

Legal Protection of Mutual Insurance Policyholders in the State of Default

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ABSTRACT

This research is motivated by the researcher's confusion as a party who explores the company's legal issues, especially those concerning insurance companies. In general, the legal entity for each insurance company in Indonesia is a limited liability company or at least a cooperative legal entity. However, this is contrary to the Bumiputra Joint Life Insurance Company 1912, which became a mutual business entity. A mutual insurance company is a company that places the policyholders as well as the owner. The mutual insurance company AJB Bumiputra 1912 is currently experiencing a default, where almost all policyholders in Indonesia are experiencing obstacles to obtaining their rights as the insured party. Policyholders never know that they are all owners of the company. The management of AJB Bumiputra 1912 in the form of a Mutual Legal Entity is unknown in Indonesian legal institutions, even though AJB Bumiputra 1912 was established before Indonesia's independence. This research is normative legal research that examines and analyses in depth the position of the policyholder as the insured and at the same time as the owner of the company in the event of a default, by using a statutory approach, especially those that regulate the existence of AJB Bumiputra 1912 as an insurance company in the form of a mutual business. This can be seen from the failure to follow up on the decision of the Constitutional Court Number 32/PUU-XVIII/2020 dated January 14, 2021, which ordered the government to immediately issue a law on this joint venture (mutual); Legal materials were collected using documentation and recording techniques, then analyzed with interpretation and qualitative techniques, with the output target being the design of the concept of the policyholder's responsibility as the insured and at the same time as the owner of the company in the event of a default.

Keywords: *Legal protection, Joint Business, Policyholder.*

1. INTRODUCTION

Indonesian economy for a long time and has even played a role in the course of the nation's history side by side with other sectors of economic activity. However, in line with the covid-19 pandemic, the world's economic conditions experienced a very sharp degradation, penetrating almost all life sectors, including insurance companies.

The Covid-19 pandemic seems to have created confusion for insurance policyholders and confusion about the sustainability of the premium he has paid, at some point in time, whether he can still guarantee his rights as the insured party at the time of signing the insurance agreement or not. The existence of the covid-19 pandemic has turned out to have crushed the beautiful dream of people's income. Insurance companies that have collaborated with the insured through an insurance agreement are experiencing difficulties fulfilling their

obligations due to the uncertainty of when the pandemic (covid-19) will pass so that the insured has no guarantee that he will get his rights as the insured, moreover for insurance companies that take the form of a mutual business that is unknown in Indonesian legal institutions such as undertaken by ajb bumiputra 1912.

A default phenomenon experienced by policyholders of ajb bumiputra 1912 impacted the loss of the policyholder's rights as the insured party. This was caused by the insurance management of ajb bumiputra 1912, who took cover behind the shield of the joint venture (mutual) adopted by ajb bumiputra 1912, so they did not want to make payments because they considered that the policyholders were also the owner of the company. after all, the company was experiencing liquidity difficulties.

According to the 2014 insurance act, a company that runs an insurance business can be a limited liability

company (pt), a cooperative, and a joint venture (mutual). The *ajb bumiputra 1912* company took the form of a joint venture (mutual), but in practice until now, the law governing mutual business insurance (mutual) does not yet exist. In this case, there has been a vacuum of the norm. The manager of *ajb bumiputra* controls the company's operations based only on the company's articles of statute, not based on the provisions of the law.

Ajb bumiputra policyholders never know about their position in the mutual company, besides being the insured party and the company's owner (the guarantor), which creates legal uncertainty regarding the claim of policyholders' funds are due. However, the company is unable to fulfill it. When at the beginning of signing this insurance agreement, the company *ajb bumiputra* had promised to pay a very tempting claim to policyholders. The policyholders do not understand this form of the joint venture (mutual); their thoughts are only oriented towards limited liability companies and cooperatives. So, previous policyholders still think that *ajb bumiputra 1912* is a limited liability company. So it is no exaggeration to think that the one who must be responsible is the manager, namely the management of *ajb bumiputra 1912*.

2. RESULT AND DISCUSSION

2.1 Position of the Policyholders as the Insured Party

The cancellation of the formation of a law that gives recognition and specifically regulates insurance businesses in the form of a Joint Venture (MUTUAL) as ordered by Constitutional Court Decision Number 32 /PUU-XI/2013 and Constitutional Court Decision Number 32 /PUU-XVIII/ 2020 has created legal uncertainty and unfairness of insurance providers based on a Joint Venture (MUTUAL) where the policyholder is also a party who acts as the owner (Insurer).

Although the insurance company *AJB Bumiputra 1912* was established since 1912, its operation is not based on law but only based on the Statute ratified through the Extraordinary Meeting of the member representative bodies on May 23, 2008. This results in the position of the policyholder being ambiguous. This can be seen in the implementation of the *AJB Bumiputra 1912* Insurance business, which is currently experiencing default and is unable to settle its obligations to the policyholder. The management still thinks that the losses suffered by the company must be borne on a prorated basis as determined in the Articles of Association of the company Article 38 paragraph (4), which determines:

“If the establishment of *AJB Bumiputra 1912* is continued, then the remaining losses are divided on a prorated basis among the members of *AJB Bumiputra 1912*, in the manner determined in the Member of Representative Body session.”

Based on the provisions of Article 38 paragraph (4) of the Company's Statute, it is clear that the policyholder's position is also obliged to be responsible for the company's losses because as a member of *AJB*,

Bumiputra 1912 is also the owner of the company. In the absence of a law that regulates this MUTUAL business, the legal basis for managing the running of this mutual company is the Articles of Statute. In the event of a default, the members of *AJB Bumiputra 1912* are responsible for the company's loss. Thus, it is clear that the absence of this MUTUAL Business Law will have implications for the position of the policyholders as the insured party do not obtain legal certainty of their rights as the insured party in the event of a default experienced by the company. This is what creates injustice.

Based on the provisions of Article 38 paragraph (4) of the Company's Articles of Association, it is clear that the position of the policyholder is also obliged to be responsible for the company's losses because, as a member of *AJB Bumiputra 1912*, he is also the owner of the company. In the absence of a law that regulates this MUTUAL business, the legal basis for managing the running of this mutual company is the Articles of Association. In the event of a default, the members of *AJB Bumiputra 1912* are responsible for the company's loss. Thus, it is clear that the absence of this MUTUAL Business Law will have implications for the policyholder's position as the insured party not obtaining legal certainty of their rights as the insured party in the event of a default experienced by the company. This is what creates injustice.

Meanwhile, on the other side, implementing an insurance business based on companies in the form of Limited Liability Companies (PT) and Cooperatives has obtained legal certainty with the existence of the Law on Limited Liability Companies and the Cooperative Law, which regulates explicitly it. So, in this case, there has been unequal treatment by the state.

Considering that *AJB Bumiputra* is currently in a state of default, this situation will result in the policyholder's position as the party responsible for the company's losses because the mutual company has placed the policyholder as the insured and at the same time as the Insurer. So that in the event of default, all losses will be borne on a prorated basis between the policyholders.

2.2 Position of the Policyholders as the Insurer

Currently, Indonesia does not yet have a regulation regarding a joint venture legal entity (mutual). The only insurance company in the form of a mutual business is only carried out by *AJB Bumiputra 1912*. Although it has been recognized in Act No. 2 of 1992, as well as its substitution Act, namely Act No. 40 of 2014 but in terms of governance, it still faces challenges considering that at this time, no laws and regulations are governing the status of legal entities, including the governance of insurance companies in the form of joint ventures (mutual) as well as insurance businesses in the form of Limited Liability Companies and cooperatives.

Because the operations of the mutual insurance company run by *AJB Bumiputra 1912* have placed the

policyholders as the insured and the Insurer, in the event of a default, the loss will be borne by referring to Article 38 of the Company's Articles of Statute, which determines:

If AJB Bumiputera 1912 suffers a loss, the General reserve fund will first cover the loss.

If it is still not enough, the loss will be covered by a guarantee fund and other equity.

If the guarantee fund also does not cover the loss, then an Extraordinary Session of the Member of Representative Body shall be held under the guidance of Article 40 to decide whether AJB Bumiputra 1912 is liquidated or continued its establishment by maintaining a standard business form or changing the form of another business entity.

If AJB Bumiputera 1912 is continued to be established, then the losses shall be divided on a prorata basis among the members of AJB Bumiputera 1912 in the manner determined in the Member of Representative Body session.(5)

Based on the provisions of article 38 of the Company's Articles of Statute, it is clear that the policyholder cannot avoid the responsibility to bear the company's losses in the event of a default. This is motivated by an initial agreement that his position is also the company's owner, so it is also appropriate to bear the company's losses.

2.3 Accountability of the Directors of AJB Bumiputera 1912 in the event of a default

The resolution of the AJB Bumiputra 1912 problem is getting more and more chaotic, considering that the Joint Business Act (MUTUAL) has not yet been realized, even though there has been a Constitutional Court Decision Number 32 /PUU-XI/2013 and a Constitutional Court Decision Number 32 /PUU-XVIII /2020, which orders the government and the House of Representative to issue a Joint Business Law immediately. However, the government has not followed up on it so that no one can formulate best practices for joint ventures in Indonesia¹. Not by the management of AJB Bumiputra 1912, even though they have been managing this Mutual business since before Indonesia's independence. Moreover, even the policyholders do not understand this form of joint business (MUTUAL). Their thoughts are only oriented to the business of Limited Liability Companies and Cooperatives. So, from the past until now, policyholders still think that AJB Bumiputera 1912 is a Limited Liability Company. So it is no exaggeration to think that the one who must be responsible in the management of AJB Bumiputera 1912, while the management even argues that the policyholders are also the company's owner.

In Article 30 of the Statute, it has been determined that the responsibilities of the Board of Directors are as follows: Each member of the Board of Directors must be in good faith and entirely responsible for carrying out

management duties for the interests and business development of AJB Bumiputera 1912. Each member of the Board of Directors is personally responsible for the loss of AJB Bumiputera 1912 caused by the personal error of the person concerned in taking actions that deviate from the Code of Conduct according to the Statute and the rules that apply at AJB Bumiputera 1912.

Based on the provisions of Article 30 paragraphs (1) and (2), it is clear that the board of directors is responsible for managing the company. In the event of a default, as currently experienced by AJB Bumiputera 1912, is the Board of Directors. Because the Board of Directors is the one who manages the running of the company. The absence of a Mutual Business Act has complicated implications for the managers of Bumiputera 1912. Apart from investigating the cause of the default, whether it was caused by an overmatch or negligence on the Board of Directors. Taking a closer look at the chaos that occurred at AJB Bumiputera 1912, it was seen that many parties intervened outside the company, and the ideas of solutions that were born from the taste of Limited Liability Company were misleading.²

The policyholders are not aware that they are all the company's owners but do not understand their position as the party who must also be responsible for all losses suffered by the company. The policyholders, who are primarily teachers, lecturers, and various company employees who are already entitled to the payment of insurance claims for the premiums that have been paid, have not been able to do so until now because the management is no longer able to fulfill their obligations. To pay claims. The policyholders do not understand what to do and demand whom, all throwing responsibilities at each other. On the one hand, the Manager is waiting for a law to regulate this mutual business. On the other hand, The Financial Services Authority, as the institution authorized to carry out supervision, still seems to move half-heartedly so that the settlement of the liability for the loss of the policyholders cannot be followed up.

Regarding the insurance company AJB Bumiputera 1912 in the form of a joint business entity (mutual). This can be seen from the Articles of Association of AJB Bumiputra 1912 as the basis for its management carried out by its organs consisting of the Member Representative Body, abbreviated as BPA; Directors and Commissioners; from the Articles of Association, it can be seen that the position of Member of Representative Body is very dominant and strong and has the right of authority to control the running of the company. AJB Bumiputera 1912 is the only mutual insurance company in Indonesia. Therefore, this Bumiputera 1912 Joint Life Insurance company does not have access to capital as does an insurance company in the form of a Limited Liability Company.

The current condition in AJB Bumiputera 1912 is that policyholders whose coverage period is due but cannot enjoy their rights as the insured party because AJB Bumiputera 1912 is in a state of default. Noting the

existence of this phenomenon, it is clear that the Manager has committed an unlawful act. The elements of unlawful acts as referred to in Article 1365 of the Civil Code are visible from the cause of the birth of the default condition, where the management of AJB Bumiputera 1912 has played an active role in creating a state of default that causes losses to the company, which has implications for the position of the policyholder as the insured party who suffers a loss in the form of not getting his rights as the insured party for the premium that has been paid by the insurance agreement that has been signed.

Due to the Board of Directors is the Manager of the company, then based on the provisions of Article 1365 of the Civil Code, those responsible for the losses suffered by the policyholders are the Directors because their actions have fulfilled the elements of unlawful acts, namely:

- 1) The existence of an action;
- 2) The act is against the law;
- 3) There is an error on the part of the perpetrator;
- 4) There is a loss for the victim;
- 5) There is a causal relationship between the act and the loss.³

The Board of Directors' responsibility for this default has also been explicitly regulated in the company's Statute. AJB Bumiputera 1912 is on the Board of Directors appointed through the Extraordinary Meeting of the Member of Representative Body. Suppose there is a violation of the Statute by the Board of Directors. In that case, the actions of the Board of Directors according to Indonesian law that adheres to civil law are referred to as *ultra vires*. The injured party cannot sue the company but becomes the personal responsibility of the concerned board of directors.⁴ Due to the management of AJB Bumiputera 1912 being in the hands of the Board of Directors, thus the party responsible is the Board of Directors of AJB Bumiputera 1912 as an organ formed by Member of Representative Body to manage the running of the company in good faith and full of responsibility if you need to be responsible personally to personal property at home.

3. CONCLUSION

The AJB Bumiputera 1912 policyholders in a mutual insurance company legally have a dual position, namely on one side being the Insured party who is entitled to the insured funds, and on the other side is also located as the Insurer (the owner of the company) who is obliged to guarantee the insured fund is paid to policyholders whose contracts have matured. The Board of Directors of AJB Bumiputera 1912 is authorized to run the company's operations by the Statute that has been agreed in the General Meeting of the Member of Representative Body. If the company fails to pay due to an error on the Board of Directors, the Board of Directors has committed an unlawful act. All losses suffered by the company will be borne by the Board of Directors personally in good faith

with full responsibility. If necessary to be responsible for personal property.

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