

## The Nature of Mutual Insurance and Legal Protection for Policyholders: A Lesson from Indonesia

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### ABSTRACT

**Keywords:**

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Legal Protection*

*Mutual insurance will only have a law that specifically regulates it in 2023. The regulation in question is through omnibuslaw Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector. In fact, the only mutual insurance company in Indonesia (AJB Bumiputera 1912) is more than 100 years old. So it is natural that the issue of defaults that harm legal protection for policyholders cannot be resolved optimally. Although realised, the concept of mutualism in the insurance company really illustrates high idealism. Both in terms of mutuality, solidarity, help, economic democracy, and cooperation for the welfare of its members. The members in this case are the policyholders, who are also the owners of the company. This research employs a normative research method, which is a legal research that focuses on the prevailing legal norms. Through statute approach, conceptual approach, and comparative approach, this article affirms that the nature of mutual legal entity, no matter how good it is, if it is unable to provide legal protection for policyholders then it can only be read as a mere "theory", not realised in reality. A paradox that provides valuable lessons, especially in the governance of insurance companies in Indonesia. There are two types of legal protection for policyholders, namely preventive and repressive legal protection, which are realized through laws and regulations, contracts, and court rulings through bankruptcy petitions filed by creditors or the Financial Services Authority (OJK).*

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### 1. INTRODUCTION

Historically, the beginning of life insurance can be found in the sixteenth century. However, until the mid-eighteenth century, life insurance agreements were issued by individual underwriters who used the same *modus operandi* as property insurance underwriters. The underwriter referred to here is the insurer. The main obstacle facing life insurance at that time was the lack of appropriate information for underwriters to estimate the amount of loss. Usually, policies are issued within a certain period of time, where the underwriter must be able to surmise the possibility of death within that period. Thus, the premium as the cost of insurance protection is set inappropriately. If not said to be arbitrary. This problem is then tried to be overcome by collecting statistics. Statistical information is a collection of information containing data on births, deaths and census

figures used to calculate the average life expectancy of humans. It is also used to compile mortality tables. Perhaps the old-fashioned statistical model is not perfect enough today. But in reality, the statistical information obtained can help the underwriter to set a more definite time for the life expectancy of the insured.<sup>1</sup>

In Indonesia itself, insurance is actually known since the Dutch colonial period. Dutch companies needed insurance in order to ensure the continuity of their business, especially businesses in the plantation and trade sectors.<sup>2</sup> Although it experienced a vacuum during the Japanese colonial period, the development of insurance in Indonesia has been growing from time to time. The legal form of insurance business organisers in Indonesia, as stated in Article 6 paragraph (1) of Law Number 40 of 2014 concerning Insurance (Law No.40/2014) consists of three forms, namely:

1. Limited Liability Company;
2. Cooperative; or
3. A joint venture that already exists at the time this Law is enacted

Regarding the legal form of Joint Venture, in the last five years we have been faced with a case involving the oldest life insurance company in Indonesia, Asuransi Jiwa Bersama (AJB) Bumiputera 1912. This case even became the highlight of the World Bank because it was considered to have shaken the insurance world in Indonesia. AJB Bumiputera 1912 experienced insolvency of more than Rp20,000,000,000,000.00 (twenty trillion rupiah). The cause was mismanagement. This began to be detected since January 2018, where AJB Bumiputera 1912 recognised delays in claims within 1-2 months. The delay was triggered by the absence of premiums that should have been generated by AJB Bumiputera 1912. The causal factor is due to the transfer of production to Bhinneka Life. Bhinneka Life's name stuck out because of the failure of the agreement between AJB Bumiputera 1912 and Evergreen Invesco Tbk. At the beginning of the agreement, Evergreen Invesco Tbk promised a net profit of 40% (forty percent) of AJB Bumiputera 1912's premium acquisition plan of Rp16,000,000,000,000.00 (sixteen trillion rupiah) within a period of 12 years. But what could be fulfilled was only Rp1,700,000,000,000.00 (one point seven trillion rupiah).<sup>3</sup>

Responding to the crisis that began to hit AJB Bumiputera 1912, in March 2018 the Financial Services Authority (OJK) released regulations related to financial health for life insurance in the form of a joint venture. The regulation in question is Financial Services Authority Regulation Number 1/POJK.05/2018 (POJK No.1/POJK.05/2018) concerning Financial Health for Insurance Companies in the Form of Joint Venture Legal

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<sup>1</sup> Gene A. Morton, *Dasar-Dasar Asuransi Jiwa Dan Asuransi Kesehatan*, (Jakarta: Penerbit Yayasan Dharma Bumiputera, 1995).

<sup>2</sup> Arus Akbar Silondae and Wirawan B. Ilyas, *Pokok-Pokok Hukum Bisnis* (Jakarta: Salemba Empat, 2011).

<sup>3</sup> *Gagal Bayar Jiwasraya & Bumiputera* (CNBC Indonesia, 2019), [https://www.youtube.com/watch?v=nHC\\_quJvqfc](https://www.youtube.com/watch?v=nHC_quJvqfc).

Entities. After the POJK, we then learned about the restructuring efforts within AJB Bumiputera 1912. Not long ago, AJB Bumiputera reopened its operations to the public, with a guarantee from OJK that AJB Bumiputera had paid claims to investors amounting to Rp436,000,000,000.00 (four hundred thirty-six billion rupiah) during the restructuring period. To customers, AJB Bumiputera also stated that it had paid claims amounting to Rp3,300,000,000,000.00 (three trillion three hundred billion rupiah) in the period January 2018 to October 2018.<sup>4</sup>

The total liabilities that must be fulfilled by AJB Bumiputera in the 2019 financial statements reached Rp30,400,000,000,000.00 (thirty trillion four hundred billion rupiah). The amount consists of premium reserves of Rp24,400,000,000,000.00 (twenty-four trillion four hundred billion rupiah) and claims payable of Rp5,200,000,000,000 (five trillion two hundred billion rupiah). However, these large liabilities were not matched by good asset management. The value of assets fell to Rp10,000,000,000,000.00 (ten trillion rupiah) and capital was minus Rp20,400,000,000,000.00 (twenty trillion four hundred billion rupiah).<sup>5</sup> Another thing that needs mutual attention so that this case immediately finds a way out is the interests of customers. Out of AJB Bumiputera's 3 million customers, there are 2.2 million individual policyholders. The majority of these individual customers are small customers with coverage values below Rp 20 million. Moreover, in the observation of Irvan Rahardjo, a national insurance observer, the majority of AJB Bumiputera policyholders are those who work as state servants such as teachers, lecturers, and civil servants. In addition, there are also customers who work as farmers and fishermen. This is illustrated by the figure of the member representative body.<sup>6</sup>

The revamping of AJB Bumiputera 1912 itself is said to be hampered by three main things. The three things in question are the existence of incestuous practices, poor governance, and frequent changes in directors. In practice, within AJB Bumiputera 1912, both authorisation and execution functions are carried out by the same organ, the Member Representative Body (BPA). This is what also triggered Cholil Hasan's resignation as managing director (2012-2013) due to the perceived ineffectiveness of checks and balances between the three organs of the company.<sup>7</sup> Admittedly, it is not easy to manage a company. Some fraud that may be committed by the management so that it indicates a misuse of the governance system or corporate governance, can cause irregularities in the company's performance. It can also harm many parties, including shareholders, creditors, employees and other related parties.<sup>8</sup>

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<sup>4</sup> *Gagal Bayar Jiwasraya & Bumiputera.*

<sup>5</sup> Primus Dorimulu, "Nasabah Kecil Jadi Korban AJB Bumiputera," *beritasatu.com*, accessed February 7, 2024, <https://www.beritasatu.com/ekonomi/691591/nasabah-kecil-jadi-korban-ajb-bumiputera>.

<sup>6</sup> Dorimulu.

<sup>7</sup> Thomas Ekafitrianus Harefa, "AJB Bumiputera 1912 Salah Urus?," *beritasatu.com*, accessed February 7, 2024, <https://www.beritasatu.com/ekonomi/693175/ajb-bumiputera-1912-salah-urus>.

<sup>8</sup> Harefa.

Such conditions also led to the collapse of the world economy in 1998. This led to the need to improve and reform the corporate governance system at the global level. The note that can be taken from this is the importance of implementing Good Corporate Governance (GCG). Although in Indonesia itself, the implementation of GCG is more driven by regulations and sanctions. The regulations in question include Ministerial Decree Number KEP-117/M-MBU/2002 dated 31 July 2002 on the Implementation of GCG Practices, Presidential Instruction Number 5 of 2004 and Bank Indonesia Regulation Number 11/25/PBI/2009 on the implementation of Risk for Commercial Banks. Other regulations that also support the company to implement GCG are Ministerial Decree No. 168/2010 on the Examination of Insurance Companies.<sup>9</sup> GCG is one of the keys to the company's success in its future growth, as well as a factor that can win the company in facing global business competition.<sup>10</sup> What are the GCG principles in question? None other than the principles of openness, accountability, responsibility, independence, and fairness.<sup>11</sup>

History also records that the economic crisis in the Asian and Latin American regions is believed to have arisen due to the failure of companies in the region to implement GCG. The company or corporation in this case plays an important role. What must be understood is that global competition is actually not a competition between countries, but a competition between corporations in that country. The good or bad condition of a country's economy depends on each corporation. When in 1999 countries in the East Asian region began to recover from their crisis, Indonesia had yet to show a similar condition. This fact opens our minds that it could be because our corporates have not been managed properly. Booz-Allen's survey in East Asia (1998) gave us some discouraging news. Indonesia is known to have the lowest corporate governance index with a score of 2.88. This score is far below Singapore (8.93), Malaysia (7.72) and Thailand (4.89).<sup>12</sup>

Regarding the AJB Bumiputera case, the interesting thing that has become a common concern at this time is the form of legal entity that is mutual or the law calls it a Joint Venture. Before 2023, the only regulation that specifically regulates Joint Ventures, but has been declared conditionally unconstitutional by the Constitutional Court in its Decision Number 32/PUU-XVIII/2020 is Government Regulation Number 87 of 2019 concerning Insurance Companies in the Form of Joint Ventures (PP No.87/2019). In Article 1 point 1 of PP No.87/2019, it is affirmed that an Insurance Company in the Form

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<sup>9</sup> Harefa.

<sup>10</sup> Thomas S. Kaihatu, "Good Corporate Governance dan Penerapannya di Indonesia," *Jurnal Manajemen Dan Kewirausahaan* 8, no. 1 (October 12, 2006): 1–9, <https://doi.org/10.9744/jmk.8.1.pp>.

<sup>11</sup> Menteri Keuangan, "Peraturan Menteri Keuangan Nomor 152/PMK.010/2012 Tahun 2012 Tentang Tata Kelola Perusahaan Yang Baik Bagi Perusahaan Perasuransian," Pub. L. No. BN.2012/No.980 (2012), <http://peraturan.bpk.go.id/Details/164330/pmk-no-152pmk0102012>.

<sup>12</sup> Keuangan.

of a Joint Venture, hereinafter referred to as a Joint Venture, is a legal entity that organises insurance business and is owned by Members, which has existed at the time Law Number 40 of 2014 concerning Insurance was enacted. In this case we underline that AJB Bumiputera 1912 is currently the only insurance company in Indonesia in the form of a Joint Venture. One of the characteristics of an insurance company in the form of a joint venture is that in running its business, the Joint Venture is owned by members. In other words, policyholders who are members of a joint venture are also the owners of the Joint Venture itself.

AJB Bumiputera 1912 dedicates itself as an insurance company that helps Indonesians realise their dreams through product and financial services. AJB Bumiputera 1912 is a leading insurance company in Indonesia, which has evolved to keep up with the changing needs of society. The company has pioneered the life insurance industry in Indonesia which to this day remains the largest national life insurance company in Indonesia.<sup>13</sup> AJB Bumiputera 1912 is a mutual insurance company, owned by Indonesian policyholders, operated for the benefit of Indonesian policyholders, and built on three pillars. The pillars are "mutualism", "idealism" and "professionalism".

#### 1. Idealism

AJB Bumiputera 1912 was not established solely for profit, but as a financial tool born from a commitment to improve the welfare of the Indonesian people through the life insurance business.

#### 2. Mutualism

As the basis of the Company's management, the social value of Mutualism is manifested through cooperation, partnership, and synergy between policyholders and fellow policyholders, between the Company and policyholders, between employees and fellow employees in the company, and between employees and management in the company.

#### 3. Profesionalism

The excellence and competence of human resources, developed through education and training from time to time, makes the Company have human resources that can maintain survival, organisational development and business growth.<sup>14</sup>

If the three pillars above become the essence of mutual insurance version of AJB Bumiputera 1912, what is the true nature of mutual insurance in the world? Why is the ideal concept of mutual insurance not enough to provide legal protection to its policyholders?

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<sup>13</sup> AJB Bumiputera, "Profil AJB Bumiputera 1912," 2023, [http://ajb.bumiputera.com/pages/default/our\\_company/company\\_profile/0](http://ajb.bumiputera.com/pages/default/our_company/company_profile/0).

<sup>14</sup> Bumiputera.

## **2. RESEARCH METHOD**

To answer these problems, legal research methods are used as an activity of know-how and not just know about. As said by Morris L. Cohen, that legal research is a process of finding laws that exist in society. This research employs a normative research method, which is legal research that focuses on the prevailing legal norms. This research will examine the legal rules, legal principles, and legal doctrines that govern the unit-linked insurance and legal protection for policyholders in Indonesia. The problem approaches used are statute approach, conceptual approach and comparative approach. For the statute approach, the author uses primary legal materials, including Law No.40/2014 and the 1945 Constitution. For the conceptual approach, the author provides affirmation related to the form of mutual legal entity in insurance companies. For the comparative approach, the author compares several examples of mutual insurance companies in several countries, namely in Europe, America, Africa, and Indonesia. Then the analysis of legal materials is carried out inductively. So that the essence of mutual insurance is found. Then the nature is contrasted with how legal protection should be given to AJB Bumiputera 1912 policyholders.

## **3. RESULTS AND DISCUSSION**

In this article, the discussion will begin with an example of some mutual insurance companies in the world, as a form of comparative approach. Let's take The Great Fire of London. The company, which was established in 1666, became a milestone in the practice of mutual insurance in Europe. More precisely in England. The condition of most people was very poor at that time. The great fire that hit the city of London, has brought them to unusual financial difficulties. Therefore, in order to ease the burden, they worked together (joint venture). There was no concept of profit-making here. It was simply to reduce each other's losses.<sup>15</sup>

Some of the mutual insurance companies in Europe are Standard Life, International Association of Mutual Insurance Companies (AISAM), European Alliance Partners Company (EURAPCO), Reale Mutua (RM), Groupama, and Liberty. Standard Life was founded in 1825 as a company that initially specialised in long-term savings and investments. In 1925, Standard Life focussed on mutual life insurance. However, the specialisation in mutual life insurance did not last long. The company demutualised in 2006, after previously operating in several countries. The countries in question were Canada, India, Shanghai and Uruguay. The company also had to face accusations of discrediting Michael Hogan (as a policyholder). Hogan was known to be dissatisfied with the company's governance. This dissatisfaction was expressed in an email, to which the management responded by defaming him. In the same year, Standard Life finally floated

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<sup>15</sup> Irvan Rahardjo, "Robohnya Asuransi Kami, Senjakala AJB Bumiputera 1912-Jalan Terjal Menjaga Warisan Bangsa" (IPB Press, 2020).

on the London Stock Exchange. Another fact that was also revealed behind the demutualisation of Standard Life was when the company gave fantastic severance pay to its top 3 executives, which was worth £5 million. As a result, the company did not have sufficient funds to pay employees. So it plans to reduce employees by 1000 people.<sup>16</sup>

Apart from Standard Life, there is an association of mutual insurance companies in Europe. Call it AISAM or the International Association of Mutual Insurance Companies. Its members reach 130 mutual insurance companies. Both life insurance, general insurance, and national mutual associations in 21 countries. Recorded in 2005, AISAM members represented around 8 per cent of the world insurance market. Mutuals in Europe are not only engaged in life insurance, but also general insurance. Of the 7,180 insurance companies in Europe (in 2004), 70 per cent were mutuals and co-operatives. However, with this composition, the contribution of mutual insurance is still lower than the contribution of insurance in the form of limited liability companies (around 27 per cent).<sup>17</sup>

Another insurance company collaboration in Europe is EURAPCO (European Alliance Partners Company). This company is an alliance of 7 mutual insurance companies. Some of them are Caser (ES), Covea (FR), Eureko (NL), Gothaer (DE), and Tapioka (FR). Eurapco operates in 19 countries within the European Union. Eurapco dedicates itself as a company that is able to adapt to changing times. Where the company will continue to exist if it is able to learn from other companies, both in knowledge and experience.<sup>18</sup>

In Italy, there is a very large mutual insurance company called Reale Mutua (RM). Founded in 1828, RM has more than 1200 employees, 350 agents and 3 million policyholders. In Spain, RM was born in 1988. Its rapid movement made RM succeed in taking over a number of companies engaged in insurance. One of them is Reale Segorus (RS), where RM owns 100 per cent of its shares. Currently, RS is one of the ten major insurance companies in Spain engaged in vehicle insurance and various risks. Through RS, RM took over 50 per cent of UNNIM PROTECCIO and CAISEGUROSGENERALES. The latter two institutions belong to a savings bank (of the same name). RM has also signed a co-operation for the marketing of insurance products through banking distribution channels.<sup>19</sup>

In Spain, mutual insurance companies can be exemplified by Mutua Madrilená. Mutua is a member of the international mutual association AMICE. Mutua is exploring marketing distribution co-operation with banks. If the cooperation is realised, Mutua could take its place as the second largest mutual insurance company in Spain. There are

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<sup>16</sup> Rahardjo.

<sup>17</sup> Rahardjo.

<sup>18</sup> Rahardjo.

<sup>19</sup> Rahardjo.

values of seriousness, resilience and experience, which underpin the pace of this mutual insurance company. It is respected by policyholders, partners and employees alike.<sup>20</sup>

In America, the form of mutual insurance companies (joint ventures) is apparently not a new form in the world of insurance. Take the Chicago Metropolitan Mutual Assurance Company, which was founded in 1925 under the name Metropolitan Funeral System Association. This company specifically provides services to black workers in the United States.<sup>21</sup> Previously, in 1752, the Philadelphia Contributionship for Insurance of Houses from Loss by Fire was established as the first mutual and general insurance company in America. At that time, houses made of wood were built close together. The reason was for safety. But then housing developers built as many houses as possible for commercial purposes. A few years later, Benjamin Franklin also initiated the establishment of the first life insurance company, The Presbyterian Minister's Fund.<sup>22</sup>

Another mutual insurance company in America is the American Mutual Life Insurance Company, established in 1908. In 1897, the mutual company was known as the Yeoman American Fraternal Company. In 1932, the name was changed, removing the fraternal side of the organisation. The name change referred to was Yeoman Mutual Life Insurance Company. The latter name was later changed again. It was the American Mutual Life Insurance Company. It came into existence at the hands of W.J. Stewart who was inspired by Walter Scott's novel *Ivanhoe*. In 1994, the company finally chose to merge with American Central Life.<sup>23</sup> Another insurance company in America, which was originally a limited liability company but later turned into a mutual, is Met Life Inc. The beginning of its establishment was recorded in 1868. Became a mutual insurance company in 1915. Met Life is a typical giant world insurance company that has 90 million customers in more than 60 countries in the world. Met Life is engaged in the life insurance business. When it turned into a mutual company, Met Life no longer operates with shareholders' capital, but by and for policyholders. In addition to the United States, the company has several countries as markets. These include Japan, Latin America, Europe, Asia Pacific, and the Middle East.<sup>24</sup>

Met Life was originally established to insure soldiers and sailors who fought in the civil war in 1863. These soldiers and sailors were insured for accidents, injuries and illnesses. It wasn't all smooth sailing in the early days. Economic trials forged Met Life. This was felt when the economic depression was so severe in 1870 that it brought the company to its weakest point. However, the company with its president Joseph F. Knapp

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<sup>20</sup> Rahardjo.

<sup>21</sup> Robert E. Weems, "The Chicago Metropolitan Mutual Assurance Company: A Profile of a Black-Owned Enterprise," *Illinois Historical Journal* 86, no. 1 (1993): 15–26.

<sup>22</sup> Rahardjo, "Robohnya Asuransi Kami, Senjakala AJB Bumiputera 1912-Jalan Terjal Menjaga Warisan Bangsa."

<sup>23</sup> Rahardjo.

<sup>24</sup> Rahardjo.



tried to survive. Starting from trying to shrink the company to having to learn from the insurance industry in England in 1879. Met Life was also engaged in labour insurance where Met Life had to collect premiums from factory workers weekly or monthly to their homes. Until then Met Life became the largest life insurance company in America, with premium income of more than 1 million dollars in 1880. The Met Life building also became the world's tallest skyscraper in 1909. History changed. In 1998, Met Life was demutualised. In 2000, Met Life became a public company through its subsidiaries and affiliates. It made its initial public offering in the same year. In 2010, Met Life took over American Life Insurance Company (Alico) from AIG for \$16.2 billion. But eventually Met Life had to make an announcement to pay a fine for alleged unfair practices in managing the company.<sup>25</sup>

The footsteps of mutual insurance companies in Africa are marked by the establishment of the Mutual Life Association of Cape of Good Hope between 1845 and 1895. The existence of this insurance company is not supported through authorised capital, but from premium contributions from policyholder members. The next trail was the election of John X. Merriman as chairman of Old Mutual as Good Hope's first executive in 1910. The company was recorded as the first life insurance company in Africa with a premium of 1 billion Rand per year in 1982. 1 million Rand is estimated to be equivalent to IDR 890,352,775. However, in 1999, Old Mutual demutualised and was listed on the London Stock Exchange, Japan Stock Exchange, and New York Stock Exchange.<sup>26</sup>

Especially for life insurance companies, there are several companies in Indonesia. However, AJB Bumiputera 1912 is the only mutual life insurance company. This well-known and oldest insurance company carries the concept of togetherness, especially for its members. Like insurance companies in general, AJB Bumiputera 1912 runs an insurance business. The insurance business in question includes a variety of businesses related to activities in the field of insurance. In Article 1 point 4 of Law Number 40 of 2014 concerning Insurance (Law No.40/2014), activities in the field of insurance include insurance or risk management services, reinsurance, marketing and distribution of insurance products, insurance consulting and brokerage, and insurance loss assessment. Talking about insurance companies, in general we also know general insurance companies, and life insurance companies. This includes sharia insurance.<sup>27</sup>

Both as a protection and investment institution, the transfer of risk by the public to insurance companies is realised in an insurance agreement, called a policy. In essence, coverage is a promise of protection given to the insured. The main purpose of coverage

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<sup>25</sup> Rahardjo.

<sup>26</sup> Rahardjo.

<sup>27</sup> Republik Indonesia, "Undang Undang Nomor 40 Tahun 2014 Tentang Perasuransian," Pub. L. No. LN.2014/No. 337 (2014).

is for the payment of compensation, which is stated in the insurance document or policy. Article 246 of the Code of Commerce (KUHD) confirms this. Insurance is an agreement in which the insurer promises to compensate the insured who suffers a loss due to several things, such as loss, damage or absence of profit due to an event, in exchange for a premium that must be paid by the insured to the insurer (insurance company, editor's note).<sup>28</sup> Legally, insurance aims to transfer some or all of the risks faced by the owner of the object or the owner of the business activity to the insurer, so that in the event of a loss is not too large. Mathematically, insurance has the purpose of predicting the likelihood of risk occurrence and the results of the forecast are used to determine the premium that is the obligation of the insured, as a basis for sharing risks to all insurance participants. Psychologically, insurance aims to reduce the mental stress of the insured and his family, when an event happens to him. Both to his property and business.<sup>29</sup>

Looking back, this form of mutual business has in fact existed in Indonesia for a long time. Outside of insurance companies, there is the Bunga Kamboja Foundation which was established in 1958. This foundation provides assistance with equipment and funeral arrangements for all religions. In order to become a member, a person or a family head only needs to pay IDR 50,000. Furthermore, prospective members' contributions of Rp5,000-Rp6,000 per month are made for 6 months. Only then is it legal to become a member. In Jakarta, for non-members, the cost of taking care of a Muslim corpse per package is IDR 4,000,000. For corpses under the age of 5 years, the corpse management package is IDR 3,500,000. Unlike members, who only need to pay dues.<sup>30</sup>

This mutual principle continues to develop in Indonesia. Where all members are also the owners of the company. This interpretation was well captured by the founding fathers. As stated in Article 33 paragraph (1) of the 1945 Constitution, that the economy is structured as a joint effort based on the principle of kinship. Article 33 paragraph (2), "Branches of production that are important to the state and that control the lives of many people shall be controlled by the state". Article 33 paragraph (3), "The land and water and the natural resources contained therein shall be under the control of the state and shall be utilised for the greatest prosperity of the people". Although in the elucidation of Article 33 paragraph (1), the principle of kinship is intended for cooperatives, the word joint venture actually better describes the nature of cooperatives. A joint enterprise is a simple form to describe a particular forum of socio-economic activity. A joint enterprise, as we know, is not an association of capital, but rather an association of people who voluntarily want to work together. The goal is none other than the welfare of the member.<sup>31</sup> Similar

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<sup>28</sup> Sri Rejeki Hartono, *Hukum Asuransi Dan Perusahaan Asuransi* (Jakarta: Sinar Grafika, 2008).

<sup>29</sup> Mulhadi, *Dasar-Dasar Hukum Asuransi* (Depok: Raja Grafindo Persada, 2017).

<sup>30</sup> Mulhadi.

<sup>31</sup> Rahardjo, "Robohnya Asuransi Kami, Senjakala AJB Bumiputera 1912-Jalan Terjal Menjaga Warisan Bangsa."

cooperative objectives The purpose of a cooperative is to realise the common interests of its members, through the work and service efforts of, by, and for members.<sup>32</sup>

Talking about the essence, we can see mutual insurance companies in Indonesia through three big lenses. The first perspective is epistemology, the next is axiology, and the last is ontology. These three are branches of philosophy that are interconnected with each other to form a complete concept regarding a particular knowledge. Epistemology, quoting from Geoffrey Samuel's views on legal epistemology, "...legal epistemology means the theoretical study of legal science. In the English language, and in English philosophy, the word 'epistemology' is used to mean a theory of knowledge." From this view, epistemology is defined as a theory of knowledge. Meanwhile, legal epistemology is interpreted as a theory about legal science. Furthermore, epistemology describes the process of how humans acquire this knowledge.<sup>33</sup> What about axiology? Axiology is the science of the value or benefits of knowledge itself. Ontology talks about the science of nature which investigates the real world with its concrete conditions.<sup>34</sup>

Epistemologically, the existence of mutual insurance companies in Indonesia is actually based on democracy in the economic sector. Where democracy is a pillar that the founding fathers of the Indonesian nation wanted to uphold. Mohammad Hatta is of the view that Indonesia's concept of economic democracy, which is characterized by a sense of togetherness, based on the principles of kinship, mutual cooperation, cooperation and positive competition, is a characteristic of the nation. Our economic democracy is the third way, neither to the right nor to the left, in accordance with Pancasila. Various names accompany it. Apart from "Economic Democracy", it is also called "Pancasila Economy", "People's Economy", or "Social Welfare Economy". In the context of a mutual insurance company, the company does not seek profit like a corporation. But prevent possible losses. This is in line with the meaning of mutual company. Mutual companies are, "Firm like a mutual insurance company that is established for its shareholders' benefit. Shareholders are called members. In proportion to the business amount done with the firm, the firm's profits is given to each member as dividends."<sup>35</sup> That mutual insurance companies are established for the benefit of their shareholders. Where the shareholders are none other than the members. Although as it develops, this goal is not only seen economically, but also socially. Social goals include member welfare and social security.

<sup>32</sup> Hadhikusuma and Sutantya Rahardja, *Hukum Koperasi Indonesia* (Jakarta: Rajagrafindo persada, 2001).

<sup>33</sup> Fariz Pari, "Epistemologi dan Pengembangan Ilmu Pengetahuan," *ILMU USHULUDDIN* 5, no. 2 (January 11, 2018): 139–54, <https://doi.org/10.15408/iu.v5i2.12781>.

<sup>34</sup> Bahrum Bahrum, "Ontologi, Epistemologi dan Aksiologi," *Sulesana: Jurnal Wawasan Keislaman* 8, no. 2 (December 1, 2013): 35–45, <https://doi.org/10.24252/v8i2.1276>.

<sup>35</sup> Black's Law Dictionary, "MUTUAL COMPANY Definition & Meaning - Black's Law Dictionary," The Law Dictionary, October 19, 2012, <https://thelawdictionary.org/mutual-company/>.

Meanwhile, economic goals can include risk transfer, compensation requirements, and premiums.<sup>36</sup>

So, the essence of mutual insurance can be divided into three things as follows:

- 1) from an epistemological aspect, mutual insurance companies are built on the basis of economic democracy, are non-profit, and are organized to provide protection for their members from the possibility of risk of loss;
- 2) from an axiological aspect, mutual insurance companies are established for the welfare of their members; and
- 3) from an ontological aspect, mutual insurance companies are realized as a forum for the people's economy which is structured based on the principles of kinship, cooperation, and is filled with a spirit of mutual cooperation. The management of the company (must) be carried out professionally..

Regarding legal protection, in the 1912 AJB Bumiputera default case, protection was divided into two. Preventive and repressive protection. Preventive legal protection in this case can be realized through statutory regulations and contracts. Legal protection through statutory regulations can be seen, for example, in Article 47 POJK No. 1/POJK.05/2018 which emphasizes that companies that, among other things, do not meet the target level of internal solvency, the company must submit a financial restructuring plan and are prohibited from distributing profits to its members in any form. Article 48 paragraph (2) of the POJK continues, that the financial restructuring plan must at least contain financial restructuring steps accompanied by a certain time period in a series of efforts to meet the internal solvency level adequacy target. The restructuring of AJB Bumiputera 1912 which was carried out was an effort or financial restructuring step offered by POJK No. 1/POJK.05/2018 (Article 48 paragraph (3) letter a). It is acknowledged that the losses experienced by AJB Bumiputera 1912 have increased because the company is a mutual company, which is actually difficult to restructure. It was feared that these losses would spread to policy holder customers, so the OJK felt the need to form a statutory manager at that time. A statutory manager is formed to take over the management's duties so that the company's condition is more stable. Statutory managers are also trying to find investors and restructure debt. However, the developing conditions are increasingly worrying. This is because the value of the company's total assets is much smaller compared to the total value of its liabilities. OJK's efforts also collided with the attitude of AJB Bumiputera 1912 residents who maintained the form of a mutual company. The efforts made by the OJK are increasingly difficult, considering that the form of a Mutual insurance company is different from a company in the form of a PT legal entity, for example. In this case, it is recognized that the PT form is relatively

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<sup>36</sup> Man Suparman Sastrawidjaja, *Aspek-aspek hukum asuransi, dan surat berharga*, Cet. 2 (Bandung: Alumni, 2003).

easier to restructure, considering that PT ownership is divided into shares. Meanwhile, ownership of a mutual insurance company takes the form of membership.<sup>37</sup>

As another preventive measure, the government issued PP No.87/2019. This PP is a reference for the governance of mutual insurance companies, until early 2023. This PP, which specifically regulates the governance system of mutual insurance companies, should be a form of legal protection for members or policy holders.<sup>38</sup> Moreover, PP No.87/2019 is a mandate from Law No.40/2014 to technically regulate the governance of mutual insurance companies in Indonesia. Confirmation regarding good governance can also be seen in Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector (UU No.4/2023). Where Article 52 of Law No.4/2023, point 5, amends the provisions of Article 11 of Law No.40/2014, so that Article 11 paragraphs (1) and (2) read:

(1) Insurance Companies are required to implement good corporate governance including investment structuring, risk management and internal control in carrying out their business activities.

(2) In implementing good corporate governance as intended in paragraph (1), Insurance Companies are required to apply the principles of prudence, transparency, accountability, responsibility, professionalism and fairness.

From these provisions, it is once again emphasized that insurance companies implement GCG well. This includes risk management and internal control. The principles in question are the principles of prudence, transparency, accountability, accountability,

In regulating legal protection through statutory regulations, policy guarantee programs are also mentioned. However, specifically for the policy guarantee program which is one of the legal protection instruments for policy holders in mutual insurance companies, we still have to wait and see what the technical details are. Previously, the policy guarantee program was mandated by Law No.40/2014 to be established by law within 3 years. However, Law No.4/2023 actually (continues) to give this mandate to the Deposit Insurance Corporation (LPS), so that within the next 5 years it will carry out a policy guarantee program.

Apart from the above regulations, since May 2023, preventive protection related to the governance of mutual insurance companies can also be found through POJK Number 7 of 2023 concerning Governance and Institutions of Mutual Insurance Companies (POJK No.7/2023). The POJK regulates, among other things, the principles

<sup>37</sup> Iswi Hariyani, "Kajian Hukum Restrukturisasi Asuransi Jiwa Bersama Bumiputera 1912 Sebagai Perusahaan Mutual," *Jurnal Hukum IUS QUIA IUSTUM* 24, no. 2 (February 19, 2017): 320–47, <https://doi.org/10.20885/iustum.vol24.iss2.art8>.

<sup>38</sup> Agustinus Ranga Respati and Aprillia Ika, "Usai Terbit UU PPSK, LPS Siap Jalankan Program Penjaminan Polis Asuransi Halaman all," KOMPAS.com, February 17, 2023, <https://money.kompas.com/read/2023/02/17/100000926/usai-terbit-uu-ppsk-lps-siap-jalankan-program-penjaminan-polis-asuransi>.

of governance, articles of association, membership, mutual insurance company organs and their duties, authority and responsibilities, risk management, dissolution, and so on. In Article 112 paragraphs (1) and (2) POJK it is emphasized that companies are obliged to protect the interests of policy holders, insureds and/or parties who are entitled to benefits. The parties in question need to be protected in order to receive their rights as stated in the insurance policy. Based on this, the company must fulfill its obligations according to the promises made, provide good service, provide correct information and take actions based on good faith.

In the eyes of Law Number 8 of 1999 concerning Consumer Protection (UU No. 8/1999), policy holders are consumers, namely users of goods and/or services available in society for use for themselves, their families, other people or creatures. other life. In this case, it is the consumer who enjoys the services of the insurance company. Article 4 letter c of Law No. 8/1999 further confirms consumer rights, one of which is the right to correct, clear and honest information regarding the condition and guarantee of goods and/or services. Furthermore, preventive protection for policy holders as consumers can also be observed through POJK Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector (POJK No.6/POJK.07/2022). In Article 46 paragraph (1) POJK, it is emphasized that every Financial Services Business Actor (PUJK) is required to have a function or unit in order to implement consumer and public protection provisions. Failure to comply with this rule will result in administrative sanctions for PUJK such as written warnings, fines, and even revocation of business permits. In fact, in an effort to provide protection for consumers, OJK is given the authority to carry out legal defense which includes ordering or taking certain actions for PUJK to resolve consumer complaints and/or file lawsuits (Article 52 paragraph (1) letters a and b POJK No.6/ POJK.07/2022). Mutual insurance companies such as AJB Bumiputera 1912 must also comply with this POJK, considering that one of the PUJKs referred to in POJK No.6/POJK.07/2022 is an insurance company. Legal protection instruments for other policy holders are of course also obtained through Law No. 40/2014 which regulates insurance in general. In Law No. 40/2014, among other things, there are regulations regarding the governance of mutual insurance companies, business licensing, as well as dissolution, liquidation and bankruptcy.

As for preventive legal protection through contracts, the reference can be seen in Article 1233 of the Civil Code which confirms that obligations arise from both agreements (agreements/contracts) and from law. Moving on from here, a contract is a representation of an agreement outlined in certain clauses, which outline the rights and obligations of the parties. A contract is a legal instrument that functions to guarantee the implementation of the promises and expectations of the parties. If one party defaults, the other party can ask for compensation based on Article 1365 of the Civil Code. The delay in payment of claims by AJB Bumiputera 1912 to policyholders actually falls into the

realm of default. However, because the policy holder is the owner of the company, how can you file a lawsuit against yourself?

Repressive legal protection is actually the opposite of preventive legal protection. If preventive legal protection is a prevention effort, then repressive legal protection is a 'treatment' effort. For mutual insurance companies such as AJB Bumiputera 1912, a certain mechanism has been attached to them to provide legal protection for policy holders in particular. In the context of AJB Bumiputera 1912, which has not yet completed its obligations, it is very possible that a mechanism for dissolving the mutual company will be implemented. The legal protection that policy holders obtain from a court order is through an application for a bankruptcy statement submitted by creditors or the OJK. OJK then forwarded the application to the Commercial Court. This regulation can technically be found in Law No.40/2014, Law No.4/2023, and POJK No.7/2023.

Because the case has already occurred, preventive efforts can no longer be carried out. Repressive efforts remain. If not through bankruptcy, demutualization is worth considering to find a way out. However, in reality, until now not a single repressive effort has been carried out.

#### 4. CONCLUSION

So, if you pay close attention, the existence of mutual insurance companies is actually needed by the world community. Likewise in Indonesia. It's not just about talking about business or profits. But more than that, having a goal to improve the welfare of members, working together, is a rare thing amidst the current rapid flow of business. However, when the management of a mutual insurance company is not based on the principles of good corporate governance, the goals to be achieved will actually be eroded by weak management. Harmful to policy holders. Legal protection for policyholders consists of two, namely preventive legal protection and repressive legal protection. Preventive legal protection in this case can be realized through legislation and contracts. Meanwhile, repressive legal protection obtained by policyholders from court rulings is through the submission of bankruptcy petitions filed by creditors or the Financial Services Authority (OJK). The OJK then forwards the petition to the Commercial Court.

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