

## Policyholder protection for insurance companies with default claims: comparative analysis in Indonesia and the UK

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### ABSTRACT

The condition of insurance in Indonesia can be categorized as wildly chaotic because the rights of insurance policyholder cannot be secured by Indonesian insurance company. 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. This study uses a normative legal research through a comparative approach with two different legal systems. The result shows 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 Financial Services Authority (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, claim, policyholder protection funds

### ABSTRAK

Kondisi perasuransian di Indonesia dapat dikategorikan sangat kacau karena hak-hak pemegang polis asuransi tidak dapat dijamin oleh perusahaan asuransi Indonesia. Kasus wanprestasi Jiwasraya dan Bumiputera menjadi bukti nyata ketidakcakapan perusahaan asuransi dalam mengelola bisnis asuransi di Indonesia. Sebagai perbandingan, Inggris mampu mengelola industri asuransi dan mampu melindungi hak-hak pemegang polis asuransi. Penelitian ini bertujuan untuk membandingkan perlindungan pemegang polis asuransi di Indonesia dan Inggris. Penelitian ini menggunakan penelitian hukum normatif melalui pendekatan komparatif dengan dua sistem hukum yang berbeda. Hasil penelitian menunjukkan bahwa Indonesia dan Inggris memiliki persamaan dan perbedaan dalam perlindungan pemegang polis asuransi. Melalui Undang-Undang Nomor 40 Tahun 2014 tentang Perasuransian dan Peraturan Otoritas Jasa Keuangan (OJK), Indonesia telah mengatur pemberian perlindungan kepada pemegang polis asuransi dalam kondisi

perusahaan asuransi gagal membayar klaim asuransi. Mekanismenya adalah dengan menggunakan prosedur Financial Health Planning and Insolvency melalui kepailitan perusahaan asuransi yang diatur dalam UU no 37 tahun 2004. Sedangkan di Inggris, dasar hukum perlindungan pemegang polis asuransi adalah Financial Services and Market Act. FSCS harus mengamankan klaim asuransi ketika perusahaan asuransi memiliki masalah keuangan membayar klaim asuransi kepada pemegang polis.

## I. INTRODUCTION

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 (Giarto & Fachrurrozie, 2020). Revenue of the company that suffering financial distress will also be affected. In overcoming company financial distress, the company can impose two options, such as solvent restructuring options and insolvency options.

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. An insurance company who fails to pay claim are PT Asuransi Jiwa Bakrie, PT Asuransi Jiwa Bumiputera and PT Asuransi JiwaSraya (Husain, 2016; Novita, 2019). Bakrie insurance case happened in 2008 the investment-based life insurance product, Diamond Investa, is estimated to cost up to IDR. 340 billion. However, until the OJK revoked the business license, its outstanding liabilities were still IDR. 260 billion (Ulya, 2020).

Another case is Jiwasraya, postponement of payments made for 711 bancassurance product policies worth 802 billion rupiah. The liquidity pressure that made Jiwasraya fail to pay the bancassurance policy occurred because of an investment error. In September 2019, losses rose to 13.7 trillion rupiah. Then in November 2019, Jiwasraya changed the negative equity of 27.2 trillion rupiah.

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. PT Asuransi Jiwa Bumiputera of 60 trillion rupiah in 12 years, but reality, only 1.7 trillion rupiah, which was fulfilled.

In the United Kingdom, there is a particular institution that has a primary role in protecting policyholders. 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. The latest news FSCS delivered compensation to 14.000 insurance policyholders according to the bankruptcy of Alpha Insurance (The ABI Conduct Regulation team, 2017; Yermo, 2000). FSCS has to pay a claim a customer £ 473 million to 425,760 customers of default firms. Bases on the above description, this study aims to compare the protection of insurance policyholders in Indonesia and the United Kingdom.

## II. METHOD

This research's approach uses a normative juridical approach and comparative approach. A comparative approach is carrying out to see how other countries, especially the United Kingdom, regulate in protecting policyholders in the company with default claims. Methods of data collection in this study used literature study. Library studies are conducted to obtain legal material in form of relevant information or problem that will or is being studied. The information obtained from books, research reports, law journals, regulations, provisions, encyclopaedias, and other written sources. This research used qualitative analysis methods, in which the data obtained was described in the forms of explanation. Then, reviewed based on opinions of experts, relevant legal theories, articles from statute and international legal publication and the argumentation of researcher themselves.

## III. RESULT AND DISCUSSION

### 3.1. Overview of Policyholder Protection Scheme

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." 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 compa-ny insurance and insurance policyholder, which is the basis for the acceptance of the premium by the insur-ance company in return for:

- 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.

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" (Onakoya & Olotu, 2017). 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"

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 (Della Croce & Yermo, 2013; OECD, 2013). There are 4 (four) function or the role of policyholder protection scheme such as:

- 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 (Lensberg et al., 2006; OECD, 2013).

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 (Paendong, 2013). Health insurance, bearing the risk of incurring the medical cost and associated financial costs, is one-way people care for their medical needs in different countries (Saloner & Daniels, 2011). 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 (Rapaport, 2015). 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 (Schich & Kim, 2011). 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.

Compensation may also be justified as an incentive to sue or to complain to victims. FSCS explains compensation as Money loss due to the results of the actions of the companies against the insured claimed (Baron & Ritov, 1993). At the time the action or omission was made, a person concerned is a person who was the target of a claim:

- a. Participant company; or
- b. A designated representative from a participant company.

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
- 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.

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 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 ([Giarto & Fachrurrozie, 2020](#)).

### 3.2. Comparison Protection of Insurance Policyholder Towards Default Insurer in Indonesia and United Kingdom

There are several indicators that can be applied in compare protection of insurance policyholder towards default insurer in Indonesia and United Kingdom such as ([Hukum et al., 2018](#)):

#### 3.2.1. Authority

Indonesia has Financial Services Authority (OJK) as authority body. Meanwhile United Kingdom separated the authority into 2 (two) institutions such as FCA and 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. Meanwhile, PRA has a general aim to promote the safety of soundness of the company it regulates.

#### 3.2.2. Legal Basis of Protection

Indonesia has several regulations and provisions regarding protection of insurance policyholder such as:

- a. Law no 40 of 2014 concerning insurance
- b. Law no 37 of 2004 concerning bankruptcy
- c. POJK No.07/2013 Consumer Protection on Financial Services Sector
- d. POJK Number: 28 /POJK.05/2015 concerning Dissolution, Liquidation and Bankruptcy Insurance Companies, Sharia Insurance Company, Reassurance company and Sharia Reassurance Company
- e. POJK no 71/POJK.05/2016 concerning health financial insurance and reinsurance companies.

As a comparison United Kingdom has also several regulations and provisions which applied for protecting insurance policyholder such as:

- a. Insolvency act 1986
- b. Winding up act 2004
- c. Financial services and markets act 2000
- d. PRA rules handbook
- e. FCA rules handbook

#### 3.2.3. Form of Protection

Indonesia and United Kingdom actually has many of similarities on the protection of policyholder such as Alternative Dispute Resolution, Distribution assets of liquidation, Financial Healthy Planning and Continuing policy insurance cover. Alternative Dispute Resolution provide by Financial Services Authority (OJK) with files a petition first after that the complaints can be proceed by Financial Service Authority (OJK). Moreover, protection of insurance policyholder funds can be process with Financial Healthy Planning (RPK) with restoring the solvability risk until 100 %. 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;
- e. Transfer of part or all of the insurance portfolio;
- f. Merger of business entities; or
- g. Other actions.

Furthermore, insurance policyholder can receive distribution of liquidation assets in the bankruptcy of insurers. In the condition of insurer stated as insolvent then insured party can receive the property through judge decision regarding bankruptcy. Financial Service Authority will offer to the insurance policyholder to continue their insurance policy contracts to new insurance company. United Kingdom provided Alternative Dispute Resolution (ADR) through a non-Court process for addressing disputes that could not be resolved by customers and financial services providers themselves. Financial Ombudsman Service (FOS) approved has competent authority as ADR entity Financial Conduct Authority (FCA) in 2015. Before liquidation process, insurance company will be restructuring to protect the company from insolvency with administration that conducted by administrator mechanism such as a turnaround plan, improving liquidity, debt for equity swap, and selling assets. When, administration finished liquidation process will starting. Liquidation process running by insolvency practitioners. Insolvency Practitioners has an authority to act as liquidator, provisional liquidator, administrator, administrative receiver, nominee or supervisor of a voluntary agreement, and trustee of partnership. Moreover, there are effective way to protect insurance funds with continuing insurance contract to the successor (new insurance company) that have a capability to receive a previous contract from default insurers. The appointment directly selected by FSCS. The difference is United Kingdom established policyholder protection schemes to protect policyholder. In United Kingdom, Financial Service Compensation Scheme (FSCS) conducted as special institution that will protect insurance policyholder funds.

#### **3.2.4. Reporting Mechanism**

Indonesia and United Kingdom has several differences on the reporting mechanism. Indonesia claimant must report to the insurer about the objection and insurance company must proceed the problems on twenty working days. Insurance company also must publish the status of the report. Meanwhile, United Kingdom 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.

#### **3.2.5. Procedures of Policyholder Compensation Payment**

Procedures of policyholder compensation payment in Indonesia described as follows, 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). 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. In other hands, United Kingdom has procedures of policyholder compensation payment such as Claimants will make a claim directly to the insurance company. The claimants must check the register number of insurance company through FCA/PRA. Moreover, claimants must verify whether the insurance company still trading or stopped trading. 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 assets, improving liquidity and debt for equity swap. 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.

### **3.2.6. *Priority of Debts***

Based on priority of debts Indonesia law arrange payment of debts toward creditor such as:

- a. Preferred creditor
- b. Separatist creditor
- c. Concurrent creditor

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 company on law no 24 mentioned that rights of insurance policyholder are preferred than others creditor.

In the United Kingdom Winding up act regulated the provision of debt priority such as:

- a. Preferential debts
- b. Insurance debts
- c. Other debts.

### **3.2.7. *Compensation Limit***

Indonesia did not regulate compensation limit on payment. In the condition of the assets is not sufficient all of assets will be divided proportionally (*pari passu pro rata*). In other hands, United Kingdom through FSCS regulated formulation regarding compensation payment with total maximum compensation 100% for types of insurance such as:



- a. Compulsory insurance
- b. Long term insurance
- c. Professional indemnity insurance
- d. Claim arising from the death or incapacity of the policyholder due to injury, sickness or infirmity

Moreover, FSCS will only compensate 90% for types of insurance such as:

- a. Pet
- b. Travel
- c. Home
- d. Dental
- e. Motor first party
- f. Warranty
- g. Public liability
- h. Property

Based on winding up act the distribution of assets will be divided equally in condition of the company assets is not enough.

### **3.2.8. Business Actor**

Based on regulations and provisions in Indonesia the business actor called as creditor and United Kingdom called the business actor as eligible claimant.

### **3.2.9. 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 premium reserve which is not yet an income. Meanwhile, in United Kingdom 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 base for relevant net income is 75% and tariffs base for eligible liabilities is 25%. (B1 and C1 class).

### **3.2.10. Appeals of Policyholder**

Cassation and Judicial review in accordance to legal remedies against a decision on the request for a bankrupt statement. In the United Kingdom appeals system provided by FSCS as a special institution with Post Decision Query, Post Decision Review, Escalated Post Decision Review, and Judicial Review.

**Table 1.** 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)

Indicator	Indonesia	United Kingdom
<b>Insurance Policyholder Protection Legal basis</b>	<ol style="list-style-type: none"> <li>1. Law no 40 of 2014 concerning insurance</li> <li>2. Law no 37 of 2004 concerning bankruptcy</li> <li>3. POJK No.07/2013 Consumer Protection on Financial Services Sector</li> <li>4. POJK Number: 28 /POJK.05/2015 concerning Dissolution, Liquidation and Bankruptcy Insurance Companies, Sharia Insurance Company, Reassurance company and Sharia Reassurance Company</li> <li>5. POJK no 71/POJK.05/2016 concerning health financial insurance and reinsurance companies</li> </ol>	<ol style="list-style-type: none"> <li>1. Insolvency act 1986</li> <li>2. winding up act 2004</li> <li>3. Financial services and markets act 2000</li> <li>4. PRA rules handbook</li> <li>5. FCA rules handbook</li> </ol>
<b>Form of protection</b>	<ol style="list-style-type: none"> <li>1. Alternative Dispute Resolution</li> <li>2. Distribution assets of liquidation</li> <li>3. Financial Healthy Planning (RPK)</li> <li>4. Continuing policy insurance cover</li> </ol>	<ol style="list-style-type: none"> <li>1. Alternative Dispute Resolution</li> <li>2. Distribution assets of liquidation</li> <li>3. Continuing policy insurance cover</li> <li>4. Financial Service Compensation Scheme</li> </ol>
<b>Reporting Mechanism</b>	<p>Claimant must report to the insurer about the objection and insurance company must proceed the problems on twenty (20) working days. 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>
<b>Procedures of Policyholder Compensation Payment</b>	<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). 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>Claimants will make a claim directly to the insurance company. The claimants must check the register number of insurance company through FCA / PRA. Moreover, claimants must verify whether the insurance company still trading or stopped trading. 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 assets, improving liquidity and debt for equity swap. Furthermore, when insurance company cannot overcome the</p>

Indicator	Indonesia	United Kingdom
		<p>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><b>Priority of debts / ranking of creditor</b></p>	<p>Based on priority of debts Indonesian law arrange payment of debts towards creditor such as:</p> <ol style="list-style-type: none"> <li>1. Preferred creditor</li> <li>2. Separatist creditor</li> <li>3. Concurrent creditor.</li> </ol> <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 company on law no 24 mentioned that rights of insurance policyholder are preferred than others creditor.</p>	<p>Winding up act regulated the provision of debt priority such as:</p> <ol style="list-style-type: none"> <li>1. Preferential debts</li> <li>2. Insurance debts</li> <li>3. Other debts</li> </ol>
<p><b>Compensation limit</b></p>	<p>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>	<p>A. 100% protected:</p> <ol style="list-style-type: none"> <li>1. Compulsory insurance</li> <li>2. Long term insurance</li> <li>3. Professional indemnity insurance</li> <li>4. Claim arising from the death or incapacity of the policyholder due to injury, sickness or infirmity</li> </ol> <p>B. 90% protected:</p> <ol style="list-style-type: none"> <li>1. Pet</li> <li>2. Travel</li> <li>3. Home</li> <li>4. Dental</li> <li>5. Motor first party</li> <li>6. Warranty</li> <li>7. Public liability</li> <li>8. Property</li> </ol> <p>Based on winding up act the distribution of assets will be divided equally in condition of the company assets is not enough.</p>
<p><b>Claimants</b></p>	<p>Creditor</p>	<p>Eligible claimant</p>
<p><b>Coverage</b></p>	<p>General Insurance, Life insurance and Reassurance</p>	<p>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).</p>
<p><b>Time limit</b></p>	<p>For suspension of payment in bankruptcy act is 270 days and the trial process is 180 days.</p>	<p>Investigation will be processed in 8 months depending on the complexity and the distribution of</p>

Indicator	Indonesia	United Kingdom
		payment will be conduct on 5 days since the IP make a command letter.
<b>Business actor</b>	Creditor	Relevant person
<b>Funding Policyholder</b>	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 premium reserve which is not yet an income	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. Tariff's base for relevant net income is 75% and tariffs base for eligible liabilities is 25%. (B1 and C1 class)
<b>Appeals of Policyholder</b>	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"> <li>1. Post Decision Query</li> <li>2. Post Decision Review</li> <li>3. Escalated Post Decision Review</li> <li>4. Judicial Review</li> </ol>

### 3.3. 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%. 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 Law Number 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. 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. Furthermore, regulation on the insurance company in Indonesia law no 40 of 2014 has been providing policyholder protection funds in article 53. The problem is government through the house of representative have not made the regulation of implementations about that.

### 3.4. 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:

- a. 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.
- b. 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.

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

- a. 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. United Kingdom has divided a single integrated system from the establishment of FSA into two financial institutions (FCA and PRA) since the crisis happen.
- b. 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.

#### **IV. CONCLUSION**

Protection of insurance policyholder in Indonesia and United Kingdom has several similarities and differences. There are few indicators that can be used to analyze protection insurance policyholder in Indonesia and United Kingdom such as authority, legal basis, form of protection, reporting mechanism, procedures, ranking of creditor, compensation limit, claimant, coverage, time limit, business actor, funding and appeals. The main differences protection of insurance policyholder between Indonesia and United Kingdom are form of protection and time limit. United Kingdom made Financial Service Compensation Scheme (FSCS) as financial institution for helping insurance policyholder that experiencing late payment of insurance claim. FSCS will proceed the compensation fund when the insurer default. FSCS will distribute compensation fund on 5 working days after the investigation with insolvency practitioners done. Different with Indonesia that has no financial institution that will cover up insured loss when default happen. Time limit in settlement of bankruptcy need 180 days for trial and 270 days for suspension of payment (PKPU). The implementation protection of insurance policyholder in Indonesia is not effective because there is no legal certainty for insured because financial institution protection fund is not made yet. House of representatives not yet making the implementation regulation as provided on article 53 of law no 40 of 2014 concerning insurance. The condition protection of policyholder in Indonesia are contrast with United Kingdom that already make FSCS as financial institution that effectively protect insurance

policyholder from financial loss and successfully distributed compensation funds to the insurance policyholder.

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