

DILEMMATIC OF LAW IN BANCASSURANCE ACTIVITIES (A COMPARISON BETWEEN INDONESIAN REGULATION AND OTHER COUNTRIES)

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ABSTRACT

The aim of this article is the issue of bancassurance in Indonesia and the comparison with other countries. Bancassurance is known as a collaboration between banks and insurance companies to market insurance products. The cooperation between the two is based on an agreement. However, it is necessary to understand that bancassurance is not or has not been regulated, neither in the Banking Law nor Insurance Law. It causes the position of the bank in bancassurance has not to be clearly explained. Currently, in Indonesia, the regulation regarding bancassurance is regulated in the Circular Letter of the Financial Services Authority, also known as Otoritas Jasa Keuangan (OJK) Number 32/SEOJK/O5/2016 concerning Marketing Channels of Insurance Products Through Cooperation with Banks (Bancassurance). Later in this article, we will further discuss the dilemma of bancassurance in the Indonesian legal system. A comparison of regulations with several other countries will also be carried out. The purpose of this discussion is to find out the problem of bancassurance in Indonesia, which is then carried out by comparing regulations with other countries to support the formation of special regulations on it.

Keywords: Agreement, Bancassurance, Cooperation, Comparison of Regulation, Legal Issue

INTRODUCTION

Insurance could be known as a form of risk transfer between the insured to the insurer. The development of insurance worldwide started long ago, since the Babylonian era, which expanded to Europe in the mid-14th century.¹ Even today, the insurance industry is still growing with various arrangements related to insurance. The development of this era brought insurance to be able to adapt to better changes. One form of action that is exceptionally influential on insurance is related to its marketing channels. This marketing channel is one of the keys to market penetration for insurance companies that want to develop their product distribution.²

There is a term known as bancassurance in a marketing channel. Bancassurance is defined as a business model in which banks and insurance companies offer insurance products to customers.³ Bancassurance is not a new term in the marketing channel of insurance products. In some countries, it is very familiar with the term bancassurance. In previous research (Guillem, 2020)⁴, the development of product distribution through banking institutions has reached a sound stage of growth in the Eurozone area. In addition, the same source also explained that using banks for product marketing (bancassurance) also provides benefits to increase sales of insurance products and develop market share without forcing insurance companies to recruit new agents or brokers to market products. Like countries in general that use banking institutions to market insurance products, Indonesia also applies bancassurance marketing channels. Bancassurance in Indonesia is currently regulated in the Circular Letter of the Financial Services Authority, also known as Otoritas Jasa Keuangan (OJK) Number 32/SEOJK/O5/2016 concerning Insurance Products Marketing Channels Through Cooperation with Banks (Bancassurance). In the Regulation of the Financial Services Authority (OJK) Number 23/POJK.05/2015 concerning Insurance Products and Marketing of Insurance Products, Article 1 number 13 also provides an understanding of bancassurance, namely cooperative activities between companies and banks in marketing insurance products through banks.

However, it is essential to note that some legal issues still occur in the scope of bancassurance. Even some of the products offered through bancassurance still have to be questioned regarding the legal aspects. Of course, the existence of such problems will be perilous for customers and the business continuity of banks and insurance companies. Therefore, through this article, we will discuss bancassurance practices in Indonesia, which will also be compared with several countries that implement bancassurance. In addition, this article will also discuss the urgency of establishing specific regulations that provide regulations regarding bancassurance in Indonesia by comparing several existing regulations in several countries.

RESEARCH METHOD

Legal research can be known as a form of process in looking at the existing law in society. Morris L. Cohen also stated this in (Peter Mahmud, 2019)⁵, Legal Research is the process of finding the law that governs activities in human society. Therefore, to carry out this research, it is necessary to have a particular research method. The research in this article has normative characteristics. This normative research intends to research sources derived from secondary data with legal materials in legislation, literature, and other legal documents. In addition, this research will also use several approaches, such as a statutory approach, a conceptual approach, and a comparative approach. Review the applicable laws and regulations relating to bancassurance in Indonesia and compare the

¹ Lowry John, Rawlings P J, and Merkin Robert, *Insurance Law: Doctrine and Principles* (North America: Hart Publishing, 2011).

² P Praba Devi, 'Bancassurance: A Marketing Perspective', *International Journal of Civil Engineering and Technology (IJCIET)*, 10.4 (2019), 936-45 (p. 936).

³ Mousumi Choudhury and Ranjit Singh, 'Identifying Factors Influencing Customer Experience in Bancassurance: A Literature Review', *Journal of Commerce & Accounting Research*, 10.2 (2021), 10-22 (p. 10).

⁴ Miguel Angel Latorre Guillem, 'The Customer Orientation Service of Spanish Brokers in the Insurance Industry: The Advisory Service of the Insurance Distribution Channel Bancassurance', *Sustainability (Switzerland)*, 12.1-22 (2020), p. 2.

⁵ Marzuki Peter Mahmud, *Penelitian Hukum* (Jakarta: Prenadamedia Group, 2019).

regulation and implementation of bancassurance in several other countries.

DISCUSSION

1. Problematic of Bancassurance in The Indonesian Legal System

As previously known, bancassurance is a collaboration between banks and insurance in offering insurance products. The definition of insurance in Indonesian law is regulated in several laws and regulations. In Article 246 of the Commercial Code (Kitab Undang-Undang Hukum Dagang also known as KUHD) insurance or coverage is an agreement, by which an insurer binds himself to an insured, by receiving a premium, to compensate him for a loss, damage, or loss of expected profit, which may be suffered because of an unspecified event. In (Arief Suryono, 2020)⁶ It is known that there are several elements in Article 246, namely in the form of an agreement, the insurer and the insured, the existence of a premium, the occurrence of losses, the existence of compensation, and uncertain events when they occur.

In (Arief Suryono, 2020), also describes several elements of insurance or coverage that exist in Act of Insurance Number 40 of 2014, namely in the form of an agreement, the insurance company, and the policyholder, the existence of premiums, the occurrence of losses, the existence of compensation and events are uncertain when they occur.⁷

Considering the two elements that exist in the KUHD and the Act of Insurance, they are almost the same, it's just that in point (b) the insurer previously in the KUHD was not explained in detail, in the Insurance Law it is specified for insurance companies. Meanwhile, for the insured, it is specified to be a policyholder. Through the elaboration of the elements of these two arrangements, it is clear about the parties and issues within the scope of insurance.

In addition to these elements, insurance is also known for several principles. The principles in insurance are the principle of insurable interest, indemnity, utmost good faith, subrogation, and contribution.⁸ These principles should be applied in order to achieve the insurance objectives as they should, following the laws and regulations.

Linking bancassurance to the elements contained in the definition of insurance according to the Insurance Act, the position of the bank is not explained. In the elements previously described, there is no mention of a bank in the coverage. Meanwhile, in Act of Banking Number 7 of 1992 concerning Banking as amended by Act Number 10 of 1998, Article 10 letter b states that Commercial Banks are prohibited from conducting insurance business.

Referring to Article 1 number 13 of the Financial Services Authority, also known as Otoritas Jasa Keuangan (OJK), Regulation Number 23/POJK.05/2015 concerning Insurance Products and Marketing of Insurance Products, it is emphasized that bancassurance is a cooperative activity between companies and banks in the context of marketing insurance products through banks. Then in the Circular Letter of the Financial Services Authority (OJK) Number 32/SEOJK.05/2016 concerning Marketing Channels of Insurance Products Through Cooperation with Banks (Bancassurance) hereinafter referred to as SE OJK in this article, is stated the definition of insurance based on the Insurance Law and the definition of bank based on the Act of Banking.⁹ Through this explanation, it can be seen that bancassurance is regulated in OJK Regulations and OJK Circular Letters (SE OJK). In this SE OJK, it is explained about the position of banks and insurance companies in bancassurance.

As is known in the SE OJK, there are several forms of bancassurance cooperation. This cooperation can be categorized into several types, namely:¹⁰

a. Reference

This cooperation in the form of references can be regarded as a form of marketing activity for insurance products in which the bank only plays a role in referencing or recommending products to customers. References related to bank products, there is a provision in which the insurance product offered is a condition for obtaining banking products. Meanwhile, for those whose references are not in the context of bank products, it does not become a requirement for bank products.

b. Distribution Cooperation

Distribution cooperation is intended for the marketing of insurance products by banks by providing explanations about insurance products directly to customers.

c. Product Integration

Product integration is a collaboration carried out to market insurance products where there is a modification to the product by combining insurance products and bank products. Products from this collaboration are known as bundled products whose marketing is done face-to-face and/or using communication or telemarketing facilities.

The SE OJK also explains that there are exceptions to activities that cannot be categorized as bancassurance when it involves a bank as an insured or participant and/or the risk being insured is bank assets or bank employees. This kind of provision is in a risky position because if it is related to the form of cooperation, especially on reference cooperation and product integration cooperation, it is considered as a provision that diverts or creates confusion. This is because banks and insurance may offer products to customers in the form of bundled products or products as a condition for banking products that have indications to protect certain interests.¹¹

If referring to the principles in insurance, one of the principles of insurable interest must exist in the insurance agreement. In the insurance agreement, the element of insurable interest is a condition that is absolute and must be on the insured with the

⁶ Suryono Arief, *Pengetahuan Dasar Hukum Asuransi* (Surakarta: UNS Press, 2020), p. 8.

⁷ Arief, p. 10.

⁸ Retno Wulansari, 'Pemaknaan Prinsip Kepentingan Dalam Hukum Asuransi Di Indonesia', *Jurnal Panorama Hukum*, 2.1 (2017), 103–116 (p. 108).

⁹ Ikhwan Abiyyu, Mukhamad Najib, and Alla Asmara, 'Bancassurance Business Strategy in Life Insurance: A Case Study One of Joint Venture Company in Indonesia', *Jurnal Dinamika Manajemen*, 11.1 (2020), 103–115 (p. 105).

¹⁰ Agustina Rani Sri, 'Bundling Product Sebagai Perjanjian Kerjasama Antara Bank Dan Perusahaan Asuransi (Bancassurance) Dikaitkan Dengan Persaingan Usaha Yang Tidak Sehat', *Jurnal Ilmiah Hukum Dan Keadilan*, 7.1 (2020), 80–96 (p. 84).

¹¹ Rani Sri, p. 82.

consequences of canceling the insurance if there is no element of interest.¹² This means that there is a requirement that is fulfilled in order to form an insurance agreement, which is related to interests. The consequences of canceling this insurance can be seen in Article 250 of the KUHD which states that if a person holds insurance for himself or the benefit of a third party, at the time the insurance is held the insured or the third party concerned does not have an interest in the insurance object, then the insurer is not obliged to compensate for the loss. which through the explanation, that interest is an absolute requirement, if it does not exist, then the insurance is void.¹³ In (Anifalaje,2021)¹⁴, that this principle of insurable interest, in general, can be described as a legal right to provide certainty between people and goods who have relationships in the financial sphere regulated by law. Furthermore, it should be noted that the concept of interest can also be found in government circles related to public policy in order to reduce moral hazards. This indicates that the principle of interest is not only a mere principle but also a meaningful principle.

The concept of the necessity for customers to buy insurance products in order to obtain banking products or purchase product bundling as a combination of bank and insurance products is feared to injure the principle of insurable interest. Because there is a relationship between the insured and the insurer, which gives rights and obligations between them which will later lead to certain interests. The insurance relation between the insured and the insurer will later give rights and obligations, in which the insured is obliged to pay a premium, and for this premium, the insurer must compensate or compensate in the event of a risk of loss (event).¹⁵ These explanations prove that in fact, the intended interest in this insurance issue is the interest of the insured. It cannot be then that this interest has nothing to do with the insured because as a consequence, the insurer is not obliged to provide compensation if later it is found that the insured has no interest.

Then also to note is the position of the bank in this bancassurance. considering the legal relationship between the insurer (in this case the insurance company) and the insured (customer), it is clear that the arrangements are in the KUHD and the Act of Insurance. These two regulations do not imply the existence of a bank's position and are also added to the Act of Banking that banks are prohibited from conducting insurance business. Referring to the SE OJK, it is stated that the bancassurance agreement must contain several things, one of which is the clarity of the rights and obligations of each party in carrying out bancassurance. This clause can be said to be an opportunity to put and build a legal relationship construction between insurance companies and banks. However, it would be better if some laws and regulations directly stated the position of the bank in the legal relationship between insurance companies, banks, and customers. Although the arrangements are contained in the agreement, it should be remembered that even for the sake of business interests, the parties are free to agree (the principle of freedom of contract) as long as it does not conflict with the law, public order, or propriety.¹⁶ The law can be used in order as a bulwark in business risk. in addition, it is also necessary to note that the agreement formed in this insurance relationship also tends to be standard. As it is known that a standard agreement with a standard or standard clauses must not make the position of the parties unbalanced because this agreement will later apply as law for both.¹⁷

Relating this issue to legal protection, even this legal protection is not only about a single issue. In (Moch Isnaeni,2016)¹⁸ that there are two legal protections, namely internal legal protection whose existence is made by the parties in the agreement and its validity is limited to the parties. Then external legal protection whose existence is through the authorities with the establishment of laws and regulations intended for the general public. Therefore, it can be seen that forming an agreement for the implementation of bancassurance should also be accompanied by adequate arrangements. In addition, the protection of bank customer data needs to be considered in this bancassurance activity. The need for regulation to fortify data protection can be said to be a non-negotiable necessity.¹⁹ Considering Indonesia as a state of the law as stated in Article 1 paragraph 3 of the 1945 Constitution, also known as Undang-Undang Dasar 1945. The importance of having regulations through legislation that is more adequate and detailed regarding bancassurance is also expected to be able to provide a form of legal certainty. As proposed by Gustav Radbruch that legal certainty shows a guarantee that the law (with justice as well as norms that promote goodness), really functions and is a rule that is obeyed.²⁰

2. Comparison of Bancassurance Regulations in Indonesia with Several Countries

The development of bancassurance in the world is no longer in doubt. The European continent as a pioneer of bancassurance to the United States, which originally banned this practice, is now getting used to bancassurance. In-page (imarcgroup.com)²¹ The distribution of the bancassurance market also covers the whole world, such as Asia Pacific, Europe, Latin America, North America, Middle East, and Africa. Europe is actually in a leading position in this market due to a supportive tax structure with potential countries such as France, Italy, Portugal, and Austria as the main contributors. Meanwhile, other European countries that have the potential for the bancassurance market are Luxemburg, Russia, and Slovenia.

¹² Fitria Dewi Navisa, 'Karakteristik Asas Kepentingan (Insurable Interest) Dalam Perjanjian Asuransi', *Negara Dan Keadilan*, 9.2 (2020), 188–204 (p. 191).

¹³ Navisa, p. 195.

¹⁴ Kehinde Anifalaje, 'Changing Legal Perspectives of the Requirement of Insurable Interest in Insurance Contracts', *Commonwealth Law Bulletin*, 47.2 (2021), 363–393.

¹⁵ Arief, p. 77.

¹⁶ Moch Isnaeni, *Pengantar Hukum Jaminan Kebendaan* (Surabaya: Laksbang Pressindo, 2016), p. 66.

¹⁷ Hanim Lathifah, 'The Justice in Credit Agreements with Clausula Standard', *Jurnal Pembaharuan Hukum*, 7.3 (2020), 274–86 (p. 275).

¹⁸ Isnaeni, p. 102.

¹⁹ Azharuddin, 'Legal Protection For Users of Internet Banking Customers Following Changes in Information and Electronic Transaction Law', *Jurnal Pembaharuan Hukum*, 52.1 (2019), 54–64 (p. 57).

²⁰ L. Tanya Bernard, N. Simanjuntak Yoan, and Y. Hage Markus, *Teori Hukum: Strategi Tertib Manusia Lintas Ruang Dan Generasi* (Yogyakarta: GENTA Publishing, 2010).

²¹ imarc, 'Bancassurance Market: Global Industry Trends, Share, Size, Growth, Opportunity and Forecast 2021-2026', *Imarcgroup.Com*, 2021 <<https://www.imarcgroup.com/bancassurance-market>>.

Discussing the comparison of bancassurance arrangements between Indonesia and several countries, of course, there are differences. As in research (Śliwiński, et.al., 2021)²², mentioned that bancassurance is a marketing channel that is frequently used, although it is not defined in the Policy Provisions (law in Poland) in insurance regulations, particularly in the distribution market. Referring to the Insurance Distribution Act 2017 in Poland, it is explained that the marketing of insurance products can be done directly by insurance companies, but it can also be done through agents or insurance brokers. It is known that bancassurance has significantly changed the distribution of life insurance. Currently, there are several regulations regarding insurance marketing channels in Poland through the Insurance Distribution Act 2017 which regulates insurance distribution issues, and the Directive of the European Parliament and of the EU Council 2016 which addresses the issue of direct insurance distribution implementation, both of which are in Polish law.²³

While in Taiwan, in previous research (Jin Lung Peng, et.al., 2017), The Financial Holding Company Act of 2001 describes in general terms which permit banks and insurance to enter into an integrated financial relationship. Through this regulation, it is also known that the bancassurance business is applied. Then in 2003, this regulation was replaced which provides more regulation on the partnership relationship between banks and insurance.²⁴ Another country that also provides support for the use of bancassurance is Latvia. In (Evija & Biruta, 2019)²⁵ One of the characteristic forms of regulation in Latvia that relates to the existence of bancassurance is by allowing banks to cooperate with several insurance companies simultaneously. The same source stated that through existing regulations, the use of bancassurance channels is allowed and can be applied with several collaborations through several partners, and it is also possible to make various offers to customers regarding insurance products. Although in reality, various strict processes must be passed by the EU (European Union) which make policies more complex than expected, they still do not affect activities and services through bancassurance.

India is a country that is also very familiar with bancassurance. In (Jyoti & Kanwal, 2018)²⁶, banks and insurance in India are regulated by two different regulations, namely the IRDA for insurance arrangements and the Reserve Bank of India for bank regulations. In 2015, there was a new regulation, namely IRDAI (Insurance Regulatory and Development Authority of India) which allows corporations as agents to sell insurance policies with a maximum of 9 insurance companies in the same business. Banks, in this case as cooperative agents, can sell a maximum of three types of insurance, namely three life insurances, three non-life insurances, and three health insurances.

When comparing with regulations in Indonesia, it is known that banks and insurance are financial institutions, both of which are regulated in different laws. Banks are regulated in the Act of Banking while Insurance is regulated in the Act of Insurance. Generally, insurance as coverage is also regulated in the Civil Code (Kitab Undang-Undang Hukum Perdata). Both the Civil Code and the Act of Insurance do not mention banks as parties involved in the insurance business. This seems to be in line with what is stipulated in Article 10 letter b of the Act of Banking that commercial banks are prohibited from conducting insurance business. However, through the Financial Services Authority (OJK), a Circular Letter was formed which provides regulations regarding bancassurance as a marketing channel. It's just that this Circular Letter must be published in the form of regulations so that it can cover more detailed arrangements. This can be seen from the contribution of bancassurance in providing support and progress for insurance companies and banks. However, it must also pay attention to the interests of customers. The customer in this case needs to be given an understanding of the position of the bank and insurance, this aims to provide a form of certainty. This position can be formed of them by setting through legislation. Therefore, there is a legal fortress for the parties if the agreement formed in this case of bancassurance cooperation is in dispute. Besides that, Through more detailed bancassurance arrangements, can also support full opportunities for customers to choose the insurance product they want. As is the case in India, which provides large amounts of insurance company products that can be offered by banks. In addition, the country of Latvia expressly allows the cooperation of banks with various insurance companies in one line of business. Therefore, the establishment of this regulation can minimize the occurrence of a form of unfair competition and monopoly. Nor does it put pressure on and injure the principle of interest in insurance. In addition, the country of Latvia expressly allows the cooperation of banks with various insurance companies in one line of business. Therefore, the establishment of this regulation can minimize the occurrence of a form of unfair competition and monopoly. Nor does it put pressure on and injure the principle of interest in insurance.

CONCLUSION

Bancassurance is a marketing channel formed in collaboration between banks and insurance companies. This collaboration is worldwide and well-known in the insurance world. As it is known that bancassurance originally grew and developed in European countries. Even today, progress in European countries regarding bancassurance is still growing. This development has also had an impact on the implementation of bancassurance as a collaboration between banks and insurance companies in other countries such as in the Middle East and countries on the Asian continent.

Like other countries, Indonesia has also begun to take advantage of bancassurance and continues to grow to this day. The regulations governing bancassurance are contained in the Financial Services Authority (Otoritas Jasa Keuangan, also known as OJK) Circular Letter Number 32/SEOJK.05/2016 concerning Insurance Products Marketing Channels Through Cooperation

²² Adam Śliwiński, Joanna Dropia, and Norbert Duczkowski, 'Risk Factors Affecting Bancassurance Development in Poland', *Risks*, 9.130 (2021), 1–19.

²³ Śliwiński, Dropia, and Duczkowski, p. 7.

²⁴ Jin Lung Peng and others, 'The Impact of Bancassurance on Efficiency and Profitability of Banks: Evidence from the Banking Industry in Taiwan', *Journal of Banking and Finance*, 80 (2017), 1–13 (p. 14).

²⁵ Evija Dundure and Biruta Sloka, 'Market Environment Factors Influence On Development of Bancassurance in Latvia', *Regional Formation and Development Studies*, 2.28 (2019), 54–64.

²⁶ Jyoti Bansal and Kanwal Anil, 'Qualitative Research on Issues and Trends in the Bancassurance Model in India: An Interview Report.', *International Journal of Banking, Risk & Insurance*, 6.2 (2018), 67–78.

with Banks (Bancassurance), in this research known as SE OJK. However, the existence of this SE OJK has not fully provided legal certainty for parties involved in bancassurance, such as indications of coercion for customers to purchase insurance products that are bundled with bank products, the principle of the interest being injured, as well as the position of the bank whose regulation is only submitted through a cooperation agreement. In order to answer the bancassurance dilemma that occurs in Indonesia, then a comparison of regulations between Indonesia and various countries is carried out, such as Latvia, India, Taiwan, and Poland. Through this comparison, it can be seen about the regulations that fortify bancassurance in these countries.

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