

Restructuring Insurance Policy as an Ultra Vires Action Based on Limited Liability Company Law



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ABSTRACT: As mentioned in the Constitution of the Republic of Indonesia of 1945, everyone has the right to live and the right to defend his life. All citizens are equally in the law and must uphold the law without exception. These rights and obligations also apply to workers who after devoting their lives for decades to the state through the company in which they work, entering retirement age and subsequently starting a new life as a retiree. There is a belief that State-Owned Enterprises (it is called as BUMN) is unlikely to go bankrupt because it is owned by the State, becomes the main choice of retirees to entrust the management of their pension funds to PT Asuransi Jiwasraya (Persero). The problem arises when Jiwasraya plans a restructuring program of all Jiwasraya insurance policy, including an annuity policies owned by millions of retirees as a result of the losses suffered by Jiwasraya due to mismanagement and corruptive behavior of former The Board of Directors of Jiwasraya. Pensioners strongly object to the restructuring plan because it has the effect of reducing monthly pensioner benefits by up to 40% (forty percent), a very large amount that means for retirees who rely heavily on monthly money from pension funds, especially during the Covid-19 pandemic health and life costs are also increasing. This study will analyze whether the actions of The Board of Directors of Jiwasraya who restructure insurance policies fall into the category of ultra vires (actions outside the the board of directors authority), which to answer it researchers will use normative juridical research methods. From the results of this study, it was concluded that the insurance policy restructuring program is an ultra vires action, therefore it must be null and void.

KEYWORDS: Annuity, Pension, Jiwasraya, BUMN, Restructuring

A. INTRODUCTION

PT Asuransi Jiwasraya (Persero) is a State-Owned Enterprise, established on December 31, 1859 under the name Nederlandsch Indiesche Levensverzekering en Liffrente Maatschappij, with notarial deed William Hendry Herklots (JIWASRAYA). Most of Jiwasraya's customers are people with lower middle economic levels¹ consists of retired civil servants, retired employees of State-Owned Enterprises (SOE) or In Indonesia called Badan Usaha Milik Negara (BUMN) and retired employees of Privately Owned Enterprises (POE) or In Indonesia called Badan Usaha Milik Swasta (BUMS), and a small percentage are corporations.

Jiwasraya's problem came to light when on January 8, 2020, the Chairman of the Audit Board of the Republic of Indonesia conveyed information on the main causes of Jiwasraya's default was due to mismanagement of investments, where Jiwasraya often placed funds in underperforming stocks. These risky stocks resulted in negative spreads and caused liquidity pressures on Jiwasraya which led to default.²

¹ Carlos KY Paath. "Forum Nasabah Ajukan Petisi Desak Pembatalan Restrukturisasi Polis Jiwasraya".

<https://www.beritasatu.com/nasional/739711/forum-nasabah-ajukan-petisi-desak-pembatalan-restrukturisasi-polisjiwasraya/> accessed on 23 Maret 2021

² Fika Nurul Ulya. "Simak, Ini Kronologi Lengkap Kasus Jiwasraya Versi BPK".

<https://money.kompas.com/read/2020/01/09/063000926/simak-ini-kronologi-lengkap-kasus-jiwasraya-versibpk?page=all#:~:text=Adapun%20kasus%20Jiwasraya%20disebut%20disebut,membukukan%20laba%20sejak%202006/> accessed on 20 Maret 2021 ³ Ulf/sfr. "Kronologi Kasus Jiwasraya, Gagal Bayar Hingga Dugaan Korupsi". <https://www.cnnindonesia.com/ekonomi/20200108111414-78-463406/kronologi-kasus-jiwasraya-gagal-bayarhingga-dugaan-korupsi/> accessed on 10 Maret 2021 ⁴ Syahrizal Sidik. "Ketok Palu, Ini Vonis Lengkap 6 Terdakwa Kasus Jiwasraya".

<https://www.cnbcindonesia.com/market/20201027095538-17-197347/ketok-palu-ini-vonis-lengkap-6-terdakwawakus-jiwasraya/> accessed on 11 Maret 2021

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Indications of fraud (corruption) and insecurity in investments by Jiwasraya management are then examined by the Attorney General of the Republic of Indonesia³, and in its development, the Central Jakarta Corruption Criminal Court sentenced six defendants namely: 1) Hendrisman Rahim, 2) Hary Prasetyo, 3) Syahmirwan, 4) Benny Tjokrosaputro, 5) Heru Hidayat, and 6) Joko Hartono Tirto to life imprisonment and fines.⁴ Thid six defendants were charged with making investment arrangements by purchasing shares and Medium Term Notes that were used as portfolios of Jiwasraya either directly, in the form of fund management contracts, limited investment mutual funds and conventional mutual funds, thus harming the country's finances amounting to Rp16.807 trillion.³

To overcome the state losses, the Ministry of Finance and the Ministry of BUMN then prepared a fund of Rp26.7 trillion in the form of state capital investment. However, the Jiwasraya Policy Restructuring Acceleration Team, chaired by former President Director of Jiwasraya Hexana Tri Sasongko, took a different step, restructuring its customers' policies due to limited funds available.⁶ Jiwasraya's customer policy restructuring efforts, should be negotiated first with all Jiwasraya policyholder totaling 5.3 million people (as of December 31, 2020), as stipulated in the Life Insurance Policy paragraph (2) and Paragraph (3) Article 13 Additional Terms and Special Provisions, which read more:

"(2) If there is/is a change in annuity benefits, costs, risks, general terms of the policy and other provisions and any additions/changes, it will be notified to the Policyholder at the address listed in the policy recorded at the Insurer no later than 30 (thirty) working days prior to the change.

(3) In the event that the PolicyHolder does not approve the change as stated in paragraph (2), then the PolicyHolder shall have the right to decide the coverage by written notice no later than 30 (thirty) working days from the date of notification of change from the Insurer and the Insurer will pay the Cash Value of the Policy (if the Policy has had a Cash Value) without incur any fees".

But in fact the provisions of paragraphs (2) and (3) of the policy are not implemented by Jiwasraya through the Jiwasraya Restructuring Announcement Press Release, giving instructions to individual insured policy holders to register by submitting the policy number, policy holder name, correspondence address, mobile phone number, and email thru Jiwasraya official website www.jiwasraya.co.id/restru or WhatsApp. In the press release, it was informed that the restructuring program was carried out in three stages starting from the announcement, socialization, to the closing phase of the new policy.

With the restructuring of Jiwasraya, the cash received monthly by pensioners (monthly pension) will be reduced by 40%. If previously a pensioner got Rp 1,000,000 (one million rupiah) every month, with this restructuring program, the pensioners would only get Rp 600,000,- (six hundred thousand rupiah). Whereas this annuity product is purchased by the customer not because of the customer's volunteerism, but because it is required by the provisions / regulations of the OJK that stipulates that the employee's savings fund in the Pension Fund Institution if it reaches Rp 625.000.000,- (six hundred and twenty five million rupiah) then 80% (eighty percent) is required to buy an annuity product, and only the remaining 20% (twenty percent) of the pension fund can be withdrawn in cash by retirees.

The money collected by pensioners in the Pension Fund is a monthly deduction of the salaries of employees that are also required by the provisions of legislation for decades. It can be said that what Jiwasraya collects through an annuity products in the form of pension programs is not money or government capital but purely the money of employees who planned benefits after retirement, having served the state for decades through the company of each pensioner, who is mostly middle-to-low-income.

In this study, the author will discuss the issue of whether the authority of Jiwasraya's The Board of Directors of Jiwasraya to instruct restructuring to customers of Jiwasraya insurance annuity policy is an ultra vires action (outside the authority) and how the responsibility of Jiwasraya directors and Jiwasraya as a corporation in the event of ultra vires actions that are contrary to limited liability company law.

B. RESEARCH METHODS

This research is in the field of law, so that is done to be more specialized, that is legal research, namely research based on certain methods, systematics and thinking, which aims to study one or more specific legal symptoms, by analyzing them. Marzuki states that Legal research is a process to find the rule of law, legal principles, and legal doctrines to answer legal issues faced. Therefore, researchers use normative juridical research methods that are descriptive analytical. According to Soekanto and Mamudji, the use of this research method to analyze the phenomena that researchers found and the causes of the onset of such phenomena, with the aim of revealing the truth systematically, methodologically and consistently. This research uses research materials in the

³ Muhamad Agil Aliansyah. "Banding Ditolak, Heru Hidayat Tetap Divonis Seumur Hidup Terkait Korupsi Jiwasraya". <https://www.merdeka.com/peristiwa/banding-ditolak-heru-hidayat-tetap-divonis-seumur-hidup-terkaitkorupsi-jiwasraya.html/>

⁶ Ihya Ulu Aldin. "Restrukturisasi Polis, Jiwasraya Siapkan 3 Produk Baru". <https://katadata.co.id/safrezifitra/finansial/5fc8ba415a686/restrukturisasi-polis-jiwasraya-siapkan-3-produk-baru/> accessed on 10 Maret 2021

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form of secondary data obtained through literature studies, with the source of primary legal materials in the form of legislation, namely Law No. 40 of 2007 on Limited Liability Companies, Law No. 40 of 2014 on Insurance, Regulation of the Financial Services Authority No. 71/POJK.05/2016 on Financial Health of Insurance Companies and Reinsurance Companies; Annuity Insurance Agreements, and laws and rules relating to this research material. Furthermore, this study also uses secondary legal material sources, in the form of reference books, and other secondary legal materials. Researchers used statutory approach methods and conceptual approaches in this study.

C. RESULTS AND DISCUSSION

1. Jiwasraya Restructuring Program

In the socialization delivered by Jiwasraya restructuring team explained in general the things that led to the restructuring of Jiwasraya, namely: 1) Background, that because of the financial condition of Jiwasraya in a position of minus Rp 38.6 trillion while Jiwasraya's assets are only Rp 15.8 trillion is much smaller when compared to Jiwasraya's liability of Rp 54.4 trillion, which condition as a result of inefficient and effective models, improper management of investments and products sold provide losses. 2) The purpose of the Restructuring, namely to stop losses, to keep the policy running, and transfer to a new company. 3) Restructuring Scheme, i.e.

a) JS Annuity Insurance, b) JS Mantap Insurance, and c) Js Tampan Insurance.

Especially for JS Annuity Policy, restructured into: 1) Existing annuity policy is calculated cash value based on cutoff date 31 December 2020. 2) The cash value of existing annuity policy is used as the basis for continuing the annuity program with adjusted annuity rates that lead to adjustment of annuity benefits. 3) The new annuity benefits that have been adjusted will be continued after the policyholder confirms the policy restructuring approval by signing the Life Insurance Request Letter, submitting the original Policy and a copy of the KTP. 4) If the policyholder does not agree to the restructuring then the policy is left in Jiwasraya and the existing cash value becomes a receivable debt.

The legal basis for the implementation of Jiwasraya restructuring program refers only to two laws and regulations that do not specifically contain the provisions of asset and/or liability restructuring, namely: 1) Regulation of the Financial Services Authority Number 71/POJK.05/2016 concerning Financial Health of Insurance Companies and Reinsurance Companies and 2) Law No. 40 of 2014 on Insurance.⁴

The restructuring undertaken by Jiwasraya unilaterally without involving the customer as a creditor is certainly not in accordance with the standard model of restructuring, which must conduct lengthy negotiations between the debtor and the creditor before formulating a restructuring model that suits the internal financial characteristics of the debtor and the ability to pay according to the projected cash flow.⁵

The losses suffered by Jiwasraya are the result of corruption and mis-management by Jiwasraya's old management (i.e. former president director, former finance director, former head of investment and finance division) along with directors and commissioners of several private companies. And the victims of corrupt actions by Jiwasraya management are not only the Government as the sole shareholder of Jiwasraya but also Jiwasraya customers, who have entrusted their pension funds to Jiwasraya to guarantee the future of pensioners, wives and children of pensioners. Jiwasraya was chosen and trusted by retirees because it is a State-Owned Enterprise (BUMN) that rationally and logically cannot go bankrupt because it is owned by the State of the Republic of Indonesia as the sole shareholder.

Losses that are not caused by customer error but as a result of corruption and mismanagement that causes default to pensioners or other customers should be the responsibility and obligation of the Government of the Republic of Indonesia as the beneficiary owner of Jiwasraya to compensate pensioners as stipulated in article 15 of Law No. 40 of 2014 concerning Insurance which reads:

"The controller shall be responsible for the losses of insurance companies, syariah insurance companies, reinsurance companies, or syariah reinsurance companies caused by the parties in their control".

But in fact, the loss of Asuransi Jiwasraya is precisely charged by Jiwasraya Restructuring Team to the retired Jiwasraya insurance policyholders through the restructuring of insurance policies that are very detrimental to pensioners, which if they refuse to participate in the pension fund restructuring program or the money of the pensioners managed by Jiwasraya will be converted into Jiwasraya receivables, which of course causes the uncertainty of payment to pensioners, considering Jiwasraya is expected to be liquidated immediately by the Government.

⁴ Jiwasraya. "Kenapa Harus Restrukturisasi". <https://www.jiwasraya.co.id/restru/> diakses 28 Juni 2021

⁵ Nanny Dewi. "Model Restrukturisasi Utang sebagai dampak dari Karakteristik Keuangan Perusahaan dan Kondisi Industri". http://pustaka.unpad.ac.id/wp-content/uploads/2009/02/model_restrukturisasi_utang.pdf/ accessed on 24 Maret 2021

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The restructuring step carried out by Jiwasraya unilaterally without involving pensioners is an arbitrary action because it is done without the consent of the retired Jiwasraya policyholders and imposed on a "fait a comply" basis so that pensioners are only given two options which are both very detrimental to pensioners. First, if the pensioners receive the restructuring program offered by Jiwasraya, then the monthly pension received will be reduced by 40% (forty percent). Second, on the contrary, if the pensioners reject the restructuring program, then the pensioner's insurance policy will be considered as Jiwasraya receivables that are planned to be liquidated and replaced by a new Insurance Institution named Indonesia Financial Group Life.

The restructuring will ultimately have an adverse impact on the small community of Jiwasraya policyholders who have entrusted their old days to the government through Jiwasraya. This restructuring will also decrease public trust both nationally and internationally to the Indonesian insurance industry, state-owned enterprises (BUMN) and the Government of Indonesia which is currently working hard to regenerate the Indonesian economy in the midst of the coronavirus pandemic (Covid-19) which has the impact of increasingly burdensome for retired Jiwasraya customers.

The simplest and most expected solution by pensioners is the return of all funds managed by Jiwasraya to pensioners, considering that pensioners as Jiwasraya customers are victims of corrupt and mismanagement actions of Jiwasraya's old management and the funds mismanaged are the result of pensioners hard work while still working to support and move the wheels of the country's economy through their respective companies.

The implementation of the restructuring also violate various regulations, including Law No. 11 of 1992 on Pension Funds, Law No. 8 of 1999 on Consumer Protection, Law No. 40 of 2007 on Limited Liability Companies, Law No. 39 of 1999 on Human Rights, Regulation of the Financial Services Authority No. 60/POJK.05/2020 concerning Amendments to Financial Services Authority Regulation Number 5/POJK.05/2017 concerning Dues, Pension Benefits, And Other Benefits Organized By Pension Funds, Financial Services Authority Regulation Number 5/POJK.05/2017 concerning Dues, Pension Benefits, And Other Benefits Held By Pension Funds, Financial Services Authority Regulation Number 69/POJK.05/2016 concerning The Implementation of Business Insurance Companies, Syariah Insurance Companies, Reinsurance Companies and Syariah Reinsurance Companies, Regulation of the Financial Services Authority Number: 1/POJK.07/2013 concerning Consumer Protection of The Financial Services Sector;

2. Company Purposes and Objectives, Doctrine of Intra Vires and Ultra Vires

Every business activity (corporate action) of a company is carried out in accordance with the vision, mission and purpose and purpose of the company was established. The purpose and purpose of Jiwasraya can be seen in the articles of association of Jiwasraya which reads more:

"The purpose and objective of the company is to participate in implementing and supporting government policies and programs in the field of economy and national development in general, as well as the development of insurance, especially in the field of life insurance, which among others includes the implementation, manufacture, acceptance, and closure of any and all forms of agreements in the field of life insurance by applying the principles of limited liability companies".

The purposes and objectives of the company are further elaborated in detail and technically on the licensing of business life insurance by stating the Standard Classification of Indonesian Business Fields (KBLI), which is further also listed on the purposes and objectives of the company in the articles of association. Thus all Jiwasraya business activities must be conducted based on and in accordance with KBLI Jiwasraya.

The purposes and objectives of the Company are also stipulated in Article 2 of Law No. 40 of 2007 concerning Limited Liability Companies, which reads: "The Company must have purposes and objectives and business activities that are not contrary to the provisions of legislation, public order, and/or decency".

Based on the legislation expressly states that the purpose and objective of the establishment of the company is the main requirement that must be contained in the articles of association and all activities of the company must be in accordance with the purposes and objectives in the articles of association.⁶ Therefore, all business activities carried out by the The Board of Directors of Jiwasraya must be in accordance with the purposes and objectives contained in the articles of association, this is said to be the Intra Vires Act.¹⁰

Intra Vires action is also implied in Article 92 paragraph (1) of the Law of Limited Liability Company where the board of directors in carrying out the management of the company must be for the benefit of the Company and in accordance with the purposes and objectives of the Company. Thus the Law of Limited Company limits the scope of the company in carrying out its activities / businesses, must always be in accordance with the purpose and purpose of the establishment of the company. The actions of

⁶ Gunawan Widjaja. *150 Tanya Jawab Tentang Perseroan Terbatas* (Jakarta: Forum Sahabat, 2008), hlm.63 ¹⁰ Rudi Agustian Hassim. "Ultra Vires Dan Intra Vires Dalam Undang Undang Perseroan Terbatas Indonesia. <https://www.rahlawfirm.com/ultra-vires-dan-intra-vires/> diakses pada tanggal 24 Maret 2021.

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companies performed outside the limits of authority listed on the purposes and objectives in the articles of association of the company are known as the actions of Ultra Vires (Ultra Vires Act).

According to Black's Law Dictionary, Ultra Vires are:

“An act performed without any authority to act on subject. Acts beyond the scope of the powers of a corporation, as defined by its charter or laws of state of incorporation. The term has a broad application and includes not only acts prohibited by the charter, but acts which are in excess of powers granted and not prohibited, and generally applied either when a corporation has no power whatever to do an act, or when the corporation has the power but exercises it irregularly. Acts is ultra vires when corporation is without authority to perform it under any circumstances or for any purpose. By doctrine of ultra vires a contract made by a corporation beyond the scope of its corporate powers its unlawful. Ultra vires act of municipality is one which is beyond powers conferred upon it by law.”

In the law science, ultra vires means actions taken by a company that is outside the purpose and therefore outside the authority of the company. The doctrine of ultra vires considers null and void for any actions of corporate organs outside its control based on the objectives of the company contained in the articles of association. Ultra vires is applied not only if the company performs actions that actually he does not have authority, but also against actions that the company has authority, but carried out irregularly (*irregular*), even an action classified as ultra vires not only if the action exceeds its express or implied authority, but also his actions are contrary to applicable regulations or contrary to public order.⁷

From the description above, it can clearly be said that Jiwasraya restructuring program is an action that falls into the category of ultra vires and null and void. For the ultra vires actions of The Board of Directors of Jiwasraya, Jiwasraya as a corporation cannot strengthen and implement the restructuring program, nor can Jiwasraya Annual General Meeting of Shareholders also be unable to ratify or approve the actions of The Board of Directors of Jiwasraya containing the ultra vires¹².

3. Responsibility of the The Board of Directors of Jiwasraya for Ultra Vires Actions

In carrying out its duties to take care of the company, The Board of Directors of Jiwasraya is obliged in good faith although in practice it is rather difficult to distinguish which actions are actually done in good faith and which are actions that are reasonable in carrying out their duties.⁸ Restructuring efforts conducted by Jiwasraya must pay attention to the interests of all stakeholders including retired customers as creditors, who must obtain legal protection as reflected in some article 126 paragraph (1) point b of the Law of Limited Liability Companies.⁹

The implementation of the actions of The Board of Directors Jiwasraya containing ultra vires becomes the full responsibility of each member of the board of directors personally for the losses suffered by the company, which is stipulated in article 97 of the Law of Limited Liability Companies, which reads more:

- (1) The Board of Directors is responsible for the management of the Company as referred to in Article 92 paragraph (1).
- (2) Management as referred to in paragraph (1), shall be carried out by each member of the Board of Directors in good faith and full of responsibility.
- (3) Each member of the Board of Directors is fully responsible personally for the loss of the Company if the person concerned is guilty or negligent in carrying out its duties in accordance with the provisions as referred to in paragraph (2).

The Law of Limited Liability Companies also regulates criminal sanctions for The Board of Directors and/or board of commissioners who commit errors/omissions, as stipulated in article 155 which reads:

"The provisions on the responsibility of the Board of Directors and/or the Board of Commissioners for their errors and omissions stipulated in this Law do not reduce the provisions stipulated in the Law on Criminal Law."

D. CONCLUSION

Jiwasraya as a corporation subject to and bound by the legal norms of the company as stipulated in Law No. 40 of 2007 on Limited Liability Companies. This limited perseoran law requires companies to carry out their business activities (corporate action) in accordance with the purpose and objective of the establishment of insurance company Jiwasraya.

From the discussion that has been described in detail and complete accompanied by a strong legal basis above, it can be concluded that jiwasraya restructuring program is not in accordance with the purpose and objective of Jiwasraya establishment, so

⁷ Dwi Suryahartati. Doktrin Ultra Vires (Perspektif Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas, diterbitkan pada Jurnal Ilmu Hukum Inovatif Vol. 6 No. 7 (2013). <https://onlinejournal.unja.ac.id/jimih/article/view/2187/> accessed on 23 Maret 2021. ¹² Sovia Hasanah. "Bentuk Tanggung Jawab Direksi Atas Tindakan Ultra Vires". <https://www.hukumonline.com/klinik/detail/ulasan/lt5b398cd4c2a98/bentuk-tanggung-jawab-direksi-atas-tindakianultra-vires-i/> accessed on 20 Maret 2021.

⁸ Binoto Nadapdap. *Hukum Perseroan Terbatas* (Jakarta: Jala Permata Aksara, 2009), hlm.77

⁹ Gunawan Widjaja. *Risiko Hukum Sebagai Direksi, Komisaris & Pemilik PT* (Jakarta: Forum Sahabat, 2008), hlm.105

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that this restructuring program belongs to the category of ultra vires act, which is an action that exceeds the capacity limit of the company that is set limitatively on the purpose and objective in the articles of association Jiwasraya. It can also be concluded that the implementation of Jiwasraya restructuring violates the Customer Insurance Policy and various laws and regulations including the Human Rights Law.

The Board of Directors of Jiwasraya is an individual who must be responsible for the impact caused by ultra vires conducted by Jiwasraya through a restructuring program that is very detrimental to the community (Indonesian citizens) as retired customers of Jiwasraya annuity insurance, which of course requires the intervention of the state as the sole shareholder of Jiwasraya which must also be responsible for the losses of the community.

Jiwasraya is advised to obey all regulations violated so that the purpose of the law that provides maximum benefits to the majority of the community (the greatest happiness of the greatest number - Jeremy Bentham) can be realized and thus has practiced human rights as mandated by the Constitution of the Republic of Indonesia of 1945.

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