

# Analysis of the Existence of Insurance Fraud in the Case of Insurance Claim Payment Failure and the Legal Protection for Insurance Clients in the Insurance Company's Failure to Pay Claims

Pan, L. S. Sewu, Rahel Octora, and Floria Lusiana

## ABSTRACT

Insurance is one of people's needs as a protection from the loss-causing risks. Based on the insurable interest, people then have an insurance agreement. The legal relation between an insurance company and the insured is based on a written agreement called a policy. In reality, not all claims can be done well. Insurance companies often fail to fulfill their obligation (payment failure), which is caused by several factors, including the allegation of frauds. This research is going to discuss the existence of insurance fraud as a factor in the case of payment failure of an insurance claim. The research employs a normative juridical method using the secondary data in the forms of primary legal materials such as relevant regulations, as well as secondary legal materials such as legal books and literature. The research uses legislation and conceptual approaches. The fraud factor is indicated if the element of intent can be proven when, in doing the transaction, the insurance company's board has abused their authority, and when the transaction is proven to have influenced the company's financial health.

**Keywords:** insurance, fraud, legal protection, payment failure.

**Published Online:** December 27, 2022

**ISSN:** 2796-1176

**DOI:** 10.24018/ejpolitics.2022.1.5.50

**Pan, L. S. Sewu\***

Faculty of Law, Universitas Kristen  
Maranatha, Indonesia

(e-mail: lindawatysewu@gmail.com)

**R. Octora**

Faculty of Law, Universitas Kristen  
Maranatha, Indonesia

(e-mail: octorael@gmail.com)

**F. Lusiana**

Faculty of Law, Universitas Kristen  
Maranatha, Indonesia

(e-mail: florialusiana@gmail.com)

\*Corresponding Author

## I. INTRODUCTION

As an individual being, a person has self-preservation or instinct to survive. In life, a person may face events that cause losses, such as accidents, fire, natural disasters, and other events that will harm him. In a person's life, those events are a risk that may be borne (Amalia, 2017). A company insurance exists to help people to overcome the risks of an event. The risks that may be caused by an event can be shifted to the insurance company as the Insurer.

There are some factors which influence the sustainability of an insurance company. To develop and maintain the insurance business, there are definitely many factors to pay attention to, namely regulations, people's awareness, honesty from the two sides, good service, the people's income levels, people's understanding concerning the importance of insurance (Sastrawidjaja & Endang, 2013).

The legal ground of an insurance business in Indonesia is the Law of the Republic of Indonesia Number 40 Year 2014 on Insurance (hereafter Insurance Law). Insurance business is defined in Article 1 number 4 of Insurance Law as follows:

*"Insurance Related Business is any business related to the services of insurance or risk management, risk reinsurance, marketing and distribution of insurance products or sharia insurance products, consultation and intermediary of insurance, sharia insurance, reinsurance, or sharia reinsurance, or insurance or sharia insurance loss adjustment."*

The insurance coverage is held based on an agreement. An insurance agreement should be based on an interest that can be valued with money, as regulated in Article 250 and Article 268 of the Commercial Code. An insurance agreement is based on an uncertainty factor. For example, in a life insurance, the event that is depended on is someone's death; every person will certainly die, but what is uncertain in this case is when the person dies (Prodjodikoro, 2020). In a life insurance, the risk transfer from the Insured Party (Insurance Client) to the Insurer Party (Insurance Company) is balanced by the obligation to pay the insurance premiums by the Insured Party (Insurance Client) according to the risks that will be shifted to the Insurer Party (Insurance Company) (Parera, 2019).

According to Subekti, Insurance is a *consensueel* agreement. This means that the agreement is regarded as legal if both parties, the Insurer Party (Insurance Company) and Insured Party (Insurance Client), have reached an agreement. Nevertheless, the Law orders the making of a deed under the hand called Policy, with the intention of facilitating the evidence if there is a dispute between the parties (Subekti, 2003). Despite the fact that the existence of a policy should become sufficient proof concerning the rights and duty of the two parties, it cannot avoid a dispute. An insurance company always faces various risks, one of which is the economic instability that influences the financial health of an insurance company so that this will hinder the insurance claim disbursements.

Payment failure cases certainly cause chaos in society. People then attempt hard to obtain their rights; however, not all attempts go well. In reality, clients cannot claim their rights as agreed on in the insurance policy. Some cases of insurance payment failures done by some insurance companies in Indonesia are as follows:

#### A. PT. Asuransi Kresna Life Case

PT Asuransi Kresna Life (PT AKL) underwent payment failures in their two insurance products, namely Kresna Link Investa (K-LITA) and Protecto Investa Kresna (PIK). (Sidik, 2021). The payment failure cases of PT. Asuransi Kresna Life (PT AKL) began with the Insurance Client's fund withdrawal, which was then stopped by PT Asuransi Kresna Life. Later, PT Asuransi Kresna Life put forward payment postponement until 2021 due to *force majeure* conditions. (Rahardjo, 2021). Plea of Delay in Payment of Debt Obligations was filed to the Commercial Court of Central Jakarta, in which 1 (one) out of 4 (four) pleas was accepted and even settled amicably (Rahardjo, 2021). The bankruptcy verdict of PT Asuransi Kresna Life (PT AKL) is considered inaccurate because the bankruptcy plea was filed to the Supreme Court by the insurance clients. Based on Article 50 of the Law of the Republic of Indonesia Number 40 Year 2014 on Insurance, the bankruptcy appeal can only be filed by Financial Services Authority (FSA). This payment failure case was allegedly caused by the fact that Krisna Life invested the clients' funds in its affiliated company much more than is allowed by the FSA.

#### B. PT. Asuransi Jiwasraya Case

Jiwasraya first announced its payment failure in October 2018. In the announcement, Jiwasraya could not pay off its clients' policy claims of 802 billion rupiahs. In mid-2019, Jiwasraya underwent insurance policy payment failure up to Rp. 12.000.000.000.000 (twelve trillion rupiah). The chairman of the Audit Board of Indonesia, Agung Firman Sampurna stated that the main reason for Jiwasraya's payment failure was the investment mismanagement of Jiwasraya, which often invested the funds in stocks with poor performance. The risky stocks led to negative spread, and this caused liquidity pressure on Jiwasraya, which ended in payment failure.

#### C. Asuransi Bumiputera Case

Asuransi Bumiputera case started in 1997. From year to year, the deficit value has been reported to be bigger and bigger. In 2021, it was noted that the company's deficit was 21.6 trillion rupiahs. Since the solution for the insurer party's obligation is not done yet, the policy holders of Asuransi Jiwa Bersama (AJB) Bumiputera, joined *Nasabah Korban Gagal Bayar Asuransi Bumiputera* (Bumiputera Insurance Clients as Victims of Payment Failures) or *Tim Biru* (Blue Team), who did a peaceful action as well as filing a mass notice to Financial Services Authority at FSA Headquarter, Central Jakarta, on Wednesday, 10 November 2021. Up to now, the case solution is still unclear.

#### D. Asuransi WanaArtha Case

Asuransi Jiwa Adisarana WanaArtha (WanaArtha Life) has undergone payment failures to 29,000 (twenty-nine thousand) clients or policy holders since October 2019. The Attorney General did some investigation in December 2019. The investigation of PT Asuransi Jiwasraya caused the sub securities account (SSA) of WanaArtha Life Insurance company to be blocked so that WanaArtha Life did the postponement of its clients' policy claim payments. This is due to the fact that WanaArtha Life could not do any selling as its portfolio assets were used to pay the clients' policy claims. The Supreme Court granted the Attorney General's cassation related to the company's asset of Rp. 2.4000.000.000.000 that would be confiscated for the state because it was connected with corruption and money laundering cases (Case number: 5728 K/PID.SUS/2022) The Supreme Court's decision surely made the insurance clients of WanaArtha Life have losses as they had fewer chances to get their rights regarding the insurance policy that they should have got.

From the various cases above, it can be seen that an insurance company can encounter a financial problem which can cause the obstruction of claim payments. One of the reasons for payment failures is the alleged action of insurance fraud. Insurance fraud is defined as any type of fraud done by the insurance perpetrators (Clients, Insurance Agents, as well as Insurance Company) in order to benefit themselves (Sarwo, 2015). The cases above show the importance of not only legal protection for insurance clients who suffer from

losses caused by payment failures but also law enforcement for the insurance company. In this case, the insurance company's responsibility is no longer limited to civil liability for the clients' losses, but it can also be criminal liability. In order to know whether the payment failure contains a fraud element, an analysis of the cases is required.

Article 77 of the Insurance Law regulates: "Every Person who embezzles by transferring, mortgaging, collateralizing, or utilize the asset, or performing any other action that may reduce asset or lower the value of asset of an Insurance Company, Sharia Insurance Company, reinsurance company, or sharia reinsurance company as referred to in Article 43 paragraph (2) without the proper right and power shall be subject to criminal sanction of imprisonment for a maximum period of 8 (eight) years and criminal fine of maximum Rp50,000,000,000 (fifty billion rupiahs)." This article can threaten corporates and/or corporate caretakers who misuse the company's wealth so that the company's financial health is disturbed.

Based on the legal problem regarding the minimum legal protection for clients who suffer some losses due to payment failure caused by fraud as well as the lack of clarity of the case resolution mechanism in Indonesia, the researchers intend to conduct research entitled: "*Analysis of the existence of insurance fraud in the case of insurance claim payment failure and the legal protection for insurance clients in the insurance company's failure to pay claims.*"

## II. PROBLEM IDENTIFICATION

Based on the ideas elaborated in the background of the study, the legal problems can be identified as follows:

- 1) How is the insurance fraud factor determined in the case of insurance claim payment failure?
- 2) How does the legislation in Indonesia legally protect the insurance clients who become victims of payment failures?
- 3) How should the dispute between the clients who become victims of payment failure and the insurance company be resolved in order to optimize the fulfilment of the clients' rights?

## III. RESEARCH METHOD

The research employs a normative juridical method, which is done to find out the positive law for a thing, an event, or a certain problem. Normative juridical research focuses on what is written in the legislation as well as conceptualizing the law as rules and norms that become the foundations of the guideline of people's proper life and conduct in everyday life (Diantha, 2017). The research uses statute and conceptual approaches. A statute approach is an approach done to examine all the legislation related to the problems or legal issues being faced. A conceptual approach is an approach that starts from the viewpoints or doctrines developed in the law science.

The data used are primary legal materials such as legislation. The secondary legal materials refer to all the publications concerning the law which do not include formal documents; they also include literature and journals of law.

## IV. ANALYSIS AND DISCUSSION

### A. *Analysis of the Existence of Fraud in the Cases of insurance Claim Payment Failure*

The management of a corporation must be based on the principle of good corporate governance. Some principles that become the foundations in good corporate governance are (Kaihatu, 2006):

- 1) Transparency (information transparency), which refers to transparency in the process of decision making and the transparency in conveying material information relevant to the company.
- 2) Accountability, which is the clarity of function, structure, system, and responsibility of the company organs so that the company management can be performed effectively.
- 3) Responsibility, which is the suitability (compliance) in the company management with the healthy corporate's principle as well as the applicable legislations.
- 4) Independence, which is a condition where a company is managed professionally without any conflict of interests and influence/pressure from the management that are not in accordance with the applicable legislations and the principles of a healthy corporate.
- 5) Fairness (equality and fairness), which is fair and equal treatment in fulfilling the stakeholders' rights that appear based on an agreement or the applicable legislation.

In running a company, the company management is demanded to be able to give transparency of all the policies and actions so as to prove that there is no conflict of interests. A conflict of interests is one of the triggers of fraud.

According to Oxford English Dictionary, fraud is described as, among other things, “the quality of being deceitful,” “criminal deception, the using of false representations to obtain an unjust advantage or to injure the rights or interest of another” and “a dishonest trick.”

Fraud can also be termed as a deceit that contains the meaning of a deviant and illegal act which is done on purpose for a certain purpose, for example to deceive or mislead other people, and which is done by people from both inside and outside of the organization.

The insurance industry is not free from threats or risks. One of the risks faced is the risk of fraud. An insurance agreement can lead to a new crime, which is a white-collar crime in an insurance business, namely fraud, which in the context of insurance is known as Insurance Fraud.

Insurance fraud can be defined as: Any offence of insurance fraud therefore falls to be dealt with as deception and dishonesty (Morse & Skajaa, 2004).

From the definition above, the elements of deception and dishonesty should be discussed. Therefore, the factors below need to be proven in the indication of fraud in the case of an insurance company’s payment failure:

- 1) Having the intention and deliberateness to commit a fraud,
- 2) An act that is against the law,
- 3) Done in the form of deceit and manipulation of material information data,
- 4) Misusing the authority owned to gain personal benefit,
- 5) Taking advantage of the trust given by another person and harming the person giving the trust. (Widyanto & Fauziah, 2001).

Based on several cases taking place in Indonesia, the case of payment failures done by insurance companies cannot be classified only as a civil law violation. From the civil law point of view, there is a legal relationship between an insurance company and a client, which is bound by an agreement. In the case when a client has fulfilled all the conditions stated in the policy, he or she is entitled to have the right to receive a payment claim. If an insurance company does not pay the claim, it fulfills the element of default or breaking a promise. Payment failure that happens because of the company’s unhealthy financial condition requires further examination, whether there are acts that are against the law that affect the health condition of the company’s finance. From the criminal law point of view, the existence of a fraud element in the case of a payment failure needs to be reviewed from Article 77 of the Insurance Law as follows:

*“Every Person who embezzles by transferring, mortgaging, collateralizing, or utilize the asset, or performing any other action that may reduce asset or lower the value of asset of an Insurance Company, Sharia Insurance Company, reinsurance company, or sharia reinsurance company as referred to in Article 43 paragraph (2) without the proper right and power shall be subject to criminal sanction of imprisonment for a maximum period of 8 (eight) years and criminal fine of maximum Rp50,000,000,000 (fifty billion rupiahs).”*

Law enforcement is not done only to individuals in an insurance company, but it can also be done to the insurance company as a separate legal subject, namely a corporate. In Article 1 number 34 of the Insurance Law, it is stated: Every Person is a natural person or corporation.

Article 81 Paragraph (2) of the Insurance Law:

*A criminal sanction shall be imposed to a corporation if the criminal act: a. is performed or instructed by the Controllers and/or the managers acting for and on behalf of the corporation; b. is performed in order to meet the objects and purposes of the corporation; c. is performed according to the duties and functions of the perpetrator or the instructor; and d. is performed with the objective of giving an advantage to the corporation.*

*The element of offense must be proven in order to charge the insurance company with a criminal sanction, namely an act done intentionally by the company caretaker, which includes shifting, guaranteeing, mortgaging, or using the wealth, or doing another act which can decrease the asset or decrease the value of the company’s assets. Hence, the elements that must be fulfilled in this article refer to the financial transactions done by the insurance company caretaker and whether the transactions done have carefully calculated the risks of the decrease of the asset value. Proving the fraud element must be done through a continuous auditing mechanism.*

*Continuous auditing can increase the scope and frequency of company activity analysis and is referred to as a strong fraud prevention and detection technique. However, this can be effective if accompanied by timely notification to the party being audited. So this depends on the system to control the rules that exist in the company. A weak system will indicate a higher*

*chance of financial reporting fraud compared to companies that have a strong monitoring system. (Gonzales and Hoffman, 2018).*

*Fraud auditing consists of four types, namely 1) fraudulent reports or known as over statements and under statements, consisting of fraudulent financial statements and other fraudulent reports (non-financial statements); 2) asset misappropriation consists of skimming and fraudulent disbursement and inventory and other assets including the scope of misuse; 3) corruption includes conflicting interests (bribery), bribery, illegal gratuities, and economic extortion; and 4) fraud related to computer use Association Certified Fraud Examination. When the audit result shows impropriety and/or deviation, the fraud element is already identified so that the case resolution process can be continued through the criminal code instrument.*

*As a preventive mechanism, Financial Services Authority Circular Letter Number 46 /SEOJK.05/2017 is applied in Indonesia regarding Fraud Control, Application of Anti-Fraud Strategies, And Reports on Anti-Fraud Strategies for Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, Sharia Reinsurance Companies, Or Sharia Units.*

*In the Circular Letter, it is compulsory that an insurance company must do the systems of supervising, control and monitor the activities in order to prevent fraud. Besides, an insurance company must detect, investigate, report, and give sanctions, as well as observe, evaluate, and follow up frauds.*

#### *B. Analysis of Legal Protection for Insurance Clients as Victims of Payment Failures*

Legal protection is the right of every person. In the life of a state, as in this case, the legal protection given by the state is in the form of passing a legislation with the intention of giving legal assurance and legal protection for everyone. The form of legal protection given by the state is the legislations issued by the state to regulate a lot of things, one of which is the legal protection for Insurance Clients.

According to Philipus M. Hadjon, legal protection is an act of protecting or giving help to a legal subject, by using legal instruments (Hadjon, 2011).

Basically, the main legal protection for an Insurance Client that becomes the victim of an Insurance Company that undergoes a payment failure is the Insurance Agreement itself, namely the Insurance Agreement made and agreed on by the Insurance Client and the Insurance Company. Insurance Agreement is also termed Insurance Policy, which is a written agreement regulating the rights and obligations of the parties. If one party violates the content of the agreement, the Insurance Policy can be used as evidence and reference in resolving the dispute (Subekti, 2003). When the Insurance Company fails to pay, this means that the Insurance Company does not meet the agreement that has been agreed on by the Insurance Company and the Insurance Client. As a result, the Insurance Policy can be used as evidence to resolve the dispute.

If related to Insurance, there are a few legislations regulating legal protection for Insurance Clients, such as Law Number 40 Year 2014 on Insurance and Law Number 8 Year 1999 on Consumer Protection. Through these two laws, the state gives legal protection to Insurance Clients. Besides, an Insurance Client can also get legal protection from the criminal side if the Insurance Company is legally proven to have done insurance fraud.

First, the issuance of Law No. 40 Year 2014 on Insurance has a positive impact on the activity of Insurance in Indonesia, especially because it gives assurance of legal protection for Insurance Clients. Based on Law No. 40 Year 2014 on Insurance, an Insurance Client as the insured has the higher position than the other parties or it can be called as Preferred Creditor, which is regulated in Article 52 paragraphs (1) and (2) of Insurance Law. In this article, it is clearly stated that if an Insurance Company is declared insolvent or liquidated, the Insurance Client as the Insured has the rights to have the insurance benefits first compared to the other parties. Consequently, an Insurance Company must fulfill the obligation towards the Insurance Clients first. Putting the Insurance Client as a Preferred Creditor is one form of legal protection given by the state to the Insurance Clients.

Legal protection to Insurance Clients as the Insured is regulated in Chapter XI of Insurance Law. Policy guarantees institution is one of the forms of legal protection regulated in Article 53 paragraph (1) of Insurance Law. The Policy guarantees program aims to give legal protection to Insurance Clients and it is related to returning half or all of the Client's rights when the Insurance Company's business license is revoked or when the Insurance Company is liquidated. In addition, in Article 54 of Insurance Law, it is stated that: Insurance Company shall become a member of a mediation institution having the function of facilitating dispute resolutions between the Insurance Company and the Insurance Clients as the Insured. Becoming a member of a mediation institution will give legal protection to the parties when there is a dispute between them.

Based on Article 20 of Insurance Law, an Insurance Company must form a guarantee fund in the form and amount as stipulated by the Financial Services Authority (FSA). The Guarantee Fund is a form of legal protection for an Insurance Client as the Insured, in which the guarantee fund is the wealth owned by the Insurance Company and will be used as a guarantee, which protects the Insurance Client's interest.

The insurance industry also has Reinsurance Company based on Article 1 number 7 of Insurance Law. Reinsurance Business is a business providing reinsurance service towards the risk faced by insurance companies, guarantee companies, or other reinsurance companies. Reinsurance Company has a mutual relationship with Insurance Company. Reinsurance Company is a form of legal protection for Insurance Clients; when an Insurance Company faces a financial problem, it can shift the risk to the Reinsurance Company so as to reduce the burden it bears.

Second, Law Number 8 Year 1999 on Consumer Protection gives legal protection to consumers of goods or services that suffer some losses. Insurance Clients belong to consumers of services as they consume services available in public. Thus, Insurance Clients get legal protection based on Consumer Protection Law. In Article 4 letter h of Consumer Protection Law, it is stated that a consumer has the right to obtain compensation, redress and/or substitution, if the goods and/or services received are not in accord with the agreement or not received as requested. If connected with insurance, insurance is a product of an agreement, so that it means that the parties have their rights and obligations to fulfill the content of the agreement. If an Insurance Company undergoes a payment failure, the agreement is not met and therefore, the Insurance Client as Consumer can demand compensation, redress and/or substitution to the Insurance Company.

Financial Services Authority (FSA) is an institution which has the authority to establish an integrated regulation and supervision system for all activities in the financial services sector, one of which is Insurance Company. The authority is regulated in Article 5 of Law Number 21 Year 2011 on Financial Services Authority (FSA). The arrangement related to legal protection to consumers of financial services is later regulated in Financial Services Authority Regulations (FSAR).

If seen from the criminal side, Insurance Fraud is an action that can be classified as a crime. However, this needs an in-depth analysis related to the fulfilment of the elements of a criminal act. An Insurance Client as the disadvantaged party because of the Insurance Company's payment failure caused by Insurance Fraud can definitely ask for legal liability for the crime done by both an individual in an Insurance Company and the Insurance Company as a legal subject, namely Corporate. In the criminal side, the legal protection given to Insurance Clients is in the form of the sanctions of imprisonment and/or penalty. Through the sanctions, the state gives legal protection to Insurance Clients who suffer from losses caused by the crime done by the Insurance Company. Besides, through the sanctions, it is expected that the same crime leading to the Insurance Client's losses can be prevented and this will give a deterrent effect to the Insurance Fraud perpetrators.

### *C. Analysis of Dispute Resolution Between Clients (Victims of Payment Failures) and the Insurance Company that Should Be Done in Order to Optimize the Fulfilment of the Clients' Rights*

A legal relationship between the Insurance Company and Insurance Client is formed because of an agreement between the two parties, namely the Insurance Agreement. The legal relationship leads to the rights and obligations that have to be fulfilled by the parties. The Insurance Company has legal liability to its Insurance Clients based on a contract (Contractual Liability) (Badruzaman, 2019). Yet, quite often, the rights and obligations and liability are not met so that this causes some losses for one of the parties. In the insurance industry, cases of Insurance Company's payment failure often happen, which surely disadvantages the Insurance Client as the insured.

If seen from the civil side, payment failure cases experienced by an Insurance Company can be considered a default because the Insurance Company does not execute the contents of the agreement so that it causes payment failure which in the end makes the Insurance Client as the Insured not obtain the rights that he or she should obtain. Based on Article 1243 of Indonesian Civil Code, if there is a default, it is obligatory for the party that is in default to compensate for the costs, damages, and interests to the party that is disadvantaged. When an Insurance Client as the plaintiff files a default lawsuit, this is expected to be able to give the fulfilment of the rights optimally to the Insurance Client because the court ruling is executorial and thus, it is compulsory for the Insurance Company to execute the content of the court ruling. Hence, if seen from the civil side, an Insurance Company can be considered legally liable for the costs, damages, and interests. The compensation is the form of legal liability that must be done by an Insurance Company to meet the Insurance Client's rights.

In Indonesia, there are 2 (two) kinds of dispute resolution, namely Litigation and Non-Litigation. Dispute resolution through Litigation is a dispute resolution through court channels, while Dispute resolution through non-Litigation is a dispute resolution done out of court or it can be regarded as an alternative dispute resolution. Insurance industry is closely related to Financial Services Authority (FSA), which is an agency having the authority to regulate and supervise the financial services sector, one of which is the Insurance Company. Financial Services Authority (FSA) forms an alternative dispute resolution called Financial

Services Sector Alternative Dispute Resolution Body (FSS-ADRB). This is a body of which the main function is to resolve disputes related to financial services sector, one of which is the insurance dispute. The work mechanism of FSS-ADRB starts with a complaint from Consumer to FSS-ADRB in order that the dispute can be resolved deliberatively. In this case, the Insurance Client as Consumer can file a complaint to FSS-ADRB if a dispute taking place between the Insurance Client and the Insurance Company can be resolved by deliberation to reach an agreement. FSS-ADRB gives an alternative resolution to disputes taking place between the Insurance Company and Insurance Client, in which there are 3 (three) dispute resolution services namely Mediation, Adjudication, and Arbitrage. It is expected that dispute resolution through FSS-ADRB can optimize the fulfilment of the clients' rights.

It is not rare that the dispute between an Insurance Company and Insurance Client is a fraud, and it is not impossible that an Insurance Company commits a criminal offense like Insurance Fraud. Chapter XVI Articles 73–82 of Insurance Law regulates the criminal provisions related to Insurance. An Insurance Client can ask for legal liability through a criminal prosecution, if the Insurance Company has fulfilled the elements of crime regulated in the applicable regulations. Nevertheless, basically, the proper way to fulfill the Insurance Client's rights because of an Insurance Company's payment failure is by filing a complaint of default or resolving the dispute through FSS-ADRB. The dispute resolution in FSS-ADRB prioritizes the right fulfilment for Insurance Clients as the disadvantaged party so that Insurance Clients can demand the fulfilment of their rights from the Insurance Company.

## V. CONCLUSION

When a payment failure in an insurance claim takes place, it can be seen from the civil point of view. This is a viewpoint of the legal relationship between an insurance company and a client, which is based on an insurance agreement. In the law of agreement, a client should obtain his right to get the claim payment. If the insurance company does not pay, the insurance company fulfils the default element or broken promise. Furthermore, if seen from the criminal point of view, payment failure caused by the company's unhealthy financial condition requires further examination of whether the company's leaders have committed actions that are against the law that affect the company's healthy financial condition. The existence of fraud elements in payment failure cases needs to be examined further. The element of fraud is fulfilled if it has the intention and deliberateness to commit a fraud; it is against the law; it is done in the form of deceit and manipulation of material information data; it misuses the authority owned to gain personal benefit; it takes advantage of the trust given by another person and harming the person giving the trust.

Legal protection for insurance clients who become victims of an insurance company's payment failure is the insurance agreement that is made and agreed on between the insurance client and the insurance company, and in the civil law the insurance policy can be used as evidence and reference in a dispute resolution. Another legal protection for insurance clients as the insured is regulated in Chapter XI of Law Number 40 Year 2014 with the existence of policy guarantee institution as regulated in Article 53 paragraph (1) of Law Number 40 Year 2014. Besides, legal protection for insurance clients is regulated in Law Number 8 Year 1999 on Consumer Protection.

At present, dispute resolution between an insurance client and insurance company is handled by the Financial Services Authority (FSA). The FSA is an agency having the authority to regulate and supervise the financial services sector, one of which is the Insurance Company. Financial Services Authority (FSA) forms an alternative dispute resolution called Financial Services Sector Alternative Dispute Resolution Body (FSS-ADRB), which is a body that functions to resolve disputes related to financial services sector, one of which is the insurance dispute. The dispute between an Insurance Client as a Consumer and an Insurance Company can be resolved in deliberation in order to reach an agreement. Dispute resolution that takes place between an Insurance Company and Insurance Client can be done through 3 (three) forms, namely Mediation, Adjudication, and Arbitrage.

## REFERENCES

- Amalia, D. (2017). Protection for insurance policyholders in insurance company's insolvency. *Business Law Review*, 2, page. 61.
- Dudi Badruzaman. (2019). Legal protection of the insured in the payment of insurance claims. *Jurnal Ekonomi dan Keuangan Syariah*, 3(1), 108.
- Hadjon, P. M. (2011). *Introduction of Indonesian Administrative Law*. Yogyakarta: Gajah Mada University Press.
- Hasiman, F. (2019, March 10). *Mega-Scandal of Jiwasraya*. Retrieved from Bisnis.com: <https://finansial.bisnis.com/read/20200131/215/1196058/megaskandal-jiwasraya>.
- Hastuti, R. K. (n.d.). *Default, these 5 insurance companies make customers scream*. Retrieved from CNBC Indonesia: <https://www.cnbcindonesia.com/market/20200816100319-17-180132/kacau-gagal-bayar-5-asuransi-ini-bikin-nasabah-teriak>.
- I Made Pasek Diantha. (2017). *Legal research methodology in justification of legal theory*. Jakarta: Prenada Media Group.
- Kaihatu, T. S. (2006). Good corporate governance and the implementation in Indonesia. *Jurnal Manajemen dan Kewirahusahaan*, 8(1), 2.

- LAPS. (2022, June 28). *Education and consumers protection-alternative dispute resolution institution*. *ojk.go.id*. Retrieved from <https://www.ojk.go.id/id/kanal/edukasi-dan-perlindungan-konsumen/pages/lembaga-alternatif-penyelesaian-sengketa.aspx>.
- Meilanova, D. R. (2021, December 18). *Claims not paid, bumiputera's customers come to the ojk office for legal notice*. Retrieved from *Bisnis.com*: <https://finansial.bisnis.com/read/20211111/215/1465071/klaim-tak-kunjung-dibayar-nasabah-bumiputera-geruduk-kantor-ojk-sampaikan-somasi>.
- Morse, D., & Skajaa, L. (2004). *Practical insurance guides, tackling insurance fraud: law and practice*. New York: Informa Law from Routledge.
- Parera, A. (2019). *Indonesian Insurance Law*. Yogyakarta: Kanisius.
- Prodjodikoro, W. (2020). *Insurance Law in Indonesia*. Jakarta: Intermedia.
- Rahardjo, I. (2021). *The collapse of our insurance: the collapse of Kresna life*. Bogor: PT Penerbit IPB Pres.
- Sari, A. G. (2020). Fraud auditing law implications in the case of jiwastraya insurance Indonesia. *International Journal of Business, Economics and Management*, 7(4), 204.
- Sarwo, Y. B. (2015). Juridical approach to fraud in the health insurance industry in Indonesia. *Jurnal Ilmiah Hukum-Kisi Hukum*, 14(1), 6.
- Sastrawidjaja, M. S., & Endang. (2013). *Insurance law: Insurance protection for insured-business deposits insurance*. Bandung: Alumni.
- Sidik, S. (2022, October 31). *Wanaartha wins against attorney general's office, here's the complete chronology*. Retrieved from *cnbcindonesia.com*: <https://www.cnbcindonesia.com/market/20211014162451-17-283950/wanaartha-menang-lawan-kejangung-ini-kronologi-lengkapnya>.
- Subekti. (2003). *Principles of Civil Law*. Jakarta: Intermedia.
- Syahrizal Sidik. (2021, September 14). *Causing worries, why so many life insurance default cases ?* Retrieved from *CNBC INDONESIA*: <https://www.cnbcindonesia.com/news/20200906182400-4-184726/bikin-khawatir-kenapa-marak-kasus-asuransi-jiwa-gagal-bayar>.
- Tobing, S. (2020, January 2). *Kresna life's case journey from insolvency-led default*. Retrieved from *katadata.co.id*: <https://katadata.co.id/sortatobing/finansial/60cc72dd9f62c/perjalanan-kasus-kresna-life-dari-gagal-bayar-hingga-berujung-pailit>.
- Ulya, F. N. (2020, January 12). *Kompas.com*. Retrieved from <https://money.kompas.com/read/2020/01/09/063000926/simak-ini-kronologi-lengkap-kasus-jiwasraya-versi-bpk>.
- Widiyanto, D. P., & Fauziah. (2021). Insurance agent's legal liability related to fraudulent practices in insurance companies that harm customers. *VERTAS: Jurnal Program Pascasarjana Ilmu Hukum*, 7(1), 106.



**Dr. Pan, L. S. Sewu**, SH., M. Hum., M. Kn. Finished Faculty of Law, Maranatha Christian University, Bandung.

Pan, Lindawaty Suherman Sewu joined Maranatha Christian University since 2000 and served as Assistant Dean (2009 - 2012), and as Dean (2012–2020). Completing a BA in Law at the University of Padjadjaran (1994), Master of Law at Parahyangan Catholic University (1995–1997), Doctor of Law at Parahyangan Catholic University (2004–2007), Master of Notary (2010–2012). Write books relating to business law and franchise law, became editor of the writing of the book *Laws invention writings of Prof. Dr. Arief B. Sidharta, SH*. Editor of several books with regard to business law and philosophy, publish in a variety of scientific meetings, scientific journals, being a reviewer of research, becoming reviewer of several journals in the country. Legal counseling help some business firms both in Bandung and Jakarta with the field of study of civil law, business law, contract law, franchise law, marriage law.



**Rahel Octora**, S.H., M. Hum. finished Faculty of Law, Maranatha Christian University, Bandung.

Rahel Octora joined the Faculty of Law Maranatha Christian University in 2012. Completed the Bachelor of Law Program at Parahyangan Catholic University (2006-2010) and Master of Law at Parahyangan Catholic University (2010–2012). Teaching and researching the field of criminal law, criminal law aspects in business, and corporate crime. In 2015–2020, served as Head of Study Program and currently serves as Vice Dean.



**Floria Lusiana**, S.H. finished Faculty of Law, Maranatha Christian University, Bandung.

Floria Lusiana graduated from Faculty of Law Maranatha Christian University with a Cum Laude Predicate (2018–2022) and received an Internal Academic Achievement Scholarship based on being selected by Maranatha Christian University. Currently work as a Corporate Legal Officer in Central Jakarta.