decision Query 2. Post Decision Review 3. Escalated Post Decision Review 4. Judicial Review

196

INDICATOR	SIMILARITIES	DIFFERENCES
Authority	Regulated by financial institutions	Indonesia only has one financial institution (OJK) and UK has two main financial institution (FCA and PRA) and two other

¹⁹⁶ <https://www.fscs.org.uk/how-we-work/what-to-do-if-youre-not-happy/> (Accessed on March 4th 2020 time 11.10)

		extraordinary institution (Service House Company and the FSCS)
Legal Basis	There are specific regulations that governs the insurance provision and its liquidation process when default is happened to insurance company	Indonesia has no specific regulation that regulates about policyholder protection schemes such as the FSCS
Form of Protection	There are some form of protection that similarly applied in both countries such as Alternative Dispute Resolution, Distribution of assets, Continuing insurance policy and solvency process of insurance company	There are no policyholder protection schemes such as the FSCS
Reporting Mechanism	Claimants have the obligation to report the objection / case to the insurance company before	The reporting system in Indonesia is not integrated such as in the United Kingdom. In the United

	<p>authority institution intervene the dispute</p>	<p>Kingdom, claimants will be assisted by several authority / institutions in reporting their objection / claims. Service House Company has main duty to check trading status. FCA will support the claimants with verifying the registration number of the insurance company and the FSCS will compensate the claimants in the condition insurance company is default</p>
<p>Procedures of Insurance Policyholder Protection Payment</p>	<p>In both countries, before insurance company is stated bankrupt, the authority will impose solvency procedures and evaluate the financial condition of insurance company. The company will have a chance to</p>	<p>In United Kingdom liquidation process the FSCS as policyholder protection scheme will guide and anticipate to pay compensation when the liquidation assets of insurance company insufficient</p>

	<p>reorganizing the company to pay the debts. After the solvency procedures insurance company still cannot pay the debts insolvency procedures will imposes to pay the creditor debts with liquidation process.</p>	
<p>Priority of Debts / Creditor ranking</p>	<p>Insurance policyholder is not prioritized when payment process is conducted. preferential creditor does not regulate insurance policyholder to receive primary payment on liquidation / compensation claim process.</p>	<p>In the winding up act regulated about insurance debts. Otherwise, Indonesian Law do not regulate specifically about insurance debts.</p>
<p>Compensation Limit</p>	<p>Both compensation payment claims system implemented to pay compensation equally in</p>	<p>4. 100% protected:</p> <ul style="list-style-type: none"> - Compulsory insurance - Long term insurance

	<p>condition the assets is not enough to pay all debts.</p>	<ul style="list-style-type: none"> - Professional indemnity insurance - Claim arising from the death or incapacity of the policyholder due to injury, sickness or infirmity <li style="padding-left: 40px;">5. 90% protected: - Pet - Travel - Home - Dental - Motor first party - Warranty - Public liability - Property
<p>Claimant</p>	<p>Insurance debt must be proven for collecting compensation of payments.</p>	<p>In the UK policyholder protection schemes claimant must verify that the insurance company is registered in the FCA, when the insurance company did</p>

		not registered claimant will not be protected by the FSCS.
Coverage	General insurance and life insurance are including as coverage plan.	The FSCS also cover other kinds of insurance other than general insurance and life insurance.
Time limit	Indonesia and United Kingdom has time limit in paying compensation claim to the claimants.	Based on bankruptcy law Postponement of loan payment limited only for 270 days and settlement of debt payment should be finished on 30 days. United Kingdom insolvency process compensation payment of claims will be delivered on 5 days after Insolvency practitioners with the FSCS make a survey to the financial of default insurance company. The FSCS will make an investigation towards

		claimant report on 6-8 months depend on the complexity of the reports.
Business Actor	Insurance company	Indonesia citing default insurance company as creditor and United Kingdom called default insurance company as relevant person.
Funding Policyholder Protection Scheme Mechanism	Indonesia and United Kingdom has set up the formulation of guarantee fund as preservation steps in securing policyholder money.	Indonesia did not enact a levy for insurance company, but United Kingdom make a levy and it is levied by the FSCS as authority.
Appeals	In the insolvency process court provide appeals to the party that not satisfied with judge decision.	The FSCS as policyholder protection scheme institutions also provided appeals for claimants that not satisfied with the FSCS decision in paying compensation claim.

B. Implementation Insurance Policyholder Protection in Indonesia

Development of insurance in Indonesia on life insurance shows a decreasing data. The data from 2014 showing insurance development 24% and decreasing 6,4 % in 2015 with 17,6%. In other hands, the data of non-life insurance increasing from 2014 until 2015 with a total of 2.68 %. In 2014 development of non-life insurance is 13,4% and the data in 2015 is 5,45%.¹⁹⁷ The protection insurance policyholder protection in Indonesia has a lousy implementation both in regulation or institution. OJK is a financial institution that is established based on law no 21 of 2011 that substitute BAPEPAM-LK on the financial sector. On running the duty on the financial sector, OJK has various authority such as supervising, examination, regulation and investigation.¹⁹⁸ With all authority granted by OJK, there is a big problem on the matters of legal enforcement in the protection of insurance policyholder. Bumiputera and Jiwasraya are examples of incapability OJK as financial services institution in protecting insurance policyholder. Supervision of OJK in insurance industry categorized as weak because of many of fraudulent financial sheet report conducted by the insurance company. Many insurance companies falsify their financial report data to the OJK.¹⁹⁹ Furthermore, regulation on the insurance company in Indonesia law no 40 of 2014 has been providing policyholder protection funds in article 53. The

¹⁹⁷ International monetary fund, Indonesia Financial Sector Assessment Program -Detailed Assessment of Observance -Insurance Core Principles, IMF Country Report No. 18/74,2018, pg 8

¹⁹⁸ Article 1 law no 21 of 2011 concerning OJK

¹⁹⁹ <https://economy.okezone.com/read/2020/01/17/320/2154310/fakta-terkini-kasus-jiwasraya-manipulasi-laporan-keuangan-hingga-rencana-penyelesaian> (Accessed on April 20th 2020 time 9.13)

problem is government through the house of representative have not made the regulation of implementations about that

C. Factors That Cause Similarities and Differences Policyholder Protection Towards Default Insurance Company in Indonesia and United Kingdom

Indonesia and the United Kingdom has several factors that are causing similarities in protecting the insurance policyholder interest, such as:

1. Workforce

: This depends on the insurance industry in the country, both the UK and Indonesia has a large industry of insurance and the scale of insurance policyholder that equally great.²⁰⁰

2. Insolvency process

: In the commercial insolvency process has the same objectives such as Ensure the significant liquidation of non-viable undertakings and companies whose liquidation is likely to deliver a greater return on creditors and the reorganization of viable undertakings. Moreover, the insolvency process also recognizes the rights of the creditor, especially for insured in the insolvency of insurers.²⁰¹

Indonesia and the United Kingdom also has several factors that are causing the differences such as:

²⁰⁰ OECD, Insurance Regulation and Supervision OECD Countries, ASIAN Economies and CEEC And NIS Countries, 1998, pg 9

²⁰¹ The World Bank, Principles for Effective Insolvency and Creditor/Debtor Regimes, world bank Group, Washington,2016, pg 7

1. Model of Authority Supervision on Financial Sector

: Indonesia has a single integrated system that controlling all financial activities since OJK established to overtake the primary role of BAPEPAM-LK ²⁰². United Kingdom has divided a single integrated system from the establishment of FSA into two financial institutions (FCA and PRA) since the crisis happen. ²⁰³

2. Governance on Protection Policyholder

: The United Kingdom, where the country that has specific regulations and specific institutions concerning protection policyholder schemes, conducted good governance management such as good policies and process in managing conflict of interest between insurers. The insured, effective management and internal control functions that is solid. ²⁰⁴

CHAPTER IV CONCLUSION AND RECOMMENDATION

²⁰² Law no 21 of 2011 concerning OJK

²⁰³ <https://www.bankofengland.co.uk/knowledgebank/what-is-the-prudential-regulation-authority-pra> (Accessed on March 13th 2020 time 11.09)

²⁰⁴ IAIS, Issues Paper on Policyholder Protection Schemes, Market Conduct Subcommittee and IAIS members and Observers, Switzerland, 2013, pg 10

A. Conclusion

The United Kingdom and Indonesia in protecting insurance policyholder have many differences and similarities. The similarities located in solvency procedures and insurance business in both countries controlled and supervised by financial institutions. The different is United Kingdom has a special institution to settle default case in the insurance and secure insurance policyholder rights. each other. Moreover, United Kingdom has special regulation called as Financial Service and Market Act (FSMA) that regulated insurance business especially for the implementation of FSCS duty. Moreover, the establishment of the FSCS is a form of protection for insurance policyholder who is experiencing unpaid claims by the insurance company because of financial distress. The implementation of insurance policyholder protection Indonesia can state as threatening because of Jiwasraya and Bumiputera case that cannot pay insurance policyholder claim in due time. It is worsened by the absence of policyholder protection funds that can guarantee insurance policyholder fund that is experiencing unpaid claims.

B. Recommendation

The Indonesian government must take several actions in accordance to protect the insurance policyholder with the establishment of policy guarantee institution as an instruction of law no 40 of 2014 concerning insurance in article 53. Moreover, OJK, as a financial institution, must strengthen the supervision of the financial report of the insurance company in Indonesia. Many insurance companies make a

fraudulent report to deceive OJK. Furthermore, OJK must renew its policy in reporting mechanism to the insurance company. The establishment of LPP must also be prioritized, remembering that Indonesia has a significant market of insurance.

BIBLIOGRAPHY

Books

Lemma W Senbet and Tracy Yu Wang , Corporate Financial Distress and Bankruptcy : A Survey , 2012

Sara Urionabarrenetxea et.al, Negative equity companies in Europe : theory and evidence , VGTU Press , Lithuania , 2016

Dong Shin Seol et.al, Risk Based Capital for Illinois based insurance companies , university of Illinois at Urbana-Champaign,2018

Philip R Wood , Law and Practice of International Finance Principles of International Insolvency : Second Edition, Sweet and Maxwell, London, 2007

DR . Judith P Summer , Insurance law and financial ombudsman service , Informa UK Ltd , United Kingdom, 2010

John Lowry et.al , Insurance Law : Doctrine and Principles Third Edition , Bloomsbury publishing ,UK, 2011

Roy Goode, Principles of Corporate Insolvency Law: Fourth Edition, Sweet and Maxwell, London , 2005

John Birds , Insurance Law in United Kingdom: Fourth Edition, Kluwer Law International BV , Netherland , 2018

Anita Ho, Health Insurance, Springer Science + Business Media Dordrecht, 2015

Cekli Setya Pratiwi et.al , Asas – Asas Umum Pemerintahan Yang Baik, LeIP, Jakarta , 2016

Mulhadi, Dasar-dasar hukum asuransi , PT Raja Grafindo Persada , Depok ,2017

Celina Tri Siwi Kristiyanti , Hukum Perlindungan Konsumen , Sinar Grafika , Jakarta , 2008

H. Zaeni Asyhadie and Budi Sutrisno , Pokok – Pokok Hukum Dagang, Depok , PT RajaGrafindo Persada, 2018

Ridwan Khairandy , Hukum Kontrak Indonesia Dalam Perspektif Perbandingan ,FH UII PRESS , Yogyakarta , 2013

Dr.Sri Rejeki Hartono , Hukum Asuransi dan Perusahaan Asuransi , Sinar Grafika , Jakarta

Cekli Setya Pratiwi et.al , Asas – Asas Umum Pemerintahan Yang Baik, LeIP, Jakarta , 2016

Journal

Fajrin Husain, Perlindungan Hukum Terhadap Pemegang Polis Asuransi Menurut Undang-Undang no 40 tahun 2014 Tentang Perasuransian, Lex Crimen Vol. V/ No.6/ Ags/ 2016

Otoritas Jasa Keuangan , Perasuransian : Seri Literasi Keuangan Perguruan Tinggi , Otoritas Jasa Keuangan dan Industri Jasa Keuangan , Jakarta , 2016

Jazim Hamidi, Makalah External Review atas Penjelasan Hukum AUPB, Jakarta, November 2015

Carol Rapaport, An introduction to Health Insurance: What should A Consumer Know? , Congressional Research Service, 2015

Jonathan Baron & Irana Litov , Intuitions about penalties and compensation in The Context of Tort Law , Journal of Risk & Uncertainty, Kluwer Academic Publishers,1993

Rodney Lester , Consumer Protection Insurance Primer Series on Insurance Issue 7 , The World Bank , 2009

Aaro Hazak & Kadri Mannaso , Indicators of Corporate Default – An EU Basic Empirical Study , Working Paper Series , 2007

Sebastian Schich and Byoung-Hwan Kim, Guarantee Financial For Financial Promises: How widely Should the safety Net be Cast?, OECD Journal Financial Market Trends Volume-2011-issue 1 , 2011

Takahiro Yasui, Insurance and Private Pensions Compendium For emerging Economies, OECD, 2001

Mike Smith, Life Insurance: The Different Types of Policies, Virginia Cooperative Extension publication 354-143, Virginia Polytechnic Institute and State University, 2005

OECD, Policyholder protection schemes: Selected considerations, OECD Working papers on finance, Insurance and private pensions no.31, 2013

Government Commercial Function, Central Government Guidance On Corporate Financial Distress, 2019

Lorraine Conway , Regulation of Insolvency Practitioners (IPs) Briefing paper number 5531, House of Common Library, 2019

Companies house, liquidation and insolvency , GP08 , 2014

Timothy Edmonds, Claims Management Companies Briefing Paper Number 060775 , House of Commons Library , 20158

Muh. Fudhail Rahman, Asuransi Dalam Perspektif Hukum Islam, Al – ADALAH Vol .X, No 1, UIN Syarif Hidayatullah, Jakarta, 2011

Laws

Indonesia Civil Code

Law no 40 of 2014 Insurance law

Law no.21 of 2011 about OJK

Law no.37 of 2004 about Bankruptcy and Suspension Debt of Payment Obligation

POJK Number: 1 / POJK.07/2013 about Consumer Protection in Financial Sector

POJK Number: 28 /POJK.05/2015 concerning Dissolution, Liquidation and Bankruptcy Insurance Companies, Sharia Insurance Company, Reassurance company and Sharia Reassurance Company

Financial Services and Markets Act 2000

Winding up act 2004

PRA rulebook FCA rulebook

Electronic Data & Websites

<https://dictionary.cambridge.org/dictionary/english/damage> (Accessed on November 18th 2019 time 11:27)

<https://www.cermati.com/artikel/unsur-unsur-pada-asuransi-yang-wajib-untuk-diketahui> (Accessed on November 18th 2019 time 11:08)

<https://www.collinsdictionary.com/dictionary/english/regulation> (Accessed on November 11th 2019 time 11:24)

<https://www.cermati.com/artikel/pengertian-polis-asuransi-dan-cara-memilih-polis-yang-tepat> (Accessed on November 18th 2019 time 11:07)

<https://www.statista.com/statistics/283031/total-direct-life-insurance-premium-income-in-the-united-kingdom-uk/> (Accessed October 29th time 12.46)

<https://www.abi.org.uk/data-and-resources/tools-and-resources/regulation/>

(Accessed October 29th 2019 time 13.02) .

<https://www.fscs.org.uk/about-fscs/organisational-information/mission-and-aims/>

(Accessed October 29th 2019 time 13.09)

<https://www.worldometers.info/world-population/uk-population/> (Accessed October 29th 2019 time 12.40).

<https://www.statista.com/statistics/793341/life-insurance-gross-premiums-united-kingdom/>

(Accessed October 29th time 12.43)

<https://www.cnnindonesia.com/ekonomi/20190410163803-78-385018/nasabah-bakrie-life-akan-temui-ojk-ungkit-kasus-gagal-bayar> (Accessed July 18th 2018 time 21.13)

<https://katadata.co.id/telaah/2018/10/23/salah-investasi-jiwasraya-yang-berujung-gagal-bayar>

(Accessed July 18th 2019 time 20.46)

<https://www.cnbcindonesia.com/investment/20181225095113-21-47838/belum-selesai-kasus-ajb-bumiputera-kini-asuransi-jiwasraya> (Accessed July 18th time 20.51)

<https://ekonomi.kompas.com/read/2018/05/24/070000926/upaya-ojk-selamatkan-ajb-bumiputera-1912?page=all> (Accessed July 18th 2018 time 21.05)

<https://www.inews.id/finance/keuangan/ojk-dorong-restrukturisasi-asuransi-jiwasraya/444061> (Accessed July 18th 2018 time 21.08)

<https://www.disitu.com/Artikel/Keuangan/daftar-perusahaan-asuransi-yang-terdaftar-di-ojk> (Accessed July 18th 2018 time 19.00)



Direktorat Perpustakaan Universitas Islam Indonesia
Gedung Moh. Hatta
Jl. Kaliurang Km 14,5 Yogyakarta 55584
T. (0274) 898444 ext.2301
F. (0274) 898444 psw.2091
E. perpustakaan@uii.ac.id
W. library.uui.ac.id

SURAT KETERANGAN HASIL CEK PLAGIASI
Nomor: 1381690292/Perpus./10/Dir.Perpus/VIII/2020

Bismillaahirrahmaanirrahiim

Assalamualaikum Wr. Wb.

Dengan ini, menerangkan Bahwa:

Nama : ALIF WIDHI PRADANA
Nomor Mahasiswa : 15410470
Pembimbing :
Fakultas / Prodi : Fakultas Hukum/ Hukum Program Internasional
Judul Karya Ilmiah : COMPARATIVE STUDY POLICYHOLDER PROTECTION FOR
INSURANCE COMPANIES EXPERIENCING DEFAULT OF
CLAIMS IN INDONESIA AND UNITED KINGDOM

Karya ilmiah yang bersangkutan di atas telah melalui proses cek plagiasi menggunakan **Turnitin** dengan hasil kemiripan (*similarity*) sebesar **11 (Sebelas) %**.

Demikian Surat Keterangan ini dibuat untuk dapat dipergunakan sebagaimana mestinya.

Wassalamualaikum Wr. Wb.

Yogyakarta, 8 September 2020

Direktur



[Handwritten Signature]
Dr. S. Prianto, SIP., M.Hum