

Juridical Review of Foreign Investment Opportunities in Reinsurance Business in Indonesia

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Abstract	This study aims to conduct a juridical review of foreign investment opportunities in the reinsurance business in Indonesia. Reinsurance is a type of insurance that is carried out by insurance companies to protect themselves from risks of significant losses. Indonesia, as a developing country with a rapidly growing insurance industry, has great potential to attract foreign investment in the reinsurance industry. This study uses normative juridical research methods by analyzing laws and policies related to foreign investment in the reinsurance industry in Indonesia. The results show that although the opportunities for foreign investment in the reinsurance industry in Indonesia are significant, there are still several obstacles that need to be overcome, such as complex regulations and intense competition with domestic reinsurance companies. This study is expected to contribute to relevant stakeholders in developing the reinsurance industry in Indonesia through more effective and efficient foreign investment.	
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1. INTRODUCTION

Investment plays a crucial role in accelerating the development of the national economy (Tian et al., 2022). The implementation of this is a manifestation of the mandate of the preamble of the Constitution of the Republic of Indonesia Year 1945, which states that the Indonesian Government has an obligation to promote the welfare of the people (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945). Based on economic democracy with principles of togetherness, efficient justice, sustainability, environmental awareness, independence, and by maintaining the balance of national economic progress and unity (Pasal 33 UUD 1945).

Sustainable national economic development requires a significant amount of funds to finance the intended development (Lee et al., 2022). This is certainly impossible to be borne and implemented by the government as a whole. The government has limitations to finance national development with its own financial strength. Therefore, to accelerate national economic development and realize Indonesia's political and economic sovereignty, an increase in investment is needed to turn economic potential into real economic strength using capital from both domestic and foreign sources, especially foreign investment in the reinsurance sector, which is part of insurance companies in Indonesia as stipulated in Law Number 40 of 2014 (Undang-Undang Republik Indonesia Nomor 40 Tahun 2014).

Foreign investment represents ownership of shares in a company by foreign investors (Chen et al., 2022). According to the provisions in Article 1 number 6 of Law No. 25 of 2007 concerning Investment,



foreign investment means individual foreign citizens, foreign business entities, and/or foreign governments who invest in the territory of the Republic of Indonesia.

In general, the entry of foreign investment in the reinsurance business sector is interesting to discuss to find out how Indonesian laws and regulations govern the opportunities for foreign investment in the existing reinsurance industry, considering that this will have an impact on accelerating national economic development as mandated in the preamble of the Constitution of the Republic of Indonesia Year 1945 as mentioned at the beginning.

Based on the above, as outlined in the background of the writing, the author considers it necessary to further discuss foreign investment opportunities in the reinsurance business based on applicable laws and regulations in Indonesia.

The purpose of the research is to obtain information about foreign investment opportunities based on the laws and regulations in Indonesia.

The expected benefits of this research are to provide information and knowledge about Investment Law and Capital Markets, particularly regarding foreign investment opportunities in the reinsurance business in Indonesia (Khan et al., 2022). It can then be scientifically applied to Investment Law and Capital Markets. Additionally, it can serve as a reference for other writers who are also writing about Investment Law and Capital Markets, particularly regarding foreign investment in the reinsurance business in Indonesia.

2. METHODS

The research method or methodology is essential for a researcher because without it, a researcher would not be able to identify, formulate, analyze, or solve a particular problem to obtain the truth. Methodology arises from certain characteristics of specific problems (Nim, 2018).

The research method used is doctrinal research. In doctrinal research, there is processing and testing of legal substance using legal doctrines to discover, construct, or reconstruct rules or principles (Banakar & Travers, 2005).

The doctrinal research method is used to determine the legal relationship construction regarding foreign investment opportunities in the reinsurance business in Indonesia when viewed juridically based on applicable laws and regulations. The research is conducted by examining insurance-related laws and other relevant regulations (Sewu et al., 2022).

This research uses qualitative data processing. Therefore, from the nature of the research, this research is descriptive analysis. This means that everything stated by the research subject in writing or orally and actual behavior is taken into account (Banakar & Travers, 2005). The object studied is the entire research object. This is because the research analysis aims to provide an accurate overview and answer whether foreign parties have investment opportunities in the reinsurance business in Indonesia when viewed juridically based on applicable laws and regulations.

3. FINDINGS AND DISCUSSION

3.1 Overview of Reinsurance Business

Reinsurance is an integral part of the insurance industry (Li et al., 2022). It was born as a risk management tool in the insurance business, and the need for parties to establish the basis for insurance business also plays a role. Whether realized or not, the relationship between parties based on mutual need will also be followed by agreements to establish regulations or rules that will serve as the basis or legal foundation that must be adhered to by the parties, including agreements in the reinsurance business industry (Simanjuntak, 2011).

In his book, Ashok Goenka defines reinsurance as follows (Safarudin, 2022):

"Reinsurance is the transaction whereby the reinsurer, for a consideration, agrees to indemnify the Company against all or part of the loss the Company may sustain under the policy or policies it has issued."

Based on the above definition, reinsurance is defined as a transaction where the reinsurer agrees to indemnify the Company, in this case, the insurance company, against all or part of the losses suffered by the insurance company under the policies it has issued.

Another definition states that reinsurance is an agreement made between two parties, namely the ceding company (insurance company) as the primary insurer (first party) and the reinsurance company as the reinsurer (second party). The first party agrees to transfer and the second party agrees to accept a predetermined portion of a risk as agreed upon (Condro & Rahayu, 2022).

Based on the two definitions above, there are at least two parties involved in a reinsurance agreement, namely:

1. Ceding company/Company, which is an insurance company that acts as an insurer and has issued policies to the insured based on providing guarantees to indemnify losses for a specific risk based on an insurance agreement.
2. Reinsurer/reinsurance company, which is a party willing to accept some or all of the risks transferred from the insurer.

These two parties are the main key to the occurrence of a reinsurance agreement because a reinsurance agreement can only be carried out by an insurance company or ceding company as the insurer and a reinsurance company as the reinsurer. The reinsurance agreement arises after an insurance agreement is made between the insured and the primary insurer. Without insurance, there would be no reinsurance. However, in a reinsurance agreement, the insured does not have any legal standing, and therefore, they do not have any rights in the reinsurance agreement.

The Insured is a party to an insurance agreement and therefore has rights based on their interests against the insurer but not in a reinsurance agreement (Novikova et al., 2022). As a result, they cannot make any claims or demands against the reinsurance company. Reinsurance agreements only involve the insurance company and the reinsurance company. However, indirectly, reinsurance agreements provide benefits to the insured through the indemnity provided by the insurance company.

According to Article 1 number 7 of the Republic of Indonesia Law Number 40 of 2014 concerning Insurance, reinsurance is defined as a service of reinsurance against risks faced by insurance companies, guarantee companies, or other reinsurance companies. Reinsurance is part of the risk management approach known as the principle of spreading of risk in the insurance industry. The principle of spreading of risk states that every risk covered by insurance needs to be spread so that it does not become a burden beyond the insurer's capacity.

The higher the productivity that can be achieved, the greater the responsibility that must be borne. This presents a greater opportunity to fulfill obligations in the future. This situation cannot be avoided by the insurance company as the primary insurer. Therefore, the risks faced by the insurance company are transferred to the reinsurance company as a secondary insurer based on the reinsurance agreement agreed upon by the parties.

Reinsurance has the following functions:

Capacity: The limited capacity of a certain Direct Insurer makes it unable to accept insurance amounts that exceed its capacity. Reinsurance facilities will increase the capacity of the Direct Insurer, allowing it to accept high insurance amounts. In this case, reinsurance functions as "Capacity Boosting."

Removal of Uncertainty: Losses are certain to occur, but what is uncertain is the frequency, timing, and amount of loss. Reinsurance can make the loss certain, in other words, reinsurance helps Direct Insurer stabilize its level of loss by removing some of the uncertainties.

Confidence: Like insurance, one of the benefits of reinsurance for the Insured is to create confidence. Reinsurance provides the same benefit to the Direct Insurer. For example, by eliminating certain uncertainties through insurance mechanisms, the entrepreneur will be willing to increase their investment instead of keeping their money as a reserve. This also applies to Direct Insurers as the influence of some uncertainties can be eliminated with the help of reinsurance mechanisms.

Catastrophe Protection: Direct Insurer's financial condition can become very bad if it has to bear extraordinary losses (Catastrophic Losses). Reinsurance acts as a safeguard to protect Direct Insurer from such situations.

Spread of Risk: As mentioned above, reinsurance is a mechanism for transferring risk from Direct Insurer to reinsurance. Therefore, reinsurance plays a role as a tool for spreading risk.

3.2. Foreign Investment Policy in Reinsurance Business in Indonesia

After understanding the general principles of reinsurance business, the next step is to examine the opportunities for foreign investment in reinsurance business in Indonesia from a legal perspective based on applicable laws and regulations. As a host state, Indonesia has a legal basis for the implementation of foreign and domestic investment, which is based on providing equal treatment to domestic and foreign investors while considering national interests. Law Number 25 of 2007 concerning Investment provides the foundation and guidelines for the implementation and procedures of foreign investment in Indonesia, including in the reinsurance business.

Regarding the opportunities for foreign investment in the reinsurance business in Indonesia, there are several related policies and regulations that will be discussed and serve as the basis for foreign investors to invest in the reinsurance business in Indonesia, including:

Law Number 25 of 2007 Concerning Investment

Before being regulated and amended by Law Number 11 of 2020 concerning Job Creation, Article 12 of Law Number 25 of 2007 concerning Investment regulates the scope of business fields open to foreign investment. Article 12 states that:

1. All business fields or types of business are open to investment, except for those declared closed and open with requirements.
2. Business fields that are closed to foreign investors are:
 - a. The production of weapons, ammunition, explosives, and war equipment; and
 - b. Business fields that are explicitly declared closed based on the law.
3. The government, based on the Presidential Regulation, determines business fields that are closed to both foreign and domestic investment, based on criteria such as health, morals, culture, the environment, national defense and security, and other national interests.
4. The criteria and requirements for closed and open business fields with requirements, as well as the list of closed and open business fields with requirements, will be regulated by Presidential Regulation.
5. The government determines business fields that are open with requirements based on national interest criteria, namely the protection of natural resources, the protection and development of micro, small, and medium enterprises and cooperatives, production and distribution oversight, technology capacity building, domestic capital participation, and cooperation with government-appointed business entities.

Based on the provisions of the article, reinsurance business is one type of business that is open to foreign investment. This openness is further stated in Presidential Regulation of the Republic of Indonesia Number 76 of 2007 concerning Criteria and Requirements for the Preparation of Closed Business Fields and Open Business Fields with Requirements in the Field of Investment and Presidential Regulation Number 39 of 2014 concerning List of Closed Business Fields and Open Business Fields with Requirements in the Field of Investment.

Under Presidential Regulation Number 39 of 2014 concerning List of Closed Business Fields and Open Business Fields with Requirements in the Field of Investment, it is explicitly stated that reinsurance business, which is part of the financial sector, is open to foreign investment with a maximum foreign investment of 80%.

Law Number 40 of 2014 concerning Insurance

Regarding investment opportunities in reinsurance business, they can be found in Article 7 of Law Number 40 of 2014 concerning Insurance. The article states that:

1. Insurance companies can only be owned by:
 - a. Indonesian citizens and/or Indonesian legal entities that are directly or indirectly fully owned by Indonesian citizens; or
 - b. Indonesian citizens and/or Indonesian legal entities as referred to in point a, together with foreign citizens or foreign legal entities which must be insurance companies that have similar business or parent companies of which one of their subsidiaries is engaged in the insurance business of the same kind.
2. Foreign citizens as referred to in point (1) letter b can become owners of insurance companies only through transactions on the stock exchange.
3. Further provisions regarding the criteria for foreign legal entities and ownership of foreign legal entities as referred to in point (1) letter b and ownership of foreign citizens as referred to in point (2) in insurance companies are regulated in Government Regulation.

Further regulations on foreign ownership in reinsurance business are stipulated in Government Regulation of the Republic of Indonesia Number 14 of 2018 concerning Foreign Ownership in Insurance Companies, which was amended by Government Regulation of the Republic of Indonesia Number 3 of 2020 concerning Amendment to Government Regulation Number 14 of 2018 concerning Foreign Ownership in Insurance Companies. In Article 5 of Government Regulation of the Republic of Indonesia Number 14 of 2018 concerning Foreign Ownership in Insurance Companies, it is explicitly stated that foreign ownership in non-public reinsurance business is maximum 80% of the paid-up capital. For open reinsurance businesses, direct foreign ownership is not allowed, except through the stock exchange.

Law Number 11 of 2020 concerning Job Creation

After the enactment of Law Number 11 of 2020 concerning Job Creation, there is no specific regulation regarding foreign investment in the reinsurance business. Regulations regarding foreign investment are generally made by amending the provisions in Law Number 25 of 2007 concerning Investment. The amended provisions on foreign investment can be found in Article 12 of Law Number 11 of 2020 concerning Job Creation which states:

1. All business sectors are open to investment activities, except business sectors that are closed for investment or activities that can only be carried out by the Central Government.
2. The business sectors that are closed for investment as referred to in paragraph (1) include:
 - a. Cultivation And Industry of Class I Narcotics;
 - b. All Forms of Gambling And/or Casinos;
 - c. Capture of Fish Species Listed In Appendix I of The Convention on International Trade In Endangered Species of Wild Fauna And Flora;
 - d. Utilization or Taking of Coral And Taking or Utilization of Coral From Nature Used For Calcium Lime Building Material, Aquarium, And Souvenirs/Jewelry, As Well As Live or Dead Coral (Recent Death Corat) From Nature;
 - e. Manufacturing of Chemical Weapons; And
 - f. Industrial Chemicals And Ozone-depleting substances.
3. Further provisions regarding investment requirements as referred to in paragraphs (1) and (2) are regulated in the Presidential Regulation.

Further regulations regarding investment are specifically regulated in Presidential Regulation of the Republic of Indonesia Number 10 of 2021 concerning Investment Business Sectors (Indrawan & Munandar, 2022). Article 2 of Presidential Regulation of the Republic of Indonesia Number 10 of 2021 concerning Investment Business Sectors regulates the types of businesses that are open for investment, namely business sectors that cannot be operated as mentioned in Article 12 of Law Number 25 of 2007 concerning Investment, as amended by Law Number 11 of 2020 concerning Job Creation.

Regarding foreign investment, in Article 7 of Presidential Regulation of the Republic of Indonesia Number 10 of 2021 concerning Investment Business Sectors, they can carry out business activities by investing with a value of more than IDR 10,000,000,000 (ten billion rupiah) and in the form of a limited liability company.

Financial Services Authority Regulation Number 67 /POJK.05/2016 concerning Licensing of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies.

Financial Services Authority Regulation Number 67 /POJK.05/2016 concerning Licensing of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies was enacted as a special rule (*lex specialis*) from the provisions regulated in Law Number 40 of 2014 concerning Insurance. One form of further regulation carried out is regarding foreign ownership in the reinsurance business. Article 3 of Financial Services Authority Regulation Number 67 /POJK.05/2016 concerning Licensing of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies states that:

1. Companies can only be owned by:
 - a. Indonesian citizens and/or Indonesian legal entities that are wholly owned, directly or indirectly, by Indonesian citizens; or
 - b. Indonesian citizens and/or Indonesian legal entities as referred to in paragraph a, together with foreign citizens or foreign legal entities that must be companies engaged in similar business or parent companies that have one of their subsidiaries engaged in Insurance Business of similar kind.
2. Foreign citizens as referred to in paragraph (1) letter b can only become owners of a company through transactions in the stock exchange.
3. The criteria for foreign legal entities and ownership of foreign legal entities as referred to in paragraph (1) letter b, as well as the ownership of foreign citizens as referred to in paragraph (2) in the Company shall be based on government regulations regarding foreign ownership in insurance companies.

In addition to the above requirements, Article 8 paragraphs (1) and (2) of Financial Services Authority Regulation No. 67/POJK.05/2016 concerning Licensing of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies require foreign investors in reinsurance business to have ratings from internationally recognized rating agencies. Article 8 states the following:

- a. Shareholders of foreign legal entities that are insurance companies must have a minimum rating of A or its equivalent from internationally recognized rating agencies.
- b. For shareholders of foreign legal entities that are parent companies with one of their subsidiaries engaged in Insurance Business of similar kind, compliance with the rating requirement as referred to in paragraph (1) may be fulfilled by the rating of one of its subsidiaries engaged in Insurance Business of similar kind.

4. CONCLUSION

Based on the research, it can be concluded that reinsurance is an important part of the insurance industry, born out of the need for risk management in insurance businesses. According to regulations in Indonesia, reinsurance is defined as a service for reinsuring the risks faced by insurance companies, guarantee companies, or other reinsurance companies. The regulations also indicate that there is a significant opportunity for foreign investment in the reinsurance industry. The maximum foreign ownership in non-public reinsurance companies is set at 80% of the paid-up capital. Furthermore, the Indonesian Financial Services Authority requires that foreign investors in reinsurance companies must have a recognized international rating from rating agencies. Overall, the regulations aim to promote a healthy and competitive reinsurance industry in Indonesia.

REFERENCES

- Banakar, R., & Travers, M. (2005). *Theory and method in socio-legal research*. Bloomsbury Publishing.
- Chen, L., Han, M., Li, Y., Megginson, W. L., & Zhang, H. (2022). Foreign ownership and corporate excess perks. *Journal of International Business Studies*, 1–22.
- Condro, M., & Rahayu, M. I. F. (2022). The Legal Consequences of Default in the Oral Lease Agreement based on Indonesia Private Law (Decision Study of Supreme Court No. 2368K/Pdt/2019). *3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2021)*, 803–809.
- Indrawan, L. N., & Munandar, A. (2022). Juridicial Review Implementation of Land Registration According to Government Regulation No. 18 of 2021 Concerning Management Rights, Land Rights, Flat Units and Land Registration. *Policy, Law, Notary And Regulatory Issues (POLRI)*, 1(1), 39–56.
- Khan, P. A., Johl, S. K., Akhtar, S., Asif, M., Salameh, A. A., & Kanesan, T. (2022). Open innovation of institutional investors and higher education system in creating open approach for SDG-4 quality education: a conceptual review. *Journal of Open Innovation: Technology, Market, and Complexity*, 8(1), 49.
- Lee, C.-C., Li, X., Yu, C.-H., & Zhao, J. (2022). The Contribution Of Climate Finance Toward Environmental Sustainability: New Global Evidence. *Energy Economics*, 111, 106072.
- Li, P., Zhou, M., & Yao, D. (2022). Optimal Time For The Excess Of Loss Reinsurance With Fixed Costs. *International Review Of Economics & Finance*, 79, 466–475.
- Nim, I. B. (N.D.). Pelaksanaan Pasal 16 Ayat (2) C Peraturan Daerah Kabupaten Melawi Nomor 3 Tahun 2015 Tentang Pengawasan Pengendalian Peredaran Dan Penjualan Minuman Beralkohol Di Warung Kaki Lima, Terminal, Kios-Kios Kecil Di Kecamatan Nanga Pinoh Kabupaten Melawi. *Jurnal Fatwa Hukum*, 1(3).
- Novikova, K., Khan, M. I., & Chang, Y.-C. (2022). Russian laws governing marine insurance and the development of mutual insurance. *Research in Transportation Business & Management*, 43, 100781.
- Safarudin, S. (2022). Analisis Teoritik dan Praktik Atas Khilafiyah Kesyariahan Reasuransi Non Proporsional. *Syar'Insurance: Jurnal Asuransi Syariah*, 8(2), 1–18.
- Sewu, P. L. S., Octora, R., & Lusiana, F. (2022). Analysis of the Existence of Insurance Fraud in the Case of Insurance Claim Payment Failure and the Legal Protection for Insurance Clients in the Insurance Company's Failure to Pay Claims. *European Journal of Law and Political Science*, 1(5), 79–86.
- Simanjuntak, R. (2011). *Hukum Kontrak Teknik Perancangan Kontrak Bisnis*. Kontan Pub.
- Tian, X., Zhang, Y., & Qu, G. (2022). The Impact of digital economy on the efficiency of green financial investment in China's provinces. *International Journal of Environmental Research and Public Health*, 19(14), 8884.
- POJK 39 tahun 2020 Perubahan Kedua Atas Peraturan Otoritas Jasa Keuangan Nomor 14/POJK.05/2015 tentang Retensi Sendiri dan Dukungan Reasuransi dalam Negeri
- Peraturan Otoritas Jasa Keuangan Nomor 14/POJK.05/2015 tentang Retensi Sendiri dan Dukungan Reasuransi dalam Negeri
- Radiks Purba, *Memahami Asuransi di Indonesia*. Pustaka Binaman Pressindo, 1992
- Ricardo Simanjuntak, 2011 *Hukum Kontrak : Perancangan Kontrak Bisnis*, PT Gramedia, Jakarta
- Ashok Goenka, *Practical Aspect of Reinsurance*, Singapore College of Insurance

