

Legal Protection towards the Beneficiaries of PT Asuransi Jiwasraya due to Payment Defaults of the Jiwasraya Savings Plan: A Critical Review



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Legal Protection towards the Beneficiaries of PT Asuransi Jiwasraya due to Payment Defaults of the Jiwasraya Savings Plan: A Critical Review

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ABSTRACT. The failure of Jiwasraya's claim settlements was since it was not a part of their insurance product and it did not comply with UU No. 40 Tahun 2014. The creation of this research article is to comprehend the unlawful effect of such failure and places responsibility on parties deemed responsible for the losses caused. This research is normative-law research-based, given the evidence of the mismanagement of PT. Asuransi Jiwasraya did not comply with the law and how their board of management disobeyed good governance. Theoretically, PT. Asuransi Jiwasraya bears responsibility, as mentioned in their contractual liability that holds the company responsible. As such is the right of the owner of the insurance policy bought from PT. Asuransi Jiwasraya. As PT. Asuransi Jiwasraya is a state-owned enterprise - the Indonesian government is also partly responsible for its failure. With that in mind, the government has mandated restructuring the Financial Services Authority (OJK) and increasing financial surveillance on PT. Asuransi Jiwasraya, putting the insurance company on a short leash.

KEYWORDS. Payment Default, Jiwasraya, Legal Protection

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Introduction

As we progress in society, many have considered the importance of having an insurance policy. In Indonesia alone, there has been a rise in policyholders than ever before. The number of policyholders has risen by 20% year on year¹. With the increase in demand, insurance companies have been competing neck and neck in Indonesia. To compete, insurance companies has been innovative at making their products to win their consumer's heart.

Insurance is a practice or product in which a private institution or a governing body guarantees compensation in the case of illness, loss, damage, or death. The main reason people purchase an insurance policy is as a safety net against many risks that may occur in their life particularly during the active period of the insurance policy itself. It would aid the policyholder

¹ *Pandemi Covid-19: Jumlah Tertanggung Naik, Kinerja Bisnis Asuransi Tertekan* | *Finansial*. (2020, June 25). *Bisnis.Com*. <https://finansial.bisnis.com/read/20200625/215/1257785/pandemi-covid-19-jumlah-tertanggung-naik-kinerja-bisnis-asuransi-tertekan>

when they get sick, go through an accident, or for retirement purposes. It is a policy that ensures payment or accepts claims for medical reasons or any other risk that the policyholder may go through during the period of the policy. An insurance policy works as a law binding agreement between two parties which are the insurance company and the beneficiary. The beneficiary is required to pay premium to the insurance company while the insurance company provides benefits in return. These benefits may include payments or reimbursement of claims, paid medical benefits, and much more.

To compete against their competition, Jiwasraya created the JS Savings Plan. This is different than most insurance policies, which are called Unit Link policies whereby the risk of any devaluation of the unit link price of the insurance is held by the policyholder. In the case of Jiwasraya Savings Plan, this savings plan is a unique plan as it falls under their bancassurance scheme where Jiwasraya ensures an investment savings plan for its policyholder². Moreover, it also bears Jiwasraya responsible in the case of any default. In this plan, policyholders were promised a fixed 9-14% annual rate of return which is a lot higher compared to many other investment instruments in the market. This steep annual interest rate of return is comparably higher to even bank certificate or time deposits in the market. With such a high annual interest rate of return, Jiwasraya was able to attract many investors to invest with them.

Looking at the savings plan policy of Jiwasraya, it bears similiarity to a savings account at a typical bank. Jiwasraya just uses its name as an insurance company and place the insurance policy benefit as a rider on top of the savings plan. This is against the law in Indonesia as the main product was not based on an insurance product but a savings plan. As closely examined, this is merely a savings account at a bank where the bank has the right to cycle the money through investments, stocks, bonds, money markets, and many other instruments. Cycling through these instruments, the bank would then earn a percentage of profit for the bank while giving out the rest of the left percentage as interest to its customers. Thus, what Jiwasraya is implementing is basically as how a bank would operate which defies its sole purpose of being an insurance company. That change of purpose is regarded as going

² Media Indonesia. (2020, September 7). *Saksi Ahli: Produk Saving Plan Jiwasraya Ilegal*. <https://mediaindonesia.com/politik-dan-hukum/342922/saksi-ahli-produk-saving-plan-jawasraya-ilegal.html>

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against the law in Indonesia which prohibits insurance companies from acting like a bank as mentioned.

The investors purchases the policy that binds Jiwasraya to promise such return to them. This binding agreement is signed and recognized by the law as a legitimate business transaction. Hence, Jiwasraya bears full responsibility in the case of any default. With that in mind, Jiwasraya has to find avenues of investments to give the promised rate of return to their stakeholders.

To keep with their promise of providing such a high amount of return, the management of Jiwasraya went through many risky avenues of cycling the money. The management of Jiwasraya cycles the money earned from the premium through risky investments in high risk stocks, bonds, and equity. Other than that, the board of management cycles the money in properties, cafes³ and hotels that questions the professionalism of the decision makers. According to the Financial Audit Board of Indonesia (BPK), it is also suspected that the management receives a fee for every JS Savings Plan purchased. Hence, by law, this is indicative of a corruption as Jiwasraya is a state-owned enterprise which is enforced by the Corruption Eradication Commision (KPK).

Moreover, the Financial Audit Board of Indonesia (BPK) has also stated that there has been a history of financial wrongdoings in the past. Back in early 2020, the Financial Audit Board of Indonesia (BPK) found that Jiwasraya manipulated their financial statements or it is also called window dressing. Window dressing is an act of fraud where a company strategizes to improve the appearance of their financial statements. An example of such act would be like transferring large sums of money between bank accounts owned by Jiwasraya or other bank accounts still related to Jiwasraya. These transactions could then be recorded or considered as sales making it look as if they have a high amount of sales.

In 2018, the situation worsened. As of June 2018, the company recorded a loss of IDR 4.1 trillion⁴, to which by then, the company couldn't even afford to have salary reserves, operational expense, and their short-term loans to

³ *Dua Mantan Direksi Jiwasraya Diduga Berinvestasi Ratusan Miliar Rupiah Untuk Sebuah Kafe di Jaksel.* (2020, February 12). *Tribunnews.com*. <https://www.tribunnews.com/bisnis/2020/02/12/dua-mantan-direksi-jiwasraya-diduga-berinvestasi-ratusan-miliar-rupiah-untuk-sebuah-kafe-di-jaksel>

⁴ Nola, L. F. (2020). *PELINDUNGAN HUKUM TERHADAP NASABAH JIWASRAYA. XII*(No.2), 6.

fund the returns for their JS Savings Plan. Moreover, the company was at an even dire position, as it hit a liabilities at IDR IDR 58.7 Trillion, assets at IDR 13 Trillion, which results to a negative equity of 45.7 Trillion.

Furthermore, there has been suspected allegations of personal gratification gained from the laundering of this case. One of the suspects, Heru Hidayat, has been found to flow money from Jiwasraya and ASABRI for his personal gain including to fund his own daughter's expense which was expected to be at IDR 100 million per month according to officials⁵.

Risky investments, lack of good corporate governance⁶, and an abominably unrealistic interest rate of return drove the company into a turmoil that leaves many of the policyholders in such a huge loss of investment. With such great loss, research is necessary to seek the consumer protection measures to avoid any such problems from arising in the future. Moreover, this research is conducted to see the probable actors in this fraudulent case, regulations that was disregarded and to analyze the responsible parties which are PT. Asuransi Jiwasraya and the government as Jiwasraya is a state-owned enterprise.

Method

This study is a law research which analyses the systematic legal concepts, rules, theories, court decisions, and legal issues. This study allows perspectives outside the law that would aid in the ideation and perception for the functions of the law. This study includes references to studies from law documents or journals and non-law references. The results of this study is a perspective of the researcher that provides a deep critical analysis of the practice of the law. Such perspective is the thorough thought of the researcher that formulates the ideation of the conclusion at the end of this research.

The research method utilized in this study is normative law research with a systematic law research approach. Such approach requires a case study analysis, statute approach, and desk research. This requires the compilation and analysis of the primary legal resources along with secondary and tertiary

⁵ *Terungkap! Uang Jajan Putri Heru Hidayat Rp 100 Juta/Bulan*. (2020). Retrieved June 20, 2021, from <https://www.cnbcindonesia.com/market/20200812160713-17-179321/terungkap-uang-jajan-putri-heru-hidayat-rp-100-juta-bulan>

⁶ *Inilah Tiga Akar Masalah Asuransi Jiwasraya | Finansial*. (2021, April 27). *Bisnis.Com*. <https://finansial.bisnis.com/read/20210427/215/1386915/inilah-tiga-akar-masalah-asuransi-jiwasraya>

resources. All of the resources are compiled from correct sources that are credible to support the analysis given in this research.

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A. Jiwasraya: A Case Study Analysis

The case of Jiwasraya's embezzlement started in the early 2000s when the Ministry of State-Owned Enterprises and the Financial Services Authority (OJK) stated that Jiwasraya's equity is negative that has created a deficit in the company. Jiwasraya then continued with a reinsurance scheme to get themselves out of the deep hole of the negative equity. However, this was only a temporary bandage to an open wound as they did not extend the reinsurance scheme. PT. Asuransi Jiwasraya then released the JS Saving Plan that was marketed through their bancassurance scheme to which they worked with their banking partners to market and sell their product. This makes it worse as those sold through the bancassurance scheme was offered at a higher interest rate of return.

Reinsurance is a way for many insurance companies to not carry the whole risk on their own when a huge disaster happens that may result in many insurance claims happening at the same time. The way it works is that an insurance company would leverage with other insurance companies to carry the risk so it wouldn't have to carry all of it on its own which may ruin their finances. In the case of Jiwasraya, it worked with other insurance companies to carry their high-risk portfolios to keep it from going under as its equity turned negative⁷. However, Jiwasraya did not have an extensive reinsurance plan with its partners. It then halted the program, and created another product aiming to gain more customers to gain more profit to help the company. This product was the JS savings plan that promised a high interest rate of return for every premium that the beneficiary pays.

⁷ Siregar, A. Y. (n.d.). *PENGAWASAN OTORITAS JASA KEUANGAN (OJK) DALAM KASUS GAGAL BAYAR POLIS OLEH PT. ASURANSI JIWASRAYA PERSERO*. Universitas Sumatera Utara.

Promising a high interest rate of return placed Jiwasraya into a “darker hole” as they had to pull strings on cycling the money into riskier but higher return investments to provide their customers with such a high return. However, it turns out that many of these investments fell into the risk which didn’t pay Jiwasraya back which created a default.

A default happens when a company fails to return or fails to give the benefit that they promised. Such as in the case that many of the banks in 1998 defaulted due to not being able to return the promised interest rates. These banks were not able to return the promised return rates as they did not think in the long run. They only thought that having a high interest rate of return would attract many customers without thinking on their investment cycle. Many banks invested their money through risky instruments that ended up failing the bank itself which then failed to pay the promised interest rates. Another reason was because of the Southeast Asian Financial Crisis that was caused by the extreme steep increase of USD to IDR exchange rate. It ballooned from about IDR 3,000/USD to IDR 20,000/USD⁸ before settling to around IDR 10,000/USD. This steep increase of exchange rate closed many imports export business as they suddenly did not have enough funds to fund their USD invoices or bills while they earn their earnings in IDR. This exchange rate gap was gauged easily as it did not fluctuate overnight. However, during this Southeast Asian Financial Crisis, rates fluctuated not only overnight but within hours which closed many business including banks. Banks were not able to have enough reserves to close that gap as many customers rush to exchange their banknotes while at the same time carrying enough margins for their trade.

This created a distrust in the society from using banks, so many rushed to the banks and retrieve their savings in cash fearing from such bank default. This then created another problem as banks fail when a “rush” happens. A rush happens when many or close to all a bank’s customers rush to the bank to withdraw almost all of their money at the same time⁹. This creates a problem as banks cycle a customer’s money through investment instruments

⁸ Yuliadi, I. (2007). ANALISIS NILAI TUKAR RUPIAH DAN IMPLIKASINYA PADA PEREKONOMIAN INDONESIA: PENDEKATAN ERROR CORRECTION MODEL (ECM). *Jurnal Ekonomi Pembangunan: Kajian Masalah Ekonomi dan Pembangunan*, 8(2), 146. <https://doi.org/10.23917/jep.v8i2.1038>

⁹ Pramisti, N. Q. (2016). *Mimpi Buruk “Rush Money” Jangan Berulang*. tirtto.id. Retrieved June 20, 2021, from <https://tirtto.id/mimpi-buruk-rush-money-jangan-berulang-b5lT>

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at different times or sometimes all at once. When cycling through such investment instrument, banks need to have enough cash reserves for withdrawals and its own operations. If many or all the cash reserves that is saved in the bank is withdrawn, the bank's investment cycle would break as they wouldn't have enough reserves to cycle their investments and pay interest to its customers.

Such fear of default is still deeply rooted in the Indonesian society. As historically this has created a distrust in the system of banking. If this case is not carefully dealt with, many customers may start distrusting the system of insurance as a whole or even the government as Jiwasraya is a state-owned enterprise. Many have chosen Jiwasraya as they believe that the government wouldn't let it go into default, but the future of this insurance company is dim. Such a distrust on an insurance program may disrupt the insurance industry in Indonesia that is currently still growing swiftly. Customers have voiced their distrust from the government owned insurance company, causing many to withdraw their policies from Jiwasraya which worsens the situation.

In terms of the financial mishaps of the company itself, historically the Financial Audit Board of Indonesia (BPK) has once opined a disclaimer (unable to give out opinion) on the financial statement of PT. Jiwasraya as the board questions the authenticity of their financial statement's supplementary information in the period of 2006-2007¹⁰. The situation worsened in 2007 which widened their deficit at IDR 5.7 trillion in 2008 and IDR 6.3 trillion in 2009. With this in mind, they continued their reinsurance scheme until it reached a surplus of IDR 1.3 trillion by the end of 2011. This reinsurance scheme definitely did not help the situation entirely as it only partly healed the company from financial turmoil. Other than the previously discussed, JS Savings Plan, the company also made the condition worse by sponsoring the world-renowned soccer team, Manchester City in 2014 despite being in a financial crisis. Thereafter, the Financial Audit Board of Indonesia found that the company was trading stocks and investing in money markets that were still affiliated with the governing body of Jiwasraya which indicates a conflict of interest.

¹⁰ *Skandal Jiwasraya, BPK: Ini Jauh Lebih Kompleks dari Dugaan.* (2020, January 6). <https://www.cnbcindonesia.com/market/20200106141553-17-127962/skandal-jiwasraya-bpk-ini-jauh-lebih-kompleks-dari-dugaan>

A conflict of interest happens when a certain body or organization or person itself involves themselves in several interests, and to serve one interest could work against another. In most cases, such conflict of interest may involve financial gain or personal gain or otherwise. In the case of Jiwasraya the governing bodies of the company, traded in high-risk stocks and investment instruments that were still affiliated with them. Such affiliation may indicate a conflict of interest. As an example, a person who is a governing body at a company has the right and authorization to purchase stocks of a company that that governing body owns. That governing body may choose to rise the stock of his company without thinking of the financial discourse that may ruin the company that he is governing who is purchasing these stocks. However, the governing body may choose to do so as they would still be able to earn their personal gain by having a large body (where the governing body has control) to purchase the stocks. In this case, if the governing body loses the control of the company that they are supposed to control, they could still enjoy the personal gain gained from that conflict of interest (the rising stock price).

However, in 2016 and 2017, the company earned plenty of profit as they had just released their JS Savings Plan that attracted many consumers. Such attraction garnered the increase in sales of each year. Thus, this resulted in a highly earning year in their financial statement for the financial year of 2016 to 2017. Despite so, such practice is not allowed in terms of good corporate governance of financial practices as it basically window dresses their financial statement to appear that they are doing well. As it then was proven in the following year, that the company's equity was negative, and it turned into a huge loss. However, the condition worsened as they promised such a high interest rate of return for those beneficiaries that have purchased a policy with them. The company's liquidity then starts to turmoil and eventually default.

The default of Jiwasraya's savings plan itself goes against Law No.40 Article 11 and 21 year 2014 that concerns the insurance industry as the funds garnered from the purchasing of Jiwasraya Savings Plan was placed in investments of stocks and money markets that is highly at risk that resulted in a default¹¹. Article 11 of that law regulates the good management or governance of insurance companies while Article 21 Paragraph 3 of that law that regulates the wealth management of its beneficiaries who have placed

¹¹ Law No. 40 year 2014 concerning the Financial Services Authority (OJK)

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their funds in the insurance company that requires the company to uphold the value of prudential principle. Jiwasraya did not operate with prudence nor having a good governance as it operates as an insurance company¹²¹³. It failed to create good business principles that could have avoided the company from its demise. It instead created a product that would in turn kill its own company after promising an astronomical interest rate that they could not provide to return that results into a negative spread which then defaulted the company. Lack of good governance was also not engaged in the company as the company failed to do a proper analysis on how they would cycle the funds garnered from the beneficiaries which was actually placing them at risk.

The regulatory board that regulates the insurance industry along with the financial services industry is the OJK or the Financial Services Authority. The OJK regulation No. 73/POJK.05/2016 says that any board of director is not allowed to conduct transactions that conflicts with their own interest, taking advantage of their position or receiving personal gratification from the company. Such conflict of interest has been shown from the act that the Financial Audit Board of Indonesia (BPK) found that the high risk trades, stocks, and investment instruments that Jiwasraya utilizes was still affiliated with the company's management members.

Aside from that, the company violates the Law No. 40 Article 97 Paragraph No. 3 year 2007 concerning Limited Liability Companies that regulates on the personal responsibility held by the board of directors¹⁴. The company belligerently violates this law as Financial Audit Board of Indonesia found that the directors deliberately accounts fraudulent profits as profits in the financial statement, appointment of bancassurance officer that did not go through a rigorous process and the process of cost of fund processing without the involvement of said division within the organization. Thereafter, there has been violations found in the fraudulent of stock exchange and money market exchange that the company conducts as it never reflected the true price of the stocks and money markets that were purchased. This certainly violated Law No. 8 Article No. 90 year 1995 concerning the Capital Market that regulates on the fraudulent practices of the capital market¹⁵.

¹² Article 11, The Indonesian Constitution, Republic of Indonesia

¹³ Article 21, The Indonesian Constitution, Republic of Indonesia

¹⁴ Law No. 40 Article 97 year 2007 concerning Limited Liability Companies.

¹⁵ Law No. 8 Article No.90 year 1995 concerning the capital market.

Reviewing the violations done by the Jiwasraya board members and decision makers, it seems that there is some sort of deliberate action that happened. Some of these violations goes back to the early 2000s which goes back 15 years, as seen in the 2006 Financial Audit Board of Indonesia BPK's opinion on the financial statement that places its opinion as plainly just disclaimer. The board found that the financial statement's supplementary information was questionable at best. Moreover, the reinsurance program that the company went through was heavily relied upon to take care of the "deeply bleeding" company that was only able to cover some of the "wounds". The company then instead started sponsoring a very expensive English soccer team and released a product that was cycled through high-risk investments promising exorbitant interest rate of returns. What made matters worse was when the company was found to be trading stocks and money markets that are still affiliated with the board of directors. As this has happened for more than a decade, it seems as if these managers were hungry for their own personal gain and gratification. Gaining stock purchases by using Jiwasraya as their source of wealth to then rise the stock value for their own personal gain as they are still affiliated shows a deliberative act to bring the company down. Many of these board directors seem to have not cared about the state of the company but would rather focus on their own personal benefits by committing such heinous acts.

With all these measures combined, it is definitely a recipe for disaster. It was not a question if it will happen or not but it was only a question of when. And, starting in 2018, many of their customers found that there has been some sort of mismanagement that happened in the previous direction of the board of directors that lead to the downfall of the company¹⁶. While by 2020, they have admitted default and failed to pay the promised interest rate of return that has angered many investors who purchased their policy. What was also interesting was the fact that it seems only the Financial Audit Board of Indonesia (BPK) was the only serious board that kept on voicing their opinions on the condition of the barely functioning insurance company. The Financial Services Authority (FSA) has full authority on regulating such practice but seems to not have given a harsh or strict punishment as they

¹⁶ Syahrizal Sidik. (2020, September 7). *Kacau! Produk Saving Plan Jiwasraya Melanggar Undang-Undang*.
<https://www.cnbcindonesia.com/market/20200907153748-17-184951/kacau-produk-saving-plan-jiwasraya-melanggar-undang-undang>

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regulate the insurance industry services. This can be fully seen in how despite having to go through such turmoil for a long time, no government body has placed a halt or stop of services or placed a harsh punishment for Jiwasraya as it has violated many of the laws implemented in this country.

It seems that many of the necessary steps have been placed in the law to protect such deliberate fraudulent practices from happening. However, no governing body, good corporate governance and many of the other regulatory bodies has never deeply questioned the practice of Jiwasraya. Such severe ignorance or bystander effect seem to have happened within the governing regulatory body. Such deep rooted ignorance may have happened as Jiwasraya has been around for hundreds of years that makes it seem impossible for them to collapse. While, the bystander effect just shows how many government regulatory bodies often pinpoints the issue to other departments when such problem arises. As Jiwasraya hides in the veil of being a state-owned enterprise, many may assume that it would never fail as it is a governmentally owned entity. However, in this case we see that it is unavoidable, and it is possible for a government owned entity to collapse.

B. Between Power and Authority: Understanding Important Actors and Regulations

Amounting to a rich and illustrious history, Jiwasraya served as the beacon of credibility when it comes to the insurance industry. Indeed, spanning from the Dutch colonial era, the reputation that was preserved for Jiwasraya was thus preserved long before the founding of even Indonesia.¹⁷ However in lieu of the cases that surrounds Jiwasraya and the added scrutiny that was further underlined by the current financial scandal which resulted in loss of much of the company's backbone and the savings plan, it is worth considering the actors that play an important role when it comes to the contention surrounding the company's role.

Hence, to further deepen research within this article, it is important to pinpoint the current stakeholders that play a role within the scandal—with elaboration to coincide towards the institutions that can influence the

¹⁷ *Sejarah: Visi Kepedulian & Tanggung Jawab | Jiwasraya.* (2014). Jiwasraya.co.id. <https://jiwasraya.co.id/id/timeline>

operations of Jiwasraya before and after it has been declared bankrupt. The main subjects of the stakeholders within the case of Jiwasraya surrounds the impact that the company has as a State-Owned Enterprise (BUMN). Its role as a State Own Enterprise, directly gives a line of responsibility within the government's ministerial arm which is the Ministry of State-Owned Enterprises and the Ministry of Finance. These two Ministries represent the executive branch and extend towards the Indonesian cabinet as senior assistants to the President.¹⁸ In addition, we also have the Financial Services Authority (OJK) and the Attorney General's Office who hold either an independent position which is accountable to the president or a position that holds cabinet-rank. Lastly, to serve as a crucial aspect within the operations of state owned enterprises is the legislative body which is known as the Indonesian House of Representatives.¹⁹ These influential stakeholders are instrumental in the development of policy, accountability and oversight towards the operations of Jiwasraya.

The Financial Services Authority (OJK) was built with the contention of splitting the responsibilities of Bank Indonesia as a Central Bank (BI) which would go over the terms of monetary policy²⁰ and OJK which would oversee the operations of policy within the financial sector.²¹ In this instance, enabled by the Law No.21 of 2011 OJK is given the capacity to supervise all financial institutions both bank and non-bank. Although the disputes between the authority between OJK and BI might vary and has been a hot button issue since the founding of OJK itself, it can be deduced that OJK has the capacity to determine the structure, infrastructure in the operations, maintenance and the oversight of finances in the determination of rules that can lead to sanctions to stakeholders who provide services to the financial industry.²²

Under the purview of the Jiwasraya Case, Economists have stated that OJK has already conducted in functions as a regulator. Basri has stated that as an institution that has stood even after the formation of Jiwasraya, its role in giving a recommendation is fulfilled.²³ Furthermore, Basri continues to

¹⁸ Article 17, The Indonesian Constitution, Republic of Indonesia.

¹⁹ Article 20, The Indonesian Constitution, Republic of Indonesia.

²⁰ Article 23D, The Indonesian Constitution, Republic Indonesia jo. The Law concerning Bank Indonesia 1999

²¹ Law No. 21 Year 2011 concerning the Financial Services Authority (OJK)

²² Pakpahan et.al, "Peran dan Kewenangan Otoritas Jasa Keuangan (OJK) terhadap Keamanan Transaksi di Pasar Modal, Jurnal Ius Civile, halaman 29-30

²³ *Ekonom*: OJK Sudah Lakukan Tugasnya di Jiwasraya (2020, September 10). Republika Online.

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say that in its current capacity as a regulator, it does not have a authority to provide a form of financial injection and the authority in the governance of the company lies in its Board of Directors.²⁴ In addition to OJK's limitations, House of Representative Member who sits on the Commission XI which regulates the banking and financial world has also stated that the institutions has no grounds in also blocking the accounts of its customers where Article 72 Paragraph 3 of Law 40. 2014 concerning Insurance states that the delivery of OJK in this instance has no authority to block any accounts and doing so would be in conflict with Indonesia's Insurance Law.²⁵

Jiwasraya has questioned OJK's role in providing credibility towards the oversight authority that they have within the financial system. In spite of the limitations in providing sanctions, OJK is able to look at the conditions of financial companies not limited to Jiwasraya. In addition, OJK is also given a wide-ranging capacity because of its scope as an independent body.²⁶ In conjunction to this, OJK is given the capacity to oversee financial companies such as Jiwasraya and thus, its work in providing oversight towards the nuances of the year 2018-2019 needs to be questioned because this represents the rising scandal of Jiwasraya. It can also recognize that OJK's authority is subject to debate within the contextualization of its presence under national law.

As a State-Owned Enterprise, Jiwasraya as a financial service industry thus has two crucial stakeholders. The first being that of the Ministry of State Owned Enterprise which can thus determine the strategic direction of every State Own Enterprise including that of Jiwasraya and the Ministry of Finance which has the capacity to look at the finances of the company and at the same time can also provide guarantees or other financial instruments as deemed appropriate. Indeed, the Ministry of State Owned Enterprise has a long standing history in delivering economic results as the Backbone of the country's economy.²⁷ With so much authority that has been vested under the aegis of the Ministry of State Owned Enterprises, Jiwasraya was thus taken under the helm of the Ministry to provide insurance and investments to

²⁴ *Ibid.*

²⁵ Kasus Jiwasraya, DPR: OJK Tidak Berwenang Blokir Dana Nasabah, (2020, April, 17) Kasus Jiwasraya, DPR: OJK Tidak Berwenang Blokir Dana Nasabah (law-justice.co)

²⁶ Suryono, Endro Kelik and Rahadat Alfin Brandon, "Tanggung Jawab Hukum PT Jiwasraya Terhadap Nasabah". Jurnal Meta Yuridis, No (2) September 2020

²⁷ Ansari, Insa Muhammad, "State Owned Enterprise and Public Obligation in the Oil and Gas Sector", Jurnal Mimbar Hukum, Vol 29, No3, 2017

Indonesia's people. In addition, there were also policies from the Ministry of State Owned Enterprises which supported the growth of institutions such as that of Jiwasraya. In contemporary history, one potential policy that would have benefitted Jiwasraya was the conceptualization of creating a super holding company brought under the leadership of Rini Soemarno²⁸ only to be stopped under the leadership of Eric Thohir. However, with the understanding that the Ministry of State Owned Enterprise to be under the umbrella of a variety of companies intent with the development of Indonesia, thus there was the realization of synergy between State Owned Enterprises. This synergy was communicated under the ministerial decree No. 04/2007 which stipulates the collaboration that BUMN needs to have with one another.²⁹

This means that Jiwasraya had the full extent and support from the Ministry of State Owned Enterprises as well as other SOEs due to extended responsibility of obligations and the authority vested within the institution. In this instance, it has thus come under the scope of the Ministry of State Owned Enterprise to provide specific policy directives towards the next steps inside the Jiwasraya scandal. Such options that are weighed include a bailout which needs to be coordinated with the Ministry of Finance, but such measures are still in early exploration phases (where listening tours in the form of Focus Group Discussions are still being processed).³⁰ At the end of the day, the Ministry of State Owned Enterprises has brought into the solution of restructuring Jiwasraya to further curtail allowances that could lead to a higher risk of instability, such restructuring measures is coordinated with the Ministry of Finance, the development of a new holding company that focuses or specializes in insurance, cross collaboration with other SOE's to create a new company or to otherwise sell the stock portfolio of Jiwasraya has

²⁸ Kompas, (2020, September 20). *Super Holding BUMN, Mimpi Rini Soemarno yang Dikubur Erick Thohir*. KOMPAS.com. <https://money.kompas.com/read/2020/09/20/081132426/super-holding-bumn-mimpi-rini-soemarno-yang-dikubur-erick-thohir>

²⁹ Peraturan Menteri BUMN No.04/2007 concerning BUMN Synergy

³⁰ Wareza, M. (n.d.). *Soal Bailout Jiwasraya, Kementerian BUMN: Ini Jalan Terakhir*. Market. Retrieved June 20, 2021, from <https://www.cnbcindonesia.com/market/20200225161332-17-140384/soal-bailout-jiwasraya-kementerian-bumn-ini-jalan-terakhir>

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become the variety of options that have been placed forward in order to maintain solution and strategy.³¹

The Ministry of Finance itself has a wide-ranging scope of authority when it comes to the maintenance, execution and implementation of policies in the country's executive branch. Often called as the government's wallet, the capacity formed in the Ministry of Finance has often times superseded the authority of the Coordinating Ministry of the Economy. With the vast authority that was developed under the Ministry of Finance, it is no wonder that customers or rather, victims of the Jiwasraya case has stated that both the Ministry of Finance and Ministry of State Owned Enterprise were weak in providing supervision.³² With that in mind, the Ministry of Finance has also stated that the case posed by Jiwasraya can also be deduced as unique precisely because the saving plans program has a policy that allows customers or beneficiaries to utilize a transfer of policy (polis) should the company be in the middle of a crisis or is unable to fulfill its obligation. This identification can be see as a way for the Ministry of Finance to take responsibility for the actions conducted by Jiwasraya by pointing out the various safety nets that are in play when it comes to the utilization of Jiwasraya policy.³³ Hence, this can be a clear signal that indicates that together with the Ministry of Finance, OJK and the Ministry of BUMN, there must be a comprehensive discussion as to how legal protection and the financial savings of the beneficiaries can be at the very least ensured by some measure. At the same time, with the Ministry of Finance's intention to ensure that good corporate governance was implemented under this procedure, it is under the scope of the Finance Ministry to conduct oversight towards the financing or financial operations of the State Owned Enterprise, and this instance is also measured by the Finance Ministry's intention to put

³¹ Kompas, (2020, January 15). *4 Solusi Kementerian BUMN Bantu Penyelesaian Kasus Jiwasraya*. KOMPAS.com. <https://money.kompas.com/read/2020/01/15/140400826/4-solusi-kementerian-bumn-bantu-penyelesaian-kasus-jiwasraya>

³² *Customer: The Jiwasraya Case Is The Result Of The Weak Supervision Of The Ministry Of BUMN And The Ministry Of Finance*. (n.d.). VOI - Waktunya Merevolusi Pemberitaan. Retrieved June 20, 2021, from <https://voi.id/en/news/23096/customer-the-jiwasraya-case-is-the-result-of-the-weak-supervision-of-the-ministry-of-bumn-and-the-ministry-of-finance>

³³ *Kemenkeu Sebut Kasus Jiwasraya Unik, Kenapa?* | *Finansial*. (2020, January 10). Bisnis.com. <https://finansial.bisnis.com/read/20200110/215/1189028/kemenkeu-sebut-kasus-jiwasraya-unik-kenapa>

accountability towards the Accounting Office that is in charge to managing the finances and auditing of Jiwasraya.³⁴

So, with this understanding, the scope of the Ministry of Finance is clear when it comes to the oversight, operations and planning of the Jiwasraya case but it needs to be supported through coordination with the Ministry of State Owned Enterprise, bolstered by the need to establish functions that enhance policies that restructure Jiwasraya.

This academic work also sees the importance of not only detailing the Jiwasraya scandal from the civil or commercial standpoint but also does not discount the criminal highlights that are marred within the crux of the scandal. Indeed, within the case to prosecute those liable is based under the authority of Indonesia's Attorney General (Jaksa Agung). Based on the primary legal component which dictates the role of the Attorney General which is from Law No.16 Year 2004 we can see that there are several scopes within the periphery of the Attorney General which includes the prosecution of cases, the enforcement of court decisions/decision by the judges, monitoring through the implementation and criminal cases, as well as the enactment of investigation towards cases and the completion of case files that need to be coordinated.³⁵ Specifically for the case of Jiwasraya, the Attorney General has utilizes human resources from the Corruption Eradication Commission to help in the handling of corruption charges.³⁶ Within the prosecution of the criminal case of Jiwasraya, the Attorney General was able to push the appropriations of more than 13 trillion rupiah in assets that were a result of the Jiwasraya scandal, and even in that effect there was a greater push to gain more of the stolen or rather, corrupted assets.³⁷

Indeed, the Attorney General's Office is within its rights to ensure that justice is implemented for the betterment of the country and this is seen from their activities of collecting evidence in the form of vehicles, documents and

³⁴ Media, K. C. (2020, January 15). *Kemenkeu Lakukan Pemeriksaan ke KAP Jiwasraya*. KOMPAS.com. <https://money.kompas.com/read/2020/01/15/143550426/kemenkeu-lakukan-pemeriksaan-ke-kap-jawasraya>

³⁵ Law No. 16 Year 2004 concerning Attorney General

³⁶ CNN Indonesia. (n.d.). *Tarik SDM dari KPK, Jaksa Agung Berdalih Dalam Jiwasraya*. Nasional. Retrieved June 20, 2021, from <https://www.cnnindonesia.com/nasional/20200131160521-12-470523/tarik-sdm-dari-kpk-jaksa-agung-berdalih-dalami-jawasraya>

³⁷ Liputan6.com. (2020, March 18). *Jaksa Agung Didorong Bongkar Korupsi Jiwasraya ke Level Lebih Tinggi*. Liputan6.com. <https://www.liputan6.com/news/read/4205370/jaksa-agung-didorong-bongkar-korupsi-jawasraya-ke-level-lebih-tinggi>

other relevant materials in their office as part of the investigation against Jiwasraya.³⁸ The Attorney General is also within its capacity to provide a stance as part of how to execute in their prosecution, and in this regard, the Attorney General deduced that the Jiwasraya did not exercise the fiduciary responsibilities that were vested or responsible in the part of Jiwasraya.³⁹

Should the Attorney General be able to criminally prosecute the Jiwasraya case, then it will be in the pursuit of justice. Aside from the executive branch, the legislative branch also plays a strong role in making sure that accountability is brought forward within the case of Jiwasraya and this is in the contention with the Indonesian House of Representatives. The House of Representatives, being constitutionally mandated to represent the people of Indonesia, and this includes in making sure that the executive branch can be brought into accountability. The Indonesian House of Representatives thus must be an institution that inspires the trust and aspirations of the people both socially and legally and hence, they must be able to defend the interests of the public as mandated by the Constitution.

Hence, the executive and legislative branch serve as crucial stakeholders that not only are able to carve the expediency or otherwise capacity that Jiwasraya has, but the two branches will become a guiding light will determine the future of Jiwasraya. With a deep understanding that this legislative and executive institutions much be in operation to the public good, thus responsibility must be placed towards the stakeholders of the industry in order to fulfill the rights and obligations in protecting the victims of Jiwasraya.

C. The Blame Game: Determining Responsibility within the Jiwasraya Case

Responsibility is the act of being held liable for one's conduct or act. In agreements, such responsibilities are banded by the law. In which case, the party promising the agreement and signs the agreement must perform their

³⁸ www.jurnaljabar.id. (n.d.). *Kejaksaan Agung Periksa 22 Saksi Kasus Jiwasraya*. <https://www.jurnaljabar.id/>. Retrieved June 20, 2021, from <https://www.jurnaljabar.id/nasional/kejaksaan-agung-periksa-22-saksi-kasus-jawasraya-b1ZIr9cwz>

³⁹ *Jaksa Agung Duga Jiwasraya Langgar Prinsip Kehati-hatian*. (2019, December 18). *Republika Online*. <https://nasional.republika.co.id/berita/q2pp9m428/jaksa-agung-duga-jawasraya-langgar-prinsip-kehatihan>

liability. This agreement may include penalties as to which the party that promises to perform fails to perform their promise. In this case, Jiwasraya is liable for the default of its own product and the company as a whole as it fails to pay the promised interest rate of return to its beneficiaries. As such, the notions of responsibility can be looked at multi-sectoral, multi-stakeholder approach depending on the charges and view of the law. Indeed, several legal theories subject itself into the nuances of the Jiwasraya case and in this instance, the concept of who accuses should prove should be a theory embedded in this case or in as known in its latin term *Actori Incumbit*.⁴⁰

Within the creases of criminal, the contention occurs between when does criminal liability extend to a company or to the individual. Indeed, this conceptualization is when responsibility might be blurred. Within the context of a limited liability company, Indonesian law recognizes a company as a legal subject which has the same focal point as a legal person.⁴¹ A limited liability company carries rights like a legal person because it is able to have separate finances and thus, different from a sole ownership, when a company fails or goes bankrupt, the responsibility of its custodians to be liable towards the company is not placed into the fullest extent.⁴²

The Board of Directors is the organ of the Company which fully responsible for the management of the company for the interests and purposes of the company, as well as representing the company both inside and outside the Court in accordance with the provisions of the Articles of Association. Thus, the management of the company is conducted by the Board of Directors appointed by the GMS in accordance with its Articles of Association.

Based on Article 1 number (5) of Law Number 40 Year 2007 regarding Limited Liability Company ("UUPT") states that the definition of the Board of Directors in Limited Liability Company ("Company") is the Company's authorized organ and fully responsible for the management of the Company for the interest of the Company, in accordance with the purposes and objectives of the Company and to represent the Company, both inside and outside the court in accordance with the articles of association.

⁴⁰ Wriadinata, Wahyu. "Corruption and Reversal Burden of Proof", *Jurnal Hukum Internasional*, Volume 12 Number 2, January 2015

⁴¹ Indonesian Company Law, Law No. 40 Year 2007, Republic of Indonesia

⁴² *Ibid*.

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Therefore, a debate will be arising on whether there will be an independency on the Board constituency from the GMS, precisely the Shareholder. In the GMS, there is a big possibility of the candidate for the Board is coming from the family of the majority shareholder. There is also a chance of another personal interest coming up between the majority shareholder and the Board. However, whatever it takes, the Board must act for the best interest of the company, not for the shareholders. Each shareholder's right must be respected according to the law, whether it is majority shareholder or minority shareholder in accordance with article 13 paragraph (3) of Law no. 40 year 2007 on Limited Liability Company. It shall be lawful if the GMS is attended by shareholders representing all of the shares with voting rights and the resolution is approved unanimously. There is also a big chance that the only shareholder is not solely the family, so that there can no be unanimous votes. In retrospect to the Jiwasraya case, especially since we are in consideration to the laws that are currently in place, it begs to determine whether or not there is the conceptualization of vicarious liability within the Board of Directors to take responsibility within the case of Jiwasraya.⁴³

As its beneficiaries sign a policy with PT. Jiwasraya, thus, such of an agreement falls under the term of contractual liability. Contractual liability happens when a party would bear the responsibility of a certain good or service that they provide in the case of damage or loss. In the case of Jiwasraya, Jiwasraya is contractually liable to their beneficiaries as they have stated in their policy that they would bear the liability in the case of any damage or loss.

The responsibility of this case falls to PT. Jiwasraya and the governing control or the governing body is at question. As the problem looms since the early 2000s starting with its case of negative equity that requires a reinsurance scheme from other insurance companies to what we see as of recently, Jiwasraya and the governing body should have more than enough time to avoid this from happening. With such a long time of mishaps and mismanagement, there seems to be a deliberate oversight by the government. The government's involvement has to be put too light as Jiwasraya is a

⁴³ Darmawan Budiarja, Wasistha, "Tinjauan Hukum Pidana Terhadap Pertanggungjawaban Pidana Lingkungan Yang Dilakukan Oleh Korporsasi". Jurnal Recidive Volume 4 No.2 Mei – Agustus 2015,

government owned institution to which if it does fail, it falls under the liability of the state.

Hence, that through a multi-pronged approach, it can be determined that the liability that is measured primarily in the sense of the Jiwasraya scandal falls into two components, the first is that liability must be placed upon the custodians of Jiwasrya who in this case would be the Board of Directors and the second component will be in the vested responsibility of the Indonesian government as a shareholder to Jiwasraya. In this instance, the Indonesian government has two roles, one as an institution that must ensure the public good of the state and the second as a shareholder whose interests in the profitability of the company must not be breached.⁴⁴

Hence, through the regulation stipulated in Indonesian Company Law Law No. 40, 2007, it is abundantly clear that the Board of Directors can be held liable over the Jiwasraya Case. This is further reiterated in Article 97 paragraph 4 in which all members within the Board of Directors are held liable. This echoes similar sentiments within the case of PT. Jamsostek who was charged with not exercising fiduciary responsibility and in this regard was faced with 8 years in prison.⁴⁵ This precedent that has opened in the Indonesian Supreme Court might have greater weight in the common law system but the decision of judges can still formulate itself as an important aspect within the lexus of Indonesian criminal law.

In addition, the results of the understanding that multiple stakeholders were involved within the Jiwasraya scandal rightly involves the government. In this instance, it is safe to make a judgement that both the executive branches and the legislative branches of the Indonesian government could have done a more coherent job in making sure oversight towards the Jiwasraya scandal was a priority. In the part of the Financial Services Authority, there should have been legal remedies that could have been contended in the form of administrative sanctions that could have brought into the understanding of the negligence and criminal activity that was seen. Furthermore, in terms of pushing forward policy directives, as a stakeholder that has authority over the appointment and dismissal of Jiwasraya, there

⁴⁴ Sayekti, Nidya Waras, "Permasalahan PT Asuransi Jiwasraya: Pembubaran atau Penyelamatan", *Info Singkat*, Vol XII, No.2, Januari 2020

⁴⁵ Supreme Court Decision No. 2740K/PID/2006 under the indictment of Drs. Ahmad Djunaidi

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should have been a more specific form of oversight from the Ministry of State-Owned Enterprises.⁴⁶

Hence, as a way to develop a sense of responsibility towards the actions seen in Jiwasraya, it can be jointly seen as a solution when the restructuring team has been formed to make sure that the assets of Jiwasraya can be managed and salvaged, with an inherent interest to protect the people. This is thus founded through the formulation of the restructuring team which detected three primary roots to be the cause of the issue in Jiwasraya which is the lack of good corporate governance, an extreme push to have liquidity and a lack of assessments regarding the risks implemented in the operations of Jiwasraya.⁴⁷ Good Corporate Governance can be traced into the both administrative and civil laws in which the company must act in good faith (*bona fides*) when it comes to the execution of business matters and fulfill the rights and obligations between its beneficiaries as stipulated within the crux of Indonesian contract law.⁴⁸ Hence, in this understanding it is clear that the primary responsibility between the implementation of Jiwasraya as an institution falls within the liability of two main actors, namely the leadership of Jiwasraya who did not exercise good corporate governance within their operations and the Indonesian Government namely under the aegis of the Ministry of State Owned Enterprises who appointed the leadership of Jiwasraya but did not extend oversight into the highest extent towards the daily workings of Jiwasraya and at the very least did not exercise good judgement.

With such extreme turmoil that the company went under, many have started to question the regulatory board or regulations in place to avoid such mishaps from happening in the first place. A regulation is a directive given by an authority or a governing body that is put in place as a rule for the involved party to follow. While a regulator, is the body or organization that

⁴⁶ Prasetyo, Agus. "Restrukturisasi Badan Usaha Milik Negara Perbankan Melalui Pemebentukan Holding Company di Indonesia", *Lex Renaissance* No.2 Vol.4 Juli 2019.

⁴⁷ *Tim Restrukturisasi: Ada 3 Akar Masalah Asuransi Jiwasraya*. (2021, April 27). *Republika Online*. <https://www.republika.co.id/berita/qs7x4x383/tim-restrukturisasi-ada-3-akar-masalah-asuransi-jawasraya>

⁴⁸ Peranto, O. (n.d.). "IKTIKAD BAIK" DALAM KETENTUAN PASAL 27 AYAT (2) UU NO. 2 TAHUN 2020, PERLUKAH DIPERMASALAHKAN? . Retrieved June 20, 2021, from [https://rechtsvinding.bphn.go.id/jurnal_online/IKTIKAD%20BAIK%20DALAM%20KETENTUAN%20PASAL%2027%20AYAT%20\(2\)%20UU%20NO.%202%20TAHUN%202020.pdf](https://rechtsvinding.bphn.go.id/jurnal_online/IKTIKAD%20BAIK%20DALAM%20KETENTUAN%20PASAL%2027%20AYAT%20(2)%20UU%20NO.%202%20TAHUN%202020.pdf)

is in charge to regulate the regulation. Such regulatory body and regulations that they have put in place is important to be examined to see on how such a long-standing company went under.

In the case of Jiwasraya there are some regulatory bodies that regulates their existence as an insurance company. These bodies include the Financial Ministry (Kemenkeu), Financial Services Authority (OJK), and State-Owned Enterprise Ministry (Kementerian BUMN).

The Financial Ministry here holds liability as it is a government body that regulates the financial transactions and all financial decisions that the government makes. This is still related with the Jiwasraya case as it is still a state-owned enterprise. What is often the case among these government organizations is that many of these bodies often pinpoint issues to other departments without solving the case fully. This makes it difficult and just stretches the time without any solution being drafted.

In terms of the Financial Services Authority (OJK), Law No. 21 year 2012 concerning the Financial Services Authority (OJK) mandates that Financial Services Authority (OJK) is the governing body that regulates the insurance service industry⁴⁹. Furthermore, article 5 of the same law mentions that the function of the Financial Services Authority (OJK) functions as a body that forms regulations and rules throughout all sectors of the financial services industry with full integrity. It then continues in article 6 that the purpose of such mandate is to keep the trust of its people in the financial services industry. Knowing such mandated laws of the country, OJK has not only failed to enforce its regulations with integrity, and it has lost the trust in many people with regards to Jiwasraya in this case. This is proven in the fact that many people withdrew their funds from Jiwasraya as soon as they heard of the financial mishaps that happened. However, there were some who still had their funds at Jiwasraya as they did not believe that such government institution would default, and it did happen.

What was more concerning was that there seems to be an extreme oversight on the products that Jiwasraya sells. Despite it selling well, it has given the company such a huge loss in terms of profit as it struggled to pay back the promised interest rates⁵⁰. Accompanied with an unsurmountable

⁴⁹ Law No. 21 year 2012 concerning the Financial Services Authority (OJK)

⁵⁰ Syahrizal Sidik. (2020, September 7). *Kacau! Produk Saving Plan Jiwasraya Melanggar Undang-Undang*.
<https://www.cnbcindonesia.com/market/20200907153748-17-184951/kacau-produk-saving-plan-jiwasraya-melanggar-undang-undang>

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amount of high-risk investments that did not return well, Jiwasraya had to stop the JS Savings Plan itself. The Financial Services Authority whose job was to regulate the insurance industry and has the right to halt or continue the insurance company's license or products did not attempt to halt or stop at all. Such proof of not attempting to halt or stop this product is prove of such oversight that the Financial Services Authority (OJK) failed to perform as a regulatory body that should've kept the insurance safe⁵¹.

Furthermore, the Financial Services Authority (OJK) did not give a strict punishment or ruling to control Jiwasraya even after the findings of the Financial Audit Board of Indonesia that has found many indications of window dressing in its financial statement. Despite so, the most that the Financial Services Authority (OJK) has done was to just give a stern written reminder or sanction to Jiwasraya without any penalties. This letter was sent towards the end of 2019. Not long after, Jiwasraya collapsed. There was not much that the letter could do and it did not help that it happened right on the brink of the default. This shows how weak the Financial Services Authority (OJK) is and how it did not strictly enforce its tools as a regulatory body to control the financial services industry particularly Jiwasraya.

Getting deeper in the way that the Financial Services Authority (OJK) controls the insurance industry, the Financial Services Authority (OJK), only coordinates with the main branch of the company, it does not deal or control the actions of its other branches for efficiency purposes⁵². Other than that, it only requires the company to submit quarterly and annual reports which would then be audited by the Financial Services Authority (OJK). Those reports are also accompanied with any consumer complaints that the company receives from their beneficiaries throughout their branches in Indonesia. After the audit, if the Financial Services Authority (OJK) finds any discrepancies in their findings they would submit their findings back to the insurance company for it to be solved⁵³.

⁵¹ *BPK Harus Temukan Peran Regulator dalam Kasus Jiwasraya | Finansial.* (2020, February 3). *Bisnis.Com.*
<https://finansial.bisnis.com/read/20200203/215/1196583/bpk-harus-temukan-peran-regulator-dalam-kasus-jiwasraya>

⁵² Siregar, A. Y. (n.d.). *PENGAWASAN OTORITAS JASA KEUANGAN (OJK) DALAM KASUS GAGAL BAYAR POLIS OLEH PT. ASURANSI JIWASRAYA PERSERO.* Universitas Sumatera Utara.

⁵³ *Ibid.*

Seeing on how the Financial Services Authority (OJK), controls the industry, it does not seem so stringent despite having the utmost authority to regulate the financial services industry. A tighter approach shall be done such as compliance reports, investigations of policies that the insurance company provides, investigations on the investment instruments that the company uses to cycle their funds, and a mark to market policy interest rate returns shall be conducted. In a compliance report, it should show how much the insurance company complies with all the regulations brought upon by the Financial Services Authority (OJK) or the other government bodies that it operates under. In terms of the policies that these insurance sells, the Financial Services Authority (OJK) should have a clear investigation on what kind of product the insurance company is selling and if it made sense financially. A mark to market should also be conducted to see if the price of the policy especially the interest rate of return follows the market trend. Clearly, none of these seems to be conducted seriously as the Financial Services Authority continued to allow the JS Savings Plan to be sold throughout the years despite it giving a heavy burden towards the finances of the company. Moreover, it seems to be worrying that such a high interest rate of return that the product offers did not ring their alarm bells to investigate further on such a lucrative product that drove the company to its downfall further.

The next body that has liability is ultimately the state-owned enterprise Ministry (BUMN) that holds control of all of the government owned institutions throughout the country. An extreme amount of neglect seems to have happened within the institution that they seem to have turned a blind eye. Such blind eye was definitely seen as to how the ministry did not react enough to the findings of the Financial Audit Board of Indonesia (BPK) that highly questions Jiwasraya for its questionable financial statement reports year over year. The most that the state-owned enterprise ministry has done is to basically request the Financial Audit Board of Indonesia (BPK) to closely monitor and be transparent about Jiwasraya and other similar insurance companies who are on the brink of survival⁵⁴. However, this is not enough. As a regulatory body that has the right to merge, divest, or even break apart government owned institutions, the ministry could've done way better. With such authority, they could've halted Jiwasraya's operations altogether,

⁵⁴ *Kementerian BUMN Minta BPK Transparan soal Jiwasraya*. (2020, January 7). <https://www.cnnindonesia.com/ekonomi/20200107203147-92-463280/kementerian-bumn-minta-bpk-transparan-soal-jiwasraya>

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revoked their license or even send out stringent penalties that shows their seriousness as an authority that holds control of all of the government owned institutions.

All in all, such lack of control from the regulatory bodies, the government and Jiwasraya itself was what brought down the company. Its default was unavoidable looking at how much of these regulatory bodies, and board of management at Jiwasraya seemed to have turned a blind eye at Jiwasraya. Many early warning signs were seen especially in the early 2000s by the Financial Audit Board of Indonesia (BPK). The Financial Audit Board of Indonesia (BPK) opined their disclaimer as they found the financial statements along with the supplementary documents questionable even since the financial year of 2006-2007. More than that, they have even found many indications of window dressing as mentioned. Knowing such length, and extreme oversight by all parties, it seems that every single actor in the whole system seems to have wanted to see Jiwasraya fall in shambles.

Conclusion

The case of Jiwasraya's demise lays in the hands of many in a system that seems to be rigged to let Jiwasraya default. A lack of good corporate governance, a lack of awareness from the board of management, corruption suspicion, the window dressing of financial statements, lack of control from the regulatory bodies, and the government's deep oversight has led to what we see as one of if not the biggest insurance defaults the country has ever seen. With all of this in place, it is without question that such a historically stable and reliable company fell into just ashes as it failed to keep its promise to its constituents. Therefore, a deep review of the legal protections and governing bodies should be reviewed to protect future consumers or current consumers of any kind of financial services.

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