

# ANNUITANT LEGAL PROTECTION ASSOCIATED WITH ACT NO 40 OF 2014 ABOUT INSURANCE BUSINESS

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## ABSTRACT

*The business of insurance thrives on legal protection to the insured as well as retrieving funds from the public. The annuitants may not be direct beneficiaries of such public funds legally but a protection may be granted to them against any financial loss as guaranteed under Act No 40 of 2014. The purpose of this study was to assess legal protection available for annuitants in different types of insurance plans and the extent to which insurance claims are addressed under the Act No 40 of 2014. A normative juridical methodology was adopted in this qualitative study. Data of this empirical study was collected through documentation search, direct interviews with annuitants and observations. Two insurance companies were sampled for this study viz. Bumiputra Insurance Inc. and Takaful Keluarga Insurance Inc. A comparative content analysis of their policies, plans and claims settlement was made. Findings and results reveal that insurance companies though are regulated by Act No 40 of 2014 but often claims are settled through mediation, arbitration and court of laws.*

**Keywords:** Annuitants, Insurance Business, Legal Protection, Arbitration.

## INTRODUCTION

According to the Indonesian Financial Services Authority (OJK) there are 137 insurance companies comprising general insurance, life insurance, reinsurance and social insurance companies. By 30 September 2017, investment in insurance had reached 505.57 trillion rupiahs a 22.42 per cent more than the last year estimating about 183.45 trillion rupiahs as income of the insurance companies (Sshiddiqie, 2010; Herman, 2010). The OJK has been granted the authority under Article 1 of Indonesian Act No. 21 of 2011 on the Financial Services Authority (Indonesian Act 21/2011) to “*regulate, supervise, inspect and investigate*” insurance matters. However, the business of insurance business is governed under Indonesian Act No. 40 of 2014 (Indonesian Act 40/2014) and is applicable on all insurance companies, shariah insurance companies, reinsurance companies, and shariah reinsurance companies (Sari, 2008; Erwin, 2012).

The definition of an annuitant in insurance jargon is the one who collects the benefits of an annuity or pension, or named in a specialized life insurance contract (Investopedia, 2018). The annuitant becomes eligible for the annuity or pension only when the time duration is complete and a claim is made. In order to determine the annuity, the legal system in Indonesia recognizes both the parties: the insurer and the insured (Lubis & Wajdi, 2012). Filing insurance claims is a problem that is very often found between the annuitant and the insurance company. In most cases, the settlement of annuity takes a very long time after filing a claim. In most cases, the insurance companies do not provide enough information about the safety of the funds

payable to the insurer. The annuitant may be only informed about the rate of return at the time of the maturity of the insurance policy and the administrative costs that would be incurred in the settlement of benefits.

The Insurance is a promising business sector. It not only provides a legal protection to the insured but also ensures safety of funds. Law No. 2 of 1992 on insurance business stipulates that every insurance company, at the time of the commencement of an insurance plan, must provide information related to premiums and annuity for each insurance plans, explain the difference between deposits of money in banks and that in insurance, helping the insured individual to compare the benefits of the two (Khoiril & Asuransi, 2007; Hans, 2009). The Law also mandates the insurance company to provide legal protection to annuitants in all types of conventional as well as Islamic insurance claims. The law also binds the insurance companies to set forth the rights of the annuitant in case of any legal situation, especially the rights associated with the funds invested. The insurance companies must also educate the annuitant about the regulations that protected his or her rights in an insurance agreement. Such a step was take keeping in view that many insurance companies were found involved in fraud and embezzlement of funds (Marbun, 2011; Pati, 2013). The Law No. 2 of 1992 on insurance business however provided a penalty of 15 years in prison, if any insurance company is found involved in premium embezzlement or illegal transfer pledge or mortgages of annuitant's property or insurance claims. There was also a provision to impose criminal sanctions under article 21 of Law No. 2 of 1992, if any insurance company was found to be involved in any counterfeiter of documents (Ismatullah, 2011; Kelsen, 2009). After the promulgation of Act 40 of 2014, there was a greater legal protection to the annuitants. Now under the new law, they can sue the insurance company for compensation and claim fees, damages, and interest, besides their annuity (Yovita & Mangestidan, 2014).

### **Islamic Economy Law**

In addition to the Indonesian Laws, there is also the Islamic Economic Law that postulates and educates people about the economic laws implicit in the Qur'an and the Hadith (Abdul, 2007; Adiwarmarman, 2010; Sunarjo, 2008; Khan & Ahmed, 2008). But the Qur'an and the Hadith expect the Islamic community in Indonesia to create and implement an economic and legal system that is fully compatible to their principles. In terms of insurance, the Islamic Economic law urges the insurance companies to follow the Islamic principles of helping and protecting one another. According to the Islamic Economic Law, all types of Insurance operations must be based on Islamic patterns and ought to be transparent to annuitants. For instance, the fund management should be done by the *Tabarru* system to get the desired results, *Mudaraba* (Junaedi & Ganie, 2011; Sidarta, 2007). Similarly, the *Tabarru* system also teaches people how to set aside the premium every year and to manage their savings (Hariri, 2011).

### **Problem Statement**

The problems discussed in this study relate to a legal protection under Law No. 2 of 1992 which guarantees annuitants to settle insurance claims in conventional as well as Islamic insurance policies. Studies and preliminary surveys (Chairuman & Suhrawardi, 2011; Sari, 2008; Junaedi & Ganie, 2011; Sidarta, 2007) reveal that the annuitant fails to get the service promised by the insurer as well as the complete information about the safety and security of his funds. It is also stated in the law that good governance depends upon providing legal protection to all its

citizens, to ensure that their rights as a citizen are not violated, and if anyone violates them, there will be huge penalties to the violators.

## METHODOLOGY

Due to the nature of study being legal, it adopted a normative juridical approach to analyze the problems under study. Data collection techniques included primary data through observation and personal interviews with participants, and secondary and tertiary data through documentation research. The main focus of the data analytics centered around two insurance company's *viz.* Bumiputra Insurance Inc and Takaful Keluarga Insurance Inc. The qualitative method of research was used to examine the validity and reliability of the data.

An empirical study was carried out using the inductive methods by which a content analysis was done of the data collected from the two sampled companies. The case method enabled a comparative analysis of the insurance instruments of the two sampled insurance companies. The time series data was compared in order to determine the trends in both investments of funds and settlements of claims. The purpose of this empirical study was to investigate the extent to which the insurance sector in Indonesia in general and the two sampled companies in particular followed the legal system and the Islamic economic laws in pursuance of the insurance business.

## FINDINGS AND DISCUSSION

The empirical study carried out in this paper resulted in the following findings:

1. In the case of the first company, Bumiputra Insurance Inc., it was found out that although problems that were related to insurance products or their implementation would be settled amicably, but if consensus could not be achieved to resolve the problem or dispute, the insurer (company) or the annuitant failed to take any legal actions in accordance with the applicable regulations. In some cases, the settlement of disputes took place through a path of mediation or arbitration of the courts. In all such arbitrations, the cost was borne by the party who would opt for such legal arbitration, or the client (annuitant) or the insurance company, as the case may be.
2. In the case of the second sampled company, Takaful Keluarga Insurance Inc., data revealed the legal protection of the insurance rights of the annuitants in the Islamic fashion. The Islamic principles were found to be integrated into the policy provision of Takaful Keluarga Insurance Inc. It was found that the company provided its clients a period of 14 (fourteen) calendar days to understand the contents of the policy prior to its acceptance. If the client was not satisfied with its contents, he can return it along with a cancellation form. The company would refund the investment plus the management fee, premium and any administrative costs that the company might have been charged by the company. In case of any discrepancy or default by the Takaful Keluarga Insurance Inc., the client may first try to settle the dispute through consensus. If such attempts failed, then the dispute could be resolved through arbitration of the competent court, which in this case was the Religious Courts.

### **Discussion on Legal Protection for Annuitants of Bumiputra Insurance Inc. in accordance with Law No. 40 of 2014 on Insurance Business**

The documentation of the sampled insurance company, Bumiputra Insurance Inc., was studied under the light of Law No. 40 of 2014 on Insurance Business. The company had established itself as entrepreneurs in the field of life insurance and therefore was required professionally and ethically to settle the claims of its clients in accordance with the agreements or clauses referenced in the policy. It was found that the company carried out its responsibilities

associated with the investment, and prioritized the investment of the customers' funds into various instruments in order to earn profits and also to manage those funds professionally.

The study also revealed that the company was involved in consumer protection in order to ensure the integrative and comprehensive settlement of disputes if they happen. A few of the arbitration methods adopted by Bumiputra Insurance Inc. include:

1. Priority to be given for amicable settlement of all issues or disputes arising from the annuitants related to the implementation of insurance instruments and services.
2. If the problem or dispute cannot be settled amicably, the insurer or the annuitant can take legal actions in accordance with applicable regulations.
3. An effort of mediation or arbitration may be made prior to the parties choose to move the court. This effort can be submitted to a mediation agency through BMAI Indonesia (Indonesian Insurance Mediation Board) or regulations set by the BMAI.
4. If the admittance of the dispute in the courts of Law is unavoidable, such a district court would be chosen that is closer to the domicile of both the annuitant and the insurer.
5. In the event that legal action is done through arbitration, the insurer or the annuitant may submit the dispute to the problem or arbitration under the rules of BANI (Indonesian National Arbitration Agency) and fully follow the Laws that apply in respect of arbitration.

Hence, the study now judged the sampled companies from the point of view of dispute settlement. Such a Lawsuit by the aggrieved annuitants would be in accordance with the provisions of Act Number 40 of 2014. The Article 54 paragraph (1) of the Act states that the insurance company mediation should be a member institution to perform the settlement of disputes between insurance companies, the Annuitants, the Insured, or any other party entitled to insurance benefits. The outcome of the mediation was independent and impartial and must be approved in writing and submitted to the Financial Services Authority. All such mediation agreements must be final and binding to all the parties (Nasution, 2007). In the event of default from either party, the aggrieved party should perform a notice to the other party and to the general public that the aggrieved party is no longer bound to the mediating agreement and that the other party had no authority to claim any redressal.

Article 73 of Law No. 40 of 2014 imposes heavy penalties on insurance companies if they are in default. Article 53 of Law No. 40 of 2014 grants privileges to annuitants to obtain payment of priority claims. When such a thing happens, it results in increased liability to the Defaulter Company and increase in the rights of the annuitant, who is given assurance of a repayment if the company liquidated. Hence, the law provides legal protection to the annuitants in the implementation of its provisions. Similarly, articles 73 to 82 in Law No. 40 of 2014 on insurance, there is a provision of 15 years' imprisonment in case of premium embezzlement, or illegal transfer or pledge or mortgages of property by the insurance company. Though it was also observed that Law provided maximum protection to annuitants, it turned out that the protection was not granted proportionally.

For instance, if either party violated the provisions set up by the Civil Code, the other party had the right to:

1. Implementation of the agreement.
2. Implementation of the agreement accompanied by replacement costs, damages, and interest.
3. Cancellation of agreement.
4. Cancellation of the agreement accompanied by the replacement costs, damages and interest.

The study thus concludes that annuitants should be treated as customers who have the right to be protected by the insurance company, for whom insurance is an entrepreneurial activity or a business. The evidence indicates that Bumiputra Insurance Inc. showed obligation to accept any complaint filed by the annuitant in accordance with the legal norms of the Act No. 40 of 2014. In most cases, the company attempts to settle disputes through consensus but in case of failure, the case was referred to insurance arbitration body, BMAI or later to the Court of Law.

### **Discussion on Legal Protection for Annuitants of Takaful Keluarga Insurance Inc. in accordance with Law No. 40 of 2014 on Insurance Business**

Like the Bumiputra Insurance Inc, the second sampled insurance company, Takaful Keluarga Insurance Inc., also accepted that in case of irregularities the annuitant or the customer may first try to settle the dispute with the company through consensus. If consensus could not be reached, then the dispute could be resolved through arbitration or through a competent court, preferable a Religious Court, in order to resolve it fairly under the Law.

A major relief to the annuitant is provided under Law No. 8 of 1999 of Consumer Protection. It is the legislation that helps the customers to resolve a dispute fairly before the Law. According to this law, the Takaful Keluarga Insurance Inc. is liable to introduce a system of justice and transparency in order to show its true Islamic nature. For instance, in case of a financial irregularity or discrepancy in the payment of funds, the annuitant can calculate the value of the cash received from the value and from its source. It means the real value of claims could be determined by the potential savings that could have resulted until after the death of the annuitant. In such a case, either the annuitant or his heir would receive the funds from the insurance company (Zainuddin, 2008),

A dispute between the insured (annuitant) or the insurer (company) caused due to its policies or management of premium can be resolved through Arbitration Board Muamalat Indonesia (BAMUI) or the National Islamic Arbitration Board (*BASYARNAS*). The *BASYARNAS* particularly was an embodiment of Article 3 of Law No. 14 of 1970 in conjunction with Article 16 of Law No. 48 of 2009, which further highlights the business principle in the insurance sector (Lubis & Wadji, 2012). In case of failure of the arbitration, to resolve the disputes, it would go to the local District Court. Law No. 3 of 2006 postulates that such disputes could move to higher courts, *viz.* the State Court or the Religious Court and if required to the Supreme Court (Badruzaman, 2005).

### **Responsibilities of insurance companies in the case of violations of the agreement of annuitants Insurance claims**

Insurance claims procedures in general are almost the same with every type of insurance policy conventional or Islamic. However, what distinguishes these companies is the speed and honesty shown by them in the assessment of a claim. The claims procedures are very long namely; (1) first, notice of the claim usually with oral evidence and reinforcement with written reports; (2) second, annuitants submit the proof of claim or completes claim forms designed specifically for each class of business; (3) third, investigation in the form of a survey through the court that would appoint an independent arbitrator, whose report would be the basis of whether the claim is secured by policy or not; (4) fourth, settlement of claims in the form of agreement on the amount of reimbursement in accordance with prevailing regulations which should not be more than 30 days since the agreement.

In the event of default by the annuitant of the agreement, the company's insurance agent issues a notice to the Annuitant and the general public stating that the company was no longer bound to the agreement and that it had no compulsions to pay the claims field by the annuitant. In such cases, the annuitants as well as the company do not cause any harm to each other. However, the chairman of the insurance company, based on his assessment of legal protection enjoyed by annuitants or if he finds that the annuitant was aggrieved, he can give priority to a mutual consultation. Article 53 of the Law No. 40 of 2014 which relates to insurance states that an insurance company shall also act as the institution of mediation and the outcome of such mediation shall be binding and final. Act No. 40 of 2014 also states the obligation of insurance companies which must make the payment of claims in accordance with international treaties and agreements. If any breach of contract, the annuitant can move the court of law under the Article 53 and Article 73-82 of Law No. 40 2014 (Sudirman, 2007).

This kind of obligation may be considered a corporate responsibility of both conventional and Islamic insurance companies. An insurance company is liable to prosecution under the following cases:

1. Running a business without permission.
2. Embezzlement of insurance premiums.
3. Embezzlement in wealth insurance companies.
4. Receiver, buyers, sellers back and wealth evasion.
5. Insurance document forgery.
6. Criminal offenses committed by or on behalf of the legal entity or non-legal entity.

Article 73 to Article 83 of the Law No. 40 2014 provides for criminal lawsuits in the event of default under a contractual agreement. It would be treated a criminal offense committed by the insurance company, if any of these six charges can be imposed on the company. Even if the criminal act is committed by a legal or non-legal entity, Articles 73 to 82 provides that the criminal charges shall be imposed upon the individual who gave the order to commit the crime or acted as leaders in committing a crime or both. A big drawback in the law is that it does not define exactly the protection of annuitants and focuses only on sanctions or responsibility of insurance companies who might commit the crime.

## CONCLUSION

The results of this study have shown that Act No 40 of 2014 has such measures that provides legal protection to the annuitants and put sanctions on the insurance companies. The case studies of two insurance companies, Bumiputera Insurance Inc. and Takaful Keluarga Insurance Inc., also reveal the role of the insurance company as a mediation institution for performing the settlement of disputes between an insurance company and the annuitant. The primary objective is to settle disputes amicably. In case of failure, the parties can take legal recourse through the courts or arbitration. If a company remains in violation of Act No. 40 of 2014, there are provisions of criminal penalties. The study also revealed that Insurance claims procedures in general are good and Islamic however speed and honesty are the differentiating factor for each company in assessing a claim.

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