

PRINCIPLES OF APPROPRIATENESS IN THE INDONESIAN INSURANCE LEGAL SYSTEM: DEMUTUALIZATION IN THE GLOBALIZATION FLOW

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Abstract:

This study examines principles of appropriateness in the Indonesian insurance legal system: Demutualization In The Globalization Flow. The research is descriptive-analytical, which describes the legal insurance system as an object regarding realizing consumer protection for the welfare of the people. This research uses the approach method normative juridical, namely legal research using theoretical, conceptual, and analytical approaches in dogmatic legal disciplines or doctrinal legal research. The juridical approach using the theory of the welfare state, justice, and development law is used as a reference to examine the legal insurance system. The study results show that the application of the principle of propriety has only reached the level of legal substance, which is still chaos, while the other two elements, namely the legal structure and legal culture, are still far from the nature of the legal objectives. Therefore, the concept of the principle of propriety of Indonesian personality is proposed to actualize the legal values that live in society. Furthermore, insurance activities based on the principles of economic democracy are believed to foster public trust as social capital for the development of the insurance system.

Keywords: Proper Principle, Insurance System

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INTRODUCTION

The discussion of the principle of propriety in Insurance is an interesting topic, considering that the application of Appropriateness Principles in insurance law has been in effect for a long time. In the reality of social relations, the principle of propriety applies to solving problems related to legal relations between community members. Even though in traditional life, social norms have not been formally stated in written form and only rely on an unwritten law, the principle of propriety has effective power or strength. In its later development, legal principles were given the form of written law and normalized in-laws to ensure legal certainty. Broadly speaking, the Act regulates legal relations between humans that give birth to agreements. Covenant law aims to protect the parties involved. The agreement does not only bind what is expressly stipulated in it but also everything that, according to the nature of the agreement, is required by etiquette, custom, or the law (Badruzaman, 2006).

Insurance in the life of traditional communities has been practiced. When one community member is affected by a disaster, the other community members mutually provide assistance, hand in hand as a form of mutual assistance. Then the pattern of the community in helping each other is standardized in the collection of social funds managed by the majlis or association. These activities are characteristic of Insurance. Insurance is risk management managed by a community among them based on togetherness in the form of mutual cooperation and help. These are the living legal values that underlie traditional insurance activities. The Indonesian people normalize these values as Indonesia's economic democracy principles. It is worth considering the opinion of Karl Von Savigny that good law is a law that lives in society or is called "living law." Thus the values of the community are accommodated as just or good law (Farida, 2016). Formally, Insurance is institutionalized in the form of an agreement to carry out risk management which is

managed by members then given the form and name of mutual Insurance. The accumulated funds collected from members are then formed into the partnership capital. Mutual insurance management is based on the principle of "from-by-and for" its mission is for the common good. Mutual Insurance has distinguished from Insurance that a company manages in the form of a limited liability company in which the company's capital comes from the accumulation of capital in the form of shares (Ambrosino et al., 2021). Grijpstra (2011) states that the power of capital in a company in the form of a Limited Liability Company is to maximize the shareholders' profits, as a handful of people (Soros, 1998).

The capitalist trait is inherent in the accumulation of shares. Economic growth is inherent in the objective of capital accumulation. It is different from the people's populist economic motive, which is aimed at the welfare of many people, not at one group or several groups (Swasono, 2010). People's economy is more likely to be a collection of people to distribute welfare. People's economy is in the vortex of two dominant and opposite poles of the world economic system, namely the capitalist and socialist economic systems. The principle of economic democracy lies between these two poles. The principal balances between capitalist and socialist economic systems. The principle is constitutionally the basis for carrying out economic activities in Indonesia. In economic activities, agreements will appear, where the principle of propriety is the principle that grows and develops from the values that live in the community following these activities. When viewed from the perspective of Insurance as an agreement, the principle of propriety here relates to the provisions regarding the agreement's contents. It is a measure of the relationship, which is also determined by the sense of community justice. In the objective sense, "property" refers to the fact that the parties' behavior in the agreement must be following the general assumption of good faith and not solely based on their own assumptions (Prodjodikoro, 1993). Wiryono Projodikoro views that etiquette is related to honesty, namely honesty in a dynamic sense rooted in the role of law in general. The principle of propriety will try to balance the various interests in society. The concrete action of propriety as honesty (in good faith) lies in the actions taken by the parties in carrying out promises. Insurance is an agreement that places obligations on the parties. The agreement itself is only binding on the parties who made it, the doctrine of the privilege of contract asserts (Koffman & Macdonald, 2004). Nor can the government enter into it. In addition, the agreement will apply the principle of freedom of contract. However, if the freedom of contract violates the principle of good faith, the judge will override the clause of the agreement and put forward his legal considerations in good faith, and if the good faith has been implemented but is deadlocked,

In the issue of demutualization insurance companies in Indonesia, the doctrine of privity of contract and good faith has been ruled out by the government, as indicated by the handing over of the management of mutual company insurance to statutory managers at the initiative of the Financial Services Authority. The breakthrough was argued to increase economic growth and the trend of globalization. However, the government's policy by considering the insurance law to increase economic growth and globalization shows that the current globalization is affecting the legal insurance system. Therefore, the question is whether demutualization is a positive attitude in responding to globalization. Indeed, many countries choose the demutualization of insurance companies, but in many countries, insurance companies in the form of limited liability companies transfer their business entities to mutual companies. In fact, Indonesia has its own principle, namely the principle of economic democracy, as stated in its constitution. Currently, the Government of Indonesia believes that the most rational choice for insurance companies to exist in the world community in achieving growth is to convert a mutual company into a limited liability company (demutualization). The views were conveyed during the judicial review session of Law no. 2 of 1992 concerning the insurance business related to the "demutualization of AJB Bumiputera," see Constitutional Court Decision No. 32/PUU-XI/2013.

The government needs to pay attention to that the process of demutualization as a process of merger, consolidation, or acquisition of mutual companies is difficult because there is only one

company in Indonesia, namely AJBB. Restructuring of a mutual company must get the approval of the majority of policyholder customers, which numbers could reach millions. This restructuring can only be applied to companies with the same type of business and the same legal entity, so this rule makes mutual restructuring companies even more difficult (Hariyani, 2017). demutualization is not the only way to pursue prosperous growth, In addition, the Nobel laureate Stiglitz argued that globalization is not suitable for developing countries because the rules of the game made by international economic institutions often put the interests of developed industrialized countries and certain interests in these countries, over helping developing countries. A narrow view of globalization is shaped by a certain vision of the economy and society. He did not work for most of the existing environment and did not create global economic stability. Based on the explanation above, in this study, the following problems were identified; (1) How is the application of the principle of decency in the legal insurance system related to the discourse on the demutualization of life insurance companies in Indonesia; (2) How is the concept of the principle of propriety developed in the legal insurance system based on the principle of democracy in the people's economy in the current of globalization. (1211

METHODS

This research uses the approach method normative juridical, namely legal research using theoretical, conceptual, and analytical approaches in dogmatic legal disciplines or doctrinal legal research. The activities carried out include an inventory of positive law, exploring the principles of law, discovering legal concepts in concrete, systematically reviewing or researching, synchronizing and harmonizing laws vertically and horizontally, and conducting legal comparisons. The research is focused on examining the rules or norms in positive law according to a literature study and reviewing norms, rules, and principles of laws and regulations related to Insurance. This research was carried out in two stages: secondary research or literature study (library research) and primary research or field studies. Data collection techniques in secondary research are carried out by researching, reviewing, and analyzing secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are in the form of statutory regulations as binding legal materials related to Insurance, secondary legal materials in the form of legal doctrines in the literature, scientific journals, etc. This primary research or field study is intended to obtain primary data, to support and complement secondary data. Data collection techniques were carried out through interviews with related parties. In connection with the conditions during the Covid-19 Pandemic, interviews were conducted, among others, in webinars discussion programs with experts at zoom meetings. This activity is carried out to obtain data that is not found in the literature study.

This research is descriptive-analytical, namely research that describes and describes insurance activities into legal facts as objects or social phenomena that occur in society. The study of the problem-focused on the application of the principle of decency in the insurance system associated with the discourse of demutualization of life insurance companies in Indonesia, and the concept of the principle of propriety was developed by a legal insurance system based on the principles of democracy in the people's economy in the current globalization era. Data analysis was carried out in a qualitative juridical manner. The Juridical intended in the study, namely starts from the existing regulations as positive legal norms, while the qualitative approach is intended to carry out analysis by studying objects systematically, thoroughly, and comprehensively. The analysis was conducted to reveal the existing reality based on the research results obtained in the form of an explanation of the problems discussed. For example, suppose there is quantitative data in the form of mathematical formulas or presented with statistics only as a support for qualitative data. This qualitative method aims to seek the truth and understand the substance of the truth. In this context, the data obtained from the three legal materials are

analyzed based on the theory of welfare state (grand theory), justice theory (middle range theory), and the theory of development law (applied theory).

RESULT AND DISCUSSION

Based on the search results on primary legal materials and secondary legal materials, the principle of etiquette is a symbiotic mutualism with honesty, good faith, justice, balance, and protection of rights (Sinaga, 2018). Therefore, applying the principle of decency in the law of the legal insurance system will be inherent in the enforcement of the insurance law system. Insurance law enforcement is the enforcement of a legal system that involves 3 (three) elements forming the system as a coherent whole, namely (1) statutory regulations, (2) more concrete structural elements of insurance law enforcement, (3) elements of legal culture or culture from the public, either business actors or insurance consumers. The application of the principle of decency in the substance of the legal insurance system in Indonesia has at least been demonstrated by the inclusion of this principle in Law no. 40 of 2014 concerning Insurance and several Financial Services Authority Regulations. In addition, the terminology of decency is often mentioned in several articles. This principle is related to the provisions of business licensing requirements and the operation of insurance businesses.

Article 8 of the Insurance Law regulates the provisions for business licensing to carry out the required Insurance, "...there is" fit and proper shareholders and controllers, ...and other things to support the healthy growth of the insurance business". Furthermore, in Article 12, the requirements are aimed at "Members of the board of directors, members of the board of commissioners, or the equivalent, company actuaries, internal auditors, and controllers must at all times meet the requirements of ability and propriety". The principle of decency in other OJK legal products is related to financial integrity and feasibility requirements, financial reputation, and financial competence. The Role of Covenant Law Principles in Realizing the Purpose of the Agreement state that these provisions are an effort to apply the principle of propriety carried out on a tightening in the process of establishing an insurance company, namely the linking of decency requirements with permit requirements and requirements to become the main party in the insurance company. When viewed from the substance of the provisions of Law No. 40 of 2014 concerning Insurance and the Financial Services Authority Regulation above, the application of the propriety principle has only reached the narrative level. There is a degradation of values from the principle of decency, which should be emphasized more on the value of integrity, but the content is oriented to worldly things. Propriety is juxtaposed with financial reputation requirements and financial feasibility requirements so that the nature of the value of the propriety principle becomes chaos.

Application of the principle of decency in the constitution formation of often directed at the flow of globalization, which is identified with efforts to realize economic growth. The influence of globalization occurred in the formation of new insurance law, Law Number 40 of 2014 concerning Insurance which replaced Law No. 2 of 1992. The issues of globalization, liberalization and economic growth are three things that go hand in hand. Currently, the purpose of establishing the Insurance Act is directed at these 3 (three) things. It can be examined in its preamble. stated that "... to respond to and anticipate the development of the insurance industry and economic development, both at the national and international levels global level. The study results in finding the concept of the principle of propriety begins with exploring the legal values that live in society. This value is used as social capital to foster public trust. It is necessary to strengthen the stance that Insurance is a trusted business (Massey et al., 2004) so public trust must be nurtured. If the public trust has been held, the company and the state must carry out their mandate and not violate that trust. If trust is ignored, the mission of economic growth and prosperity will not be realized. In the end, the state had to restore the economy without the support of the people. The concept of Appropriateness Principles in the context of economic development is associated with linking the legal insurance system at the intersection of the legal

system and the economic system. The legal system requires achieving the legal objectives of justice, legal certainty, and expediency (Alexy, 2015). The economic system requires the realization of social welfare. Indonesia is a welfare law country (societal welfare state) and not a power state (*machstaat*). Then the legal foundations that are formed must be able to provide legal protection justice and advance the life of the nation as a whole. The idea of a state of the law is built by developing legal instruments as a functional and just system, developed through the supra and infrastructure of economic, political, cultural, and legal institutions that are rational and impersonal in the life of society, nation, and state. That's why the legal system was built (law-making) and enforced (law informing) as appropriate, starting with the foundation of all activities based on the constitution, as the law of the highest position (the supreme law).

The principle of etiquette is generally implemented in the agreement. The legal relationship that is fostered is the relationship between the parties, namely the insured and the insurer, or between business actors and consumers. In the welfare state theory, the government has the role of supervising and fostering business actors to carry out well-managed insurance activities. Other government interventions are by establishing laws and regulations to provide legitimacy to carry out supervision and guidance. The government should not enter into the internal company because Insurance is an agreement between the insurers and the insured, and the government is not any of the parties involved. If it is related to democratic principles, Article 33 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "The economy is structured as a joint effort based on the principle of kinship. "the concept of applying the principle of propriety to the legal insurance system is that every insurance activity is based on the principle of people's economic democracy, with the adage "of the people, by the people for the people" as a cooperative structure. This concept exists in the form of a mutual company. Therefore, the state needs to maintain, foster, and support insurance business activities such as the Bumiputra Joint Life Insurance (mutual company). Even in carrying out the principles of Indonesian economic democracy, the meaning of "cooperative structure" is widely applied to any form of business entity (Ruslina, 2013). Thus, every insurance company in carrying out business activities and managing the company must be based on the principles of economic democracy based on mutualism, mutual cooperation, and family, as part of an economic system based on a people's economy. If not, then the economic activity is unconstitutional.

In the rule of law (*rechstaat*), the law is formed and used as a foundation to provide legal protection justice and advance the nation's life as a whole. Law will limit power because power tends to develop into arbitrariness, as stated by Lord Acton: "Power tends to corrupt, and absolute power corrupts absolutely." The idea of the rule of law is built by developing legal instruments as a functional and just system by arranging the superstructure and infrastructure of political, economic, and social institutions in an orderly and orderly manner and fostering by building a rational and legal culture and awareness. Impersonal in the life of society, nation, and state. Thus, the legal system is built (law-making) and enforced (law enforcement) as it should be, namely starting with basing all activities based on the constitution as the law with the highest position. In a state of law, the existence of law is for humans, and not vice versa; humans are for law, (Rahardjo, 2009) and development is intended for humans, not humans for development (Yusuf, 2016).

The goal of development is to achieve the progress of civilization, where human values are promoted by law. The progress of civilization is the progress of a virtuous human being, all the results of human cultivation that cover all aspects of human life, both physical and non-physical, in the form of values, order, art, and culture, as well as science and technological progress to achieve the progress of civilization, development Law begins with reforming legal principles. Budiono (1997) state this priority is motivated by the fact that legal principles are the "heart" of regulations (Badriyah, 2012). Principles are the broadest basis for the birth of regulation. Legal principles can also be referred to as the reason for the birth of legal regulations. (*legis ratio*) of the rule of law. According to Paton, the law principle is to guard and give life force (nourishment) to

law and other parts or fields of law. Many legal principles apply to insurance agreements and the field of economic law. The principle of propriety occupies an honorable position because it becomes a breaker if the principles of justice and good faith can no longer stand upright based on legal goals, namely justice, order, legal certainty, and practicality. The development of universal legal principles and concepts encourages the development of the state to be able to relate to other nations in the world. However, each nation has its own personality, which is rooted in the legal culture of society. Likewise, Indonesia has its own way of ruling. Its constitution determines that Pancasila is stated as the source of all sources of positive law in Indonesia. Panca - 5 (five) and Sila = value, then there are five values contained in it, including the value of divinity, the value of humanity, the value of unity, the value of populism, and the value of social justice. These values become a view of life personality and become the source of all sources of law (ground norm). These values are derived on a constitutional basis, referred to in the principles of economic democracy. The principle of "the economy is structured as a joint effort based on the principle of kinship" (Article 33 of the Indonesian constitution). The meaning compiled means "to wake up, and the structure" of an economy based on togetherness (mutualism), the principle of mutual cooperation, and kinship; then, these principles become the umbrella for the principles that apply to other fields of economic law, including insurance law. The concept of the principle of decency in the Indonesian insurance system is a principle that is based on the principles contained in the principles of economic democracy. In other words, the principle of economic democracy becomes (an umbrella act) to the concept of the principle of decency in the Indonesian insurance system.

The principle of decency is also linear, balancing protecting people's rights as a form of justice. Concerning the nature and role of the principle of propriety, balance, meaning that in a legal system, it is essentially not allowed to fulfill one's interests entirely with the consequences of other people's interests, so that they are completely pressed or ignored. "Society must be a balance that stands upright in a state of balance." Therefore, the principle of propriety also directs us to do justice and do good. The concept of the principle of propriety in Insurance in response to the policy of demutualization of life insurance companies in Indonesia can be discussed by referring to the notion of mutual company and demutualization. Mutual Insurance is an insurance company owned by the policyholder. They collect insurance funds and manage the company together for mutual benefit for their welfare as members and owners of the company, while demutualization is the process by which a mutual company turns into a stock company.

Hanifah (2017) state that mutualization is a legal breakthrough to restructure mutual companies by changing the legal entity form to a limited company. Hariyani (2011) state this method is commonly used in America and Japan. Restructuring at a mutual company will be difficult, unlike restructuring at a limited company, because it can be merged, consolidated, acquired, and separated. In demutualization, policyholders are made as shareholders of the limited company so that the demutualization process does not harm the customers (Sharma & Gupta, 2016). The principle of etiquette should also be implemented in the formation of laws. The purpose of forming laws is often directed at the flow of globalization, which is identified with growth. Understanding and wrong mindsets make globalization something cult. . Yoseph Stiglitz noted that, 'many trade and finance ministers from WTO member countries, and even political leaders believe that everyone will ultimately benefit from liberalization. so that they force countries to accept "reforms", by any means, even by inappropriate means. The leaders of this country are not aware of this. The biggest challenge is not only the institutions themselves, but rather the mindset. According to Stiglitz, what needs to be done if the benefits of globalization are to be reaped is to promote awareness of ensuring the poor have a say in the decisions that affect them, promoting democracy and fair trade. Thus Stiglitz supports economic democracy with social justice.

Between the people's economy, capitalist economy, or socialist economy should not be contradicted, because all systems will ultimately lead to the goal of welfare. The economic system adopted must be seen from a priority scale. Likewise, concerning globalization, there is no need

to argue between the goals of growth and prosperity; the two go hand in hand. The contradiction is simply due to the wrong understanding and interpretation of the notion of welfare. Therefore, the notion of welfare must be returned to its essence, namely providing happiness and prosperity to fulfill human needs.[33] Therefore, it is believed that the people's economic base will still contribute to economic growth. In this case, strengthening public trust is capital and has great potential for prosperous growth. Therefore, concerning the government's legal politics towards demutualization of insurance companies, it is not only oriented towards growth, but should be more oriented towards implementing the principles of economic democracy, which is based on kinship and togetherness, as well as mutual cooperation in solving problems in joint insurance companies. Bring back the essence of a joint effort to manage insurance funds and the company. According to the theory of the welfare state, the role of the state in intervening is carried out in the context of supervision and guidance, implementing regulations through the making of fair laws to support its role. Therefore, concerning the government's legal politics towards demutualization of insurance companies, it is not only oriented towards growth, but should be more oriented towards implementing the principles of economic democracy, which is based on kinship and togetherness, as well as mutual cooperation in solving problems in joint insurance companies. Bring back the essence of a joint effort to manage insurance funds and the company. According to the theory of the welfare state, the role of the state in intervening is carried out in the context of supervision and guidance, implementing regulations through the making of fair laws to support its role. Therefore, concerning the government's legal politics towards demutualization of insurance companies, it is oriented towards growth and should be more oriented towards implementing the principles of economic democracy, which is based on kinship and togetherness, as well as mutual cooperation in solving problems in joint insurance companies. Bring back the essence of a joint effort to manage insurance funds and the company.

According to the theory of the welfare state, the role of the state in intervening is carried out in the context of supervision and guidance, implementing regulations through the making of fair laws to support its role. However, it should be more oriented toward implementing the principles of economic democracy, which are based on kinship and togetherness, and mutual cooperation in solving problems with insurance companies together. Bring back the essence of a joint effort to manage insurance funds and the company. Insurance is an agreement that applies the principle of privity of contract; the agreement only applies to the parties who make it. The government is not a party. In addition, the mutual insurance company is not a State-Owned Enterprise but belongs to the policyholder as a participant of the company. Based on this principle, the government determines and decides on the demutualization of mutual company insurance (AJJB). They are the policyholders who decide. Based on the principles of Indonesian democracy, in deciding something, it must go through a deliberation process to produce a fair settlement. Justice comes from the basic word "fair," namely honesty, straightness, and sincerity that is not one-sided. Justice means something that is impartial, impartial, or not arbitrary. authority, not acting that is not following religious norms, decency, propriety, decency, and legal norms.[34]. According to the theory of justice from John Rawl, justice is the main virtue in social institutions and the truth in the system of thought. Rawls (2006) state that, according to contemporary legal doctrine, which emphasizes aspects of justice and decency in contracts (Asnawi, 2018) legal protection for the parties is a fundamental element of the law. Therefore, legal protection can be interpreted as an effort to enforce and/or restore civil rights. No matter how efficient and orderly laws and regulations are, laws and institutions must be reformed or abolished if they are unfair (Asnawi, 2018). This theory answers the need to repeal laws and government regulations that discriminate against mutual insurance companies in Indonesia.

To aim and establish an insurance law that is contextualized with economic growth and globalization, the government and the legislature need to pay attention to Stiglitz's view, which can be referenced to create the nation's mindset in responding to globalization. Stiglitz argued that we all live on one planet. We are a global society, and like all societies, we have to follow

several rules to live together. Regulations must be viewed as open and fair regulations that favor the weak and the strong, reflecting the basic nuances of civility and social justice. In today's world, rules must be made through democratic processes, rules in institutions, and governing parties must ensure that they will pay attention to and respond to the wants and needs of all parties affected by policies and decisions made by far-flung countries. In addition, Stiglitz said that a country gets a negative influence from a narrow understanding of globalization on decision-makers. "I see many decisions in countries being made often because of ideological and political considerations. As a result, many misguided actions are taken, actions that do not solve existing problems, but are following the interests and beliefs of those in power".

There is a tug of war between economic power and legal force, which should complement each other, but what happens is the opposite, the law becomes a tool to bring out economic power, not Indonesia's identity. Capital strength considered everything and put aside the meaning of welfare. Soros is of the view that "...the owners of capital seek to maximize their profit... yet the truth is that market fundamentalism is itself naive and illogical... to put the matter simply, market forces, if they are given complete authority even in the purely economic and financial arenas, produce chaos and could ultimately lead to the downfall of the global capitalism system..." In addition, Soros said that "globalization equilibrium utopia is often embraced blindly and assumes that profits will come on their own and only a matter of waiting time. Soros categorizes this condition as suffering from acute danger because it will uproot the subject (participant) from the object he creates. In other words, although it is intended to liberate the individual, in fact, the individual is fundamentally confined. Soros offers the concept of equilibrium which is placed as a social construction, whose meaning will be largely determined by the consensus in society. Soros (2002) state that; what needs to be realized in responding to the biggest challenges if the benefits of globalization are to be achieved is to encourage awareness to ensure that people have a voice in the decisions that affect them and to encourage democracy inequitable economic activities.

CONCLUSION

Applying the propriety principle in Indonesia's insurance legal system aims at 3 (three) elements forming the system, namely legal substance, legal structure, and legal culture. The application of the principle of decency to the element of substance has at least been shown by the inclusion of this principle in the normalization of the formulation of the articles of Law no. 40 of 2014 concerning Insurance and several Financial Services Authority Regulations. In addition, this principle is related to the provisions of business licensing requirements and the operation of insurance businesses. However, the application of the principle of propriety has only reached the level of the narrative, which is still chaotic. The principle of propriety has not yet become a value that underlies the legal culture of insurance company managers and law enforcement efforts. The concept of Appropriateness Principles that can be developed in the legal insurance system is the re-actualization of the principles of economic democracy, namely the principles of togetherness, mutual cooperation, and kinship as used by this principle in the management of mutual insurance companies.

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