

OJK urged to conduct audit for failure of Jiwasraya to pay claims

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Merdeka.com: Insurance Observer Irvan Rahardjo urged the Financial Services Authority (OJK) to immediately conduct an investigative audit related to the failure of PT Asuransi Jiwasraya (Persero) to pay claims. This is an early warning to look into the failure to pay claims. "The OJK needs to conduct an investigative audit, as Minister Rini stated. If it can create an early warning system so that if there are symptoms of default, the OJK will be able to detect such default," he said when contacted by Liputan6.com on Thursday (11/10).

In addition, the OJK must be proactive in responding to liquidity problems that occur with insurance. "The point is that OJK must intervene and be proactive because this is the same case as with Bumiputera: the Bumiputera case has not yet been solved, and now there is already another one, Jiwasraya," he explained.

Irvan stated that in this case, policyholders have been unfairly treated. Therefore, the government is advised to immediately create a Policy Guarantee Institution. "That demonstrates the importance of forming a Policy Guarantee Institution such as the deposit insurance institution for the banking industry. Thus far, it has not been formed," he said. Meanwhile, as confirmed by Liputan6.com, Jiwasraya President Director Asmawi Syam and Jiwasraya Communication Section Head, Wiwik Sutrisno, have made no comment.

PT Asuransi Jiwasraya Persero experienced liquidity problems such that the state-owned enterprise (SOE) insurer must now postpone payment on matured insurance policies to a number of banks that should have been paid this October.

Reporter: Bawono Yadika Tulus

Source: <https://www.merdeka.com/uang/ojk-didesak-audit-investigasi-terkait-gagal-bayar-klaim-jiwasraya.html>

Are cars destroyed in an earthquake covered by insurance?

Jakarta, CNN Indonesia: Vehicles that are heavily damaged or a total loss as a result of natural disasters are not always covered by insurance. It is important to understand that only in certain conditions does insurance protect against losses due to natural disasters. There are two types of vehicle insurance, in general: namely Total Loss Only (TLO) which bears 75 percent of the price of a vehicle before a loss is incurred and comprehensive loss, which carries all risks from minor to severe damage and loss.

In the rules of the Standard Indonesian Motor Vehicle Insurance Policy, Article 3 Paragraph 3, it is stipulated that insurance coverage does not provide protection against losses as a result of earthquakes, tsunamis, floods, nuclear reactions, riots, civil unrest, terrorism and others. The article stipulates the following:

"This insurance does not guarantee against loss, damage and or cost of Motorized Vehicles and or legal liability to third parties, directly or indirectly caused by, as a result of, arising from:

3.1. riots, strikes, blockages of work, civil unrest, riots, public disorder, expropriation of power, revolution, rebellion, military power, invasion, civil war, war and hostility, treason, terrorism, sabotage, looting;

3.2. earthquakes, volcanic eruptions, hurricanes, storms, tsunamis, hail, floods, water damage, landslides or other geological or meteorological occurrences;

3.3. nuclear reactions, including but not limited to nuclear radiation, ionization, fusion, fission or radioactive pollution, regardless of whether it occurs inside or outside of the Motor Vehicle and or the insured interest".

The Head of Communications and Events, Laurentius Astra Iwan Pranoto, explained that if consumers wish for insurance to bear the risks stated in the article above, then such coverage must be added to the coverage. "Thus, protection must be expanded. You can check the policy beforehand because it is usually sold in a package," Iwan said when contacted on Monday (1/10). Usually, when purchasing a new car or motorbike, consumers are given vehicle insurance, and then costs are included in the payment credit package.

For owners who experience losses due to natural disasters, such as earthquakes and tsunamis in Palu and Donggala, it is advisable to look to the information about the policy regarding the coverage. The insurer can be contacted directly to ascertain such information.

Source: <https://www.cnnindonesia.com/teknologi/20181001122452-384-334591/mobil-korban-gempa-belum-tentu-ditanggung-asuransi>

New geothermal tender process

(Ferdinand Jullaga, S.H., LL.M, research by Aldris Prayogo)

The Minister of Energy and Mineral Resources issued Regulation No. 37 of 2018, regarding Offering of Geothermal Working Areas, Issuance of Geothermal Licenses and Geothermal Business Assignments (“**MEMR 37/2018**”). MEMR 37/2018 provides the general rules on geothermal working area tenders. It covers the (i) working area tender for public; (ii) working area tender resulting from Preliminary Survey and Exploration Survey (*Penugasan Survei Pendahuluan dan Eksplorasi* or “**PSPE**”); as well as (iii) assignment of working areas to a public service entity (*Badan Layanan Umum* or “**BLU**”) or a geothermal state-owned enterprise (“**SoE**”). It does not, however, provides the rules for a geothermal working area that is intended for own-use (captive project) by a business entity.

Legal News

MEMR 37/2018 provides the procedures for a working area tender from the early stage of the tender, i.e. formation of the tender committee, preparation of tender documents up to the appointment of a tender winner and granting of the geothermal license. In the preparation of a tender, MEMR 37/2018 introduces new features which require PLN to submit a pre-transaction agreement to the MEMR as well as the proposed price of electricity which must be approved by MEMR. The pre-transaction agreement contains clauses to provide certainty as to the power purchase between the PLN and the tender winner. It is hoped that the participants in the tender would already have certainty (at least on certain key aspects) on the power purchase once they win the tender.

In principle, a working area tender is to be carried out by auction, which is divided into two stages. The first stage is to assess the administrative, financial as well as technical aspects of the bidders. MEMR then will assess and determine the shortlisted bidders who qualify to proceed to the second stage. At the second stage, the MEMR will assess the exploration commitment proposal of each bidder. MEMR 37/2018 provides the criteria for the tender committee to score each bidder based on (i) a technical assessment of geothermal reserves; (ii) exploration strategy and plan; (iii) exploitation strategy and utilization; (iv) investment plan; (v) innovation; and (vi) commercial operation date commitment.

With respect to the tender of working area resulting from PSPE, MEMR 37/2018 provides that a limited tender shall be carried out. The limited tender is only open to business entities that have completed the PSPE and SoE(s). The business entity that completes the PSPE also has priority rights in the tender. It means that the tender committee will open the proposal to such business entity first. If the proposal meets the requirement, such business entity will be directly appointed as the tender winner. Only in the event that such proposal does not meet the tender requirement can the MEMR proceed to the next bidder and open the proposal from SoE(s).

The tender participant is also required to deposit a bid bond in an amount that varies depending on the prospective capacity of the project: a) Rp2,000,000,000 (*two billion rupiah*) bid bond for auctions with unknown reserves or proven reserves greater than or equal to 100 MW; b) Rp1,000,000,000 (*one billion rupiah*) bid bond if the source is less than 100 MW; and c) in the case that the working area is located in the provinces of East Nusa Tenggara, Maluku, North Maluku, Papua and West Papua, the bid bond shall be set at Rp1,000,000,000 (one billion rupiah) at a minimum. The tender of a geothermal working area resulting from PSPE does not require that the bidder submit a bid bond.

Furthermore, there is an obligation to form a new business entity for bidders who participated in the tender as a consortium. Nevertheless, there are no clear guidelines as to whether a foreign entity is eligible to participate as a consortium member.

In addition to the tender of working area noted above, the MEMR may also assign certain geothermal working areas to SoE or BLU. There are criteria for working areas that can be assigned by the MEMR, as follows: (i) there were previous exploration activities conducted by SoE or the government in such working area; (ii) the working area has been operated by SoE or the government; (iii) the working area has been returned by the business entity; (iv) the assignment is intended to accelerate the supply and utilization of geothermal energy; (v) the assignment is intended to increase the electrification ratio in the relevant area; and/or (vi) there has been a tender for such working area, but no winner has been appointed.

By the issuance of MEMR 37/2018, the government seeks to provide a clear pathway for business entities to develop geothermal projects in Indonesia which eventually will boost geothermal development.

Legal News

Right to be forgotten

(Oka Anantajaya, S.H., LL.M with research by Jonathan Sadikin, S.H.)

According to Law No. 11 of 2008, regarding Electronic Information and Transactions, as amended by Law No. 19 of 2016 concerning Amendment to Law No. 11 of 2008, concerning Electronic Information and Transactions (“**ITE Law**”), if a data owner’s request to delete irrelevant Personal Data is granted by the court, such personal data in an Electronic Service Operator’s (**ESO**) sphere of control must be deleted. In order to comply with this deletion, there should be no method by which the personal data can be recovered or reconstructed and redisplayed within the system.

This right is provided in Article 26(3) of the ITE Law. The ESO is required to delete irrelevant electronic information and/or documents within its sphere of control upon the request of relevant data owners based on a court ruling. According to Article 26(4) of the ITE Law, every ESO must provide a mechanism to delete irrelevant electronic information and/or documents as legally required. It is possible for a personal data owner to re-submit his/her personal data to the ESO after such deletion, which requires the execution of a new consent form in advance. To avoid any risk to the ESO, records should be kept to ensure that the court-ordered deletion of personal data has been carried out before said data were re-submitted by the data owner to the ESO.

Further provisions on the method of deletion has not been issued by the government, though sources in the media indicate that a new regulation to implement the right to be forgotten will soon be drafted and enacted. In addition, to our knowledge, there have yet to be any case laws in Indonesia implementing the right to be forgotten.

Religious leave

MKK labor team (with research by Miranda Mamahit, S.H.)

It is important for a company to stipulate the terms and conditions for employees to take time off for religious duties. With regard to pilgrimages, according to Law no 13 of 2003 on Manpower (**Law 13**), Article 93 paragraph (2) point e UU No. 13 of 2003, employees have the right to take time off work for this purpose. Let us look at what the rights of the employee and the obligations of the employer are in this matter.

In fact, it is mandatory for employers to give paid leave to employees who wish to go on a pilgrimage. In article 6 paragraph (4) PP No. 8 of 1981, regarding Wage Protection, it is stipulated that workers are allowed paid leave to undertake a pilgrimage. However, in the elucidation of article 6 paragraph (4), we note that an employer is only obliged to give an employee paid leave in this manner once, and if the employee chooses to subsequently go on another pilgrimage, the employer is not obligated to give him paid leave therefor. Furthermore, Law 13 also states that this obligation on the part of the employer only applies if the pilgrimage in that religion is mandatory in nature. If the pilgrimage is not mandatory and/or not specifically called for in the employee's religion, then the matter can be governed by the company's CR (Company Regulation) or

CLA (Collective Labor Agreement), as the employer's obligation in this regard ends after leave for the first pilgrimage has been taken. To avoid misunderstandings with employees and for the sake of transparency and certainty, it is thus best to set out the company's policy with regard to leave for religious purposes in the CR while taking into account the legal basis set out above.

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