

## LETTER OF ACCEPTED

Date : 14 October 2024

ID : JLPH69221/LOA/10/2024

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Based on the results of the review, the article was declared **ACCEPTED** for publication in the **Journal of Law, Politic and Humanities (JLPH)** journal in the **Vol. 5 No. 1 November - December 2024** edition, The article will be published no later than **29 November 2024**. The article is available online at <https://dinastires.org/JLPH>

### Submission Details

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Title	THE LEGAL LIABILITY OF INSURANCE COMPANIES ON UNIT-LINKED INSURANCE PLAN'S MIS-SELLING PRACTICES DONE BY INSURANCE AGENTS: AN APPROACH TO LAW NUMBER 4 OF 2023 CONCERNING THE DEVELOPMENT AND STRENGTHENING OF THE FINANCIAL SECTOR (PPSK LAW)

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**JLPH:**  
**Journal of Law, Politic  
and Humanities**

E-ISSN: 2962-2816  
P-ISSN: 2747-1985

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DOI: <https://doi.org/10.38035/jlph>  
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## **The Legal Liability of Insurance Companies on Unit-Linked Insurance Plan's Mis-Selling Practices Done by Insurance Agents: an Approach to Law Number 4 of 2023 Concerning the Development and Strengthening of the Financial Sector (PPSK Law)**

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**Abstract:** The purpose of this study aims to analyze the legal liability of an insurance company when an Unit-linked Insurance Plan (ULIP) products is mis-sold by an insurance agent. Using the normative judicial method, this study also examines the main factors of mis-selling practices and the legal responsibilities that both insurance companies and their agents have to carry based on Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (PPSK Law). The results revealed that many insurance agents have a poor knowledge of how ULIP and its investment works. High-pressure sales techniques is also often used by insurance agents to manipulatively persuade policyholders into buying ULIP, which then consequently leads into mis-selling. In accordance to the current PPSK Law, insurance company as the principal of the legally binding agency agreement is liable for the negligent actions committed by their agents, including when they mis-sell an ULIP product, however insurance agents can also be held liable for the negligent actions that are committed outside the scope of their authorities.

**Keyword:** Insurance, Unit Link, Unit-Linked Insurance Plan, Insurance Law, Mis-selling.

### **INTRODUCTION**

The existence of uncertainty in every humans' life is indeed a necessity. The experiences that people have gone through by dealing with these uncertainties has led them to gain the ability to recognize and comprehend various forms and concepts of risks in their daily life. Based on its definition, risk is defined as an unpleasant consequence that arises from an action. Risk generally arises as a result of deviations between an expected return from an action and the actual return that one receives once the action is done. When someone is exposed to risk, there is a high possibility that they will suffer an incurring loss or unpleasant misfortune from something they value in life. The loss or misfortune that people may suffer from usually costs

people their wealth, health, well-being, or even their own life. It cannot be denied that the losses and misfortunes caused by risks in life are a responsibility that people must take regardless of who they are and whatever the cause of the loss is. Therefore, it is a logical consequence that every individual will always try every means to avoid risks in order to minimize unwanted losses.

Managing the unavoidable risk to handle or prevent any unwanted loss in life is important. We never know when any of these risks will occur. We also never know whether the risk itself may occur or not, however it is always the best for people to identify any potential risk, eliminate or tackle them before they happen, and mitigate them. One of the most common strategies that people often use for managing risk is to transfer the risk to another party. This technique allows people to transfer their responsibility to manage a risk to another party, mostly through a contract. Along with how rapidly the world is changing at an unprecedented rate nowadays, risk in our daily life is also constantly evolving, which is why the method of transferring risk may be the best and the most relevant option to facilitate this evolution.

Insurance companies are built as a safety net for individuals by voluntarily accepting the risks people have transferred towards them. By removing liabilities from an entity, insurance companies are automatically held responsible for any potential risks and its losses which one might face or suffer from. The existence of insurance companies has been recognized by the Indonesian government since 1992, where Law Number 2 of 1992 concerning Insurance Business was issued. After 22 years of implementation, Law Number 14 of 2014 concerning Insurance comes into force, replacing the previous Insurance Business act. Along with how complex the financial industry is getting nowadays, the Indonesian government, using the omnibus method, recently amended 17 laws in the financial sector, into one integrated act called Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (PPSK Law). PPSK Law partly amended some of the regulations written in the Insurance Act as an effort to strengthen the insurance industry and help enhance the implementation of customer protection.

The existence of insurance companies offers people a sense of stability and enables people to recover from the unwanted effects of any potential risks and losses, which may or may not happen in the uncertain future. In exchange of the security insurance companies provide to people, both parties normally sign an insurance policy, which is a legal contract or agreement between the insurer (the insurance company) and the insured (the entity or policyholder). An insurance policy commonly consists of detailed informations regarding the terms, conditions, and exclusions for certain types of risks that are not covered by the policy. Considered as an authentic written legal document, insurance policy is usually used as a basis and guidance for both parties to settle claims. Therefore, an insurance policy which contains the information of how the insurance can or must be used needs to be understood and paid attention to in detail by the parties concerned.

The insured can only obtain their right to receive a coverage from an insurance company when they fulfill their obligations to pay an insurance premium, which is a certain amount of money that is required to be paid regularly to the insurance company. The premium usually can be paid monthly, quarterly, every six months, or annually according to the insurance policy an individual has. One's right to receive an insurance cover is automatically granted by the insurer as long as the premium is paid on time and the coverage is related to the risks that one's insurance policy protects against.

There are actually many types of different insurance policy, however whole life insurance policy is usually purchased more commonly. Whole life insurance refers to a permanent life insurance that are meant to covers an individual's life throughout their entire life (until death). A whole life insurance offers a lifelong protection where the insured is guaranteed to be paid a benefit upon their death. Throughout the years, life insurance industry has shown a significant

growth. According to data from Indonesian Life Insurance Association (AAJI), until June 2024, the total amount of whole life insurance's premium income amounted to Rp. 88,49 billion, which is 2.6% higher compared to the same period of time in the previous year. With this astounding figures, it is proven that the life insurance industry in Indonesia has impacted and contributed to the growth of the whole insurance sector positively.

Despite the big figures, apparently when compared to other Southeast Asian countries, it seems that there is still a lot of room for Indonesia to grow and develop its insurance industry. Based on the ASEAN Surveillance Report in 2022, the insurance penetration rate in Indonesia is only 1.4%, which is still relatively low. This figure is clearly still far from the number of insurance penetration in the neighboring countries such as Singapore (12.5%), Thailand (4.6%), Malaysia (3.8%), the Philippines (2.5%), and Vietnam (2.2%).

Throughout the years, many insurance companies has came up with an innovative product to improve and boost the insurance penetration rate in Indonesia so that the industry can grow even bigger than before. That innovative product is now what is known as the Unit-linked Insurance Plan (ULIP). The existence of ULIP is acknowledged by the Indonesian government, where it is regulated through the Financial Service Authority Circular Letter Number 5/SEOJK.05/2022 concerning ULIP. Unlike the conventional insurance policy, ULIP combines a dual benefit of both protection and investment. Basically, when a policholder holds an ULIP policy, half of the premiums they pay for the policy is used for a life insurance policy, while the rest of them is invested in mutual funds, bonds, or stocks. According to Part I Number 7 of the Financial Service Authority Circular Letter Number 5/SEOJK.05/2022 concerning ULIP, ULIP is defined as:

“Unit-linked Insurance Plan, hereinafter referred to as ULIP, is an insurance product that at least provide a form of protection against the risk of death and a benefit which can be earned through an investment return collected from a collection of funds which specifically is established for an insurance product, whether expressed in units or non-units.”

As a multi-faceted insurance policy, ULIP is seen as a more interesting product compared to other conventional insurance products. ULIP offers its policyholders a financial protection from the risk of death and at the same time an opportunity for them to earn some financial gains through the assets they own while investing their premiums in mutual funds, bonds, or stocks. According to a statement from the Chief Executive for the Supervision of Insurance, Guarantee, and Pension Funds of Indonesia's Financial Service Authority Ogi Prastomiyono, ULIP plays a huge role as one of the main contributor to the success of the life insurance industry. In the last 10 years, ULIP has grown by approximately 10.000%. As one of the biggest player in the insurance industry, PT. Prudential Life Assurance or Prudential Indonesia stated that until the third quarter of 2023, the premium income accumulated from ULIP sales was equally as many as the conventional policy sales.

Despite ULIP's high domination in the market, ULIP had actually been showing a decreasing trend in sales throughout the year 2023. According to a report from AAJI, in terms of total premium income, ULIP only managed to secure approximately Rp. 65 billion in the third quarter of 2023, which was 22.4% lower than the previous year. The declining numbers of ULIP's premium income was so significant to the point where it also created an unpleasing result for the life insurance industry as a whole, where the total accumulation of the life insurance premiums collected in 2023 was only approximately Rp. 178 billion, which was 7.1% less compared to the same period of time in the previous year.

One of the main reasons that cause this issue is because of the declining trust and public interest in ULIP. Conceptually, there is nothing wrong with ULIP itself, however the process of sales and promotions regarding ULIP products indeed has been becoming a concerning issue for many ULIP policyholders. As we might already know, insurance agent is a licensed professional who represents an insurance company as the marketer and seller of the company's

insurance products for a commission. Referring to Article (27) Paragraph (2) of the Insurance Law, every insurance agent is required to have a sufficient knowledge and ability, as well as a good reputation. Moreover, the PPSK Law also explains the obligation for insurance agents to provide correct information to policyholders in terms of offering a service or making transactions with them.

On the other hand, while carrying out their roles and duties, every insurance agent has to follow the rules that are stated and written in the Financial Service Authority Circular Letter Number 19/SEOJK.05/2022 concerning Insurance Products' Marketing Channels and the Financial Service Authority Regulation Number 8 of 2024 concerning Insurance Products and Insurance Products' Marketing Channel. Not only is it regulated externally through statutory or law, the responsibilities that agents need to have while they are carrying out their duties are also regulated by the company's internal regulations which usually can be found in the agency agreement and/or the Guidelines and Standard Operating Procedures (SOP).

Despite the legislator and insurance companies' effort in regulating insurance agents' behaviour, many do not comply with the regulations. The roots of problems involving ULIP can be traced back to the negligence acts done by insurance agents during the marketing process to the policyholder. This act is what is called a mis-selling practice. Mis-selling is when an insurance agent sells a product that is not suitable for the policyholder or their needs. Based on the circumstances, this act can be done deliberately or recklessly. Mis-selling usually happens when an insurance agent gives a mis-leading information or advice which then causes the policyholder to mistakenly buy a product that might not be necessary for them.

One of the main causes why mis-selling practices happen is generally because of the insurance agents' lack of understanding of ULIP and how the investment works in ULIP products. On the other hand, it cannot be denied that mis-selling can also occur when a policyholder carelessly buys ULIP when they also do not have any clue about how ULIP, investment, or even insurance works. ULIP itself is considered as one of the most complex insurance products, therefore those who hold a specific certification and license are the only ones who are allowed to sell ULIP products. However, this does not guarantee or even prevent mis-selling from happening.

Many insurance agents still market and sell ULIP to policyholders in spite of their inadequate knowledge of the product. There also has been a lot of cases where insurance agents deliberately give policyholders misleading information about the return of ULIP's investment, just for the sake of fulfilling targets and receiving commissions. Indeed, mis-selling practices have created a huge chaos in the insurance industry, subsequently impacting many policyholders, insurance agents, and especially insurance companies negatively.

In a mis-selling dispute involving the negligent actions committed by an insurance agent during the marketing or selling process of ULIP, generally the question arises as to whether the legal liability for the agents' negligence will rest on the agent themselves or the insurance company. According to the PPSK Law, every insurance company is obligated to be the one held liable and responsible for the negligent actions committed by their agents.

The question of the liability of an insurance company for the negligent acts of their insurance agents is one that has kept many wondering. The focus of this paper is twofold. First, this paper analyses the main factors that trigger or influence the occurrence of mis-selling practices. Second, it examines why an insurance company is liable or legally responsible for the losses caused by mis-selling practices through the perspectives of the PPSK Law.

## **METHOD**

This paper is written using the normative judicial method. This method is described as a legal research method where the author uses various primary and secondary legal materials to do a qualitative analysis on the issues mentioned on this paper. This method aims to discover and

explore legal regulations, legal principles, and legal doctrines to find the answers to the issues. Specifically, the research method used in this paper is conducted by analysing the regulations that are related to the issues of this paper. Moreover, this paper is also considered a descriptive research, which basically means that the aim of this paper is to obtain a description of the studied object. Therefore, it enables the author to precisely describe research objects through the collected data.

The primary legal materials used in this paper are datas such as statutory regulations, legal theories, legal principles, legal inventory, and opinions of legal scholars. The source of this material is what is considered as the original or the actual law. Furthermore, the secondary legal materials are resources that specifically provide explanation, discussion, analyzation, and commentary on the law, for example treatise, law reviews, legal articles, and legal journals. This materials can help the author to interpret the law and point the author to relevant primary sources.

## **RESULTS AND DISCUSSION**

ULIP is a multi-faceted life insurance policy that provides both life protection and valuable investment returns for policyholders. According to its concept, ULIP is actually very similar to other conventional life insurance policies. No matter what special features ULIP has, at the end of the day, ULIP is still an insurance product which aims to give a form of protection and security for its policyholders from the risk of death. In the same way conventional insurance policy works, ULIP policyholders are also given a 14-days free look period, which gives them the opportunity to review and cancel the policy without any penalty. For this reason, even though ULIP's feature offers policyholders an investment benefit, it does not change the fact that ULIP is an insurance product, not an investment product.

There are actually some shared distinctions between the two products that set ULIP apart from other conventional insurance policies. According to the Financial Service Authority Circular Letter Number 5/SEOJK.05/2022 concerning ULIP, there are 3 characteristics of ULIP:

1. Has a life protection benefit against the risk of death along with investment benefit;
2. Has a certain period of coverage;
3. Has a specific investment strategy.

In contrast of a conventional life insurance policy, ULIP's policyholder or the policy's insurer does not necessarily need to wait until the policyholder reach a certain age or pass away to be able to receive the financial benefit of death claim. Through the investment feature of ULIP, both the policyholder and the insured can withdraw the funds from their investment for financial needs or emergencies, however this withdrawal usually can only be done after approximately a 5-year lock-in period of the policy. It should be noted that this withdrawal is only possible if the premiums are all paid regularly during the lock-in. Therefore, ULIP's policyholder can enjoy the financial return of the policy as long as they are still physically and mentally healthy.

Apart from that, ULIP comes with flexibility in premium payment options. Policyholders are allowed to pay their premiums in a lump sum or on a regular basis (monthly, quarterly, half-yearly, or annually) according to their own financial capacity. Whereas premiums need to be constantly paid for a conventional life insurance to not lapse, this may not be the case for ULIP. Basically, ULIP's policyholder is facilitated with "premium holiday" or "premium leave" feature where they are not always required to pay their policy's premium.

The Financial Service Authority Circular Letter Number 5/SEOJK.05/2022 concerning ULIP has defined premium holiday as a condition where the policyholder or the insured does not pay their premium according to the rules that have been specified in the insurance policy, but the policy and its coverage will still remain valid, and the insurance company will continue to

charge the policyholder with the full premium cost or half of the premium cost in accordance with the terms and condition so of the insurance policy.

For an instance, when an ULIP's policyholder is struggling with financial issues to the point where they cannot afford to pay the premiums on time, instead they can pay the premiums by withdrawing and using the investment funds of their ULIP policy. However, it is advisable for ULIP's policyholder to always pay their premium regulary and not always depend on this feature because at the end of the day, ULIP is still a life insurance policy that needs to be paid permanently to keep the policy active.

In accordance to the explanation of ULIP's characteristics in the paragraphs above, Ketut Sendra elaborates that:

1. ULIP is an insurance policy that policyholders can use as a tool of investment, savings, and/or protection;
2. ULIP policies do not always have a large stock investment element;
3. ULIP's investment and protection value depends on the performance of the investment;
4. ULIP's premium is determined according to the policyholder's age and the amount of protection;
5. ULIP's policyholders will be charged several costs for the sake of the inurance agents' commisions and other expenses;
6. ULIP's investment funds are stated in units in the policy and are calculated using bid-price.

Generally, insurance companies allow policyholders to choose one of the investment fund options they can put their paid-premiums into. Based on the investment fund options available, there are generally 4 types of ULIP policy. The first one is cash fund ULIP which is a low risk investment option where policyholders can place their premiums in money market instruments. The second one is fixed income ULIP, which is a medium risk investment option where policyholders can place at least 80% of their premiums in bonds. The third one is managed fund ULIP, which is a medium risk investment option for policyholders who are willing to place their premiums in various investment instruments such as stocks, market money instruments, and bonds. The last one is equity fund ULIP, which is a high risk investment option where at least 80% of the premiums are placed in stocks.

As investment carries some degree of risk, investment value is normally determined by the performance of the investment itself. Therefore, there is a high chance that the investment's actual gains might be different or, in the worst case, far from the expected return or outcome. Referring to the terms and condition of ULIP policy in the Financial Service Authority Circular Letter Number 5/SEOJK.05/2022 concerning ULIP, every insurance companies are not allowed to include guarantees or mention any certain targets related to the investment return in the policy to prevent any form of misunderstanding that possibly might occur in the future.

Moreover, every insurance companies have to be careful when managing policyholders' investment funds. Based on what is written in Article (11) Paragraph (1) of the PPSK Law, insurance companies are required to implement a good corporate governance, including investment management, risk management, and internal control while carrying out its business activities. A good corporate governance usually can be ensured if an insurance company has a set of principles used as a guidance to constantly mantain a long-term sustainability, improve its values, and also maximize its performance. To implement these principles, it is also important for an insurance company to establish a systematic process of measurement, monitorization, and management of risks or threats that might negatively impact the company. Article (11) paragraph (2) of the PPSK Law also states that in terms of executing the good corporate governance principle, every insurance companies are also obliged to implement the principle of prudence, transparency, accountability, responsibility, professionalism, and fairness. Theoretically, every ULIP insurance policyholders are also obliged to implement these

principles. The values of these principles are also what is known as the utmost good faith principle, which is a principle that legally requires both parties to act honestly and disclose all relevant and accurate information in a policy contract. The reason why this principle is very crucial is because the utmost good faith principle does not necessarily apply to only the insurance company, but also the policyholder. Every policyholders have a duty of giving disclosures regarding their health condition during the underwriting process, meanwhile every insurance companies are obliged to act in good faith when handling the settlement of claims. Despite only the insurance company and the policyholder are considered as the parties in an ULIP policy, the principle of utmost good faith also applies to insurance agents as the party who is responsible for the process of marketing and selling the policy. It should be noted that the utmost good faith principle aims prevent mis-selling by obliging the related parties to not to withhold critical information from one another to prevent misleading information or misinformation.

As we might already know, insurance agents play a pivotal role in the process of marketing and selling ULIP products. According to the PPSK Law, an insurance agent is a person working alone or for a business entity who acts for and on behalf of an insurance company and meets the requirements for representing the company to market insurance products. In other words, to become an insurance agent is to be responsible for providing information about ULIP in a clear and concise manner so that the policyholders can understand.

Unlike other conventional insurance policies, ULIP is a very complex insurance product. In terms of implementing all the principles required by the PPSK Law, every insurance companies need insurance agents to rely on. Because of the complexity of ULIP's concept, insurance agents are obliged to follow a certain periods of training in order to market or sell ULIP products. As a matter of fact, only those who have a special certification from AAJI can market or sell ULIP products. One of the most important keys in marketing an ULIP product is being transparent. Every insurance agents has to ensure that every ULIP policyholders are informed with every details regarding the rights and obligation of the parties involved in the policy, the terms and conditions of ULIP, and et cetera. If an insurance agent fails to do so, that means there is a high possibility of an ULIP product being mis-sold.

Mis-selling is defined as an act of misleading a customer while marketing or selling an financial product, eventually resulting in customer detriment. Mis-selling of insurance products usually happens because of the unethical practice done by insurance agents which tends to occur when they recklessly or intentionally give a misleading information about a product to a policyholder, which then causes the policyholder to buy a policy that is sold to them based of the agent's misleading advices.

Mis-selling itself is not specifically defined in the PPSK Law nor any other insurance-related laws in Indonesia, however Article (27) Paragraph (7) of the PPSK Law explicitly stated that every insurance agents are obliged to provide correct informations which are not false, and/or misleading to policyholders regarding the risks, benefits, obligations, and charging costs of the insurance products offered.

If an insurance agent misexplains or deliberately provides an incorrect, incomplete, false, misleading, unclear, and inaccurate information to a policyholder, that means an insurance product has been mis-sold. A violation of this regulation usually is detected when the policyholder finally realizes that the insurance product they bought does not actually give them the benefits promised to them by the insurance agent.

The reasons why mis-selling happens can be vary. Mis-selling practice of ULIP products generally occurs in a variety of ways. One of the things the Financial Service Authority Circular Letter Number 5/SEOJK.05/2022 concerning ULIP has regulated is regarding the marketing of ULIP. While marketing an ULIP product, it is concluded that every insurance companies have to emphasize that ULIP is an insurance product which aims to protect policyholders



against risks. Moreover, every insurance companies are required to provide explanations regarding the investment benefit of ULIP, its potential returns, as well as its risk.

Procedurally, insurance agents are the ones who represent insurance companies to market ULIP. They are the intermediaries bridging the gap between policyholders and insurance companies. Article (27) Paragraph (4) of the PPSK Law explicitly stated that guidance and supervision of every insurance agents are carried out by the insurance company itself. Therefore, every insurance companies have to ensure that every insurance agents working under them actually do understand about ULIP and how it works by establishing training standards for insurance agents and also training them to market ULIP according to the rules obligated by the company.

Despite the trainings and all the efforts insurance companies have done, mis-selling still happens. This is due to the lack of ways to ensure that insurance agents actually have a good understanding and comprehension of what they learned during the training. Many insurance agents undergo the training and examination for becoming insurance agents and even receive proper certifications, however it is still hard for insurance companies to actually measure their knowledge and capabilities as insurance agents.

Furthermore, there are some important aspects that contribute to an insurance company's success in implementing a good ULIP marketing system. All of those aspects actually hinge on the outcome of the country's financial literacy and inclusion, which are considered as the two essential keys that can be used to measure how well-educated the people are in the financial-related fields, including insurance, and how accessible the utilization of insurance products is.

Based on the key findings in the latest edition of the Indonesia's National Survey on Financial Literacy and Inclusion which was carried out from 9th January to 5th February 2024 and drew responses from 10.800 respondents across 34 provinces in Indonesia, the financial literacy in Indonesia for people aged 15 to 79 years old was reported at 65,43%. On the other hand, the financial inclusion was reported at 75,02%. Thus, it can be concluded that the utilization of financial products in Indonesia is currently still not equally supported by an adequate amount of financial literacy rates. Therefore, it is no wonder that many ULIP products are still being mis-sold until this day.

On the other hand, it should be noted once again that ULIP does not have the same characteristics that other conventional insurance products have. Unlike other conventional insurance policies, there are some costs that are automatically charged when an individual becomes an ULIP policyholder, such as administration fee, acquisition fee, investment fee, and other additional fees that might not be suited for everyone's financial capabilities or needs. Because of this, ULIP is usually more expensive if compared to other conventional insurance policies.

Apart from that, many insurance agents try to manipulate policyholders into believing that ULIP is a risk-free insurance product, which is totally wrong because ULIP involve some degree of risk and its investment exposure does not always bring financial gains or profits. Many of them also promise policyholders with unrealistic investment results and benefits. Therefore, it is very crucial for insurance agents and insurance companies to make sure that ULIP policyholders are equipped with an adequate understanding and a clear acknowledgement of the product, its risks, and all of the fees that will be charged to them.

Other than that, it is very crucial for insurance agents to also explain about how the premium holiday feature works. Even though policyholders are given the advantage that allows them to stop paying premiums for a period of time, many agents tend to skip or leave out the most important part of the explanation regarding how premium holiday really works and why it is not suggested for policyholders to stop paying their premiums in a long period of time, despite being given the opportunity to.

Many insurance agents lied to policyholders by telling them that they do not have to pay their premiums any further after a certain number of years. The reality is that when a policyholder stops paying their premium, their investment fund value is going to be used to cover the premium that has not been paid yet and if there is no fund left to be used as a coverage for their premium, the policy will surely lapsed.

Furthermore, there is a selling method called high-pressure sales techniques, or what is usually called hard selling. This usually occurs when an insurance agent uses a series of selling methods where they aggressively and manipulatively attempt to pressure a customer into buying or purchasing a policy. Usually, an insurance agent who uses this method of marketing deliberately gives a false sense of urgency to a policyholder, leading them to believe that the offered product is the best option for them. This unethical tactics are strategies used persistently by insurance agents who are trying to coerce or persuade customers into making quick decisions.

As a consequence of having sales target to fulfill, many insurance agents still use high-pressure sales tactics to persuade and secure as many policyholders as they can. As we might already know, insurance agents do not typically receive salaries as their source of incomes. Instead, they earn commissions based on certain performance metrics, such as meeting sales targets or maintaining low claim ratios. The more policyholders they sell, the higher commissions they can get.

In order to close deals as many as they can, many insurance agents often ignore the procedural steps they need to follow as agents when marketing insurance products. Especially when it comes to marketing ULIP as one of the most complicated insurance products, insurance agents are required to do a “softer” systematic approach. However, this approach might be a little impossible to do when an insurance agent is way too focused on earning commissions instead of carrying out their responsibilities as good insurance agents. As a result of high-pressure sales tactics done by insurance agents, many ULIP products are being mis-sold to policyholders who are not actually in a need of ULIP.

In order to ensure the suitability of needs, capabilities, and risk profile of the policyholders and ULIP, every insurance companies are obliged to do an evaluation called the customer need assessment which will conclude whether they fit the criteria of becoming ULIP policyholders. This assessment will also help insurance companies to identify the policyholders’ financial abilities and capabilities to pay for ULIP’s premiums.

Typically, companies (including insurance companies) can be held legally liable when there is a damage or loss caused by an employee’s wrongful actions, even if the companies themselves did not commit any mistake or anything wrong. This means an insurance company should and is required to take an accountability for the negligence of its employees who are acting within the scope of their job. It is true that mis-selling practices are done directly by insurance agents, not the insurance company, however insurance agents are not and can not be considered as employees of the company.

Before proceeding further, it is important to take the legal relationship between insurance agents and the insurance company that hires them into account to create a conclusion. The legal relationship between both parties is based on a contractual relationship that begins when an insurance agent signs the agency contract offered by the insurance company. An agency contract refers to a legally binding agreement between the insurance company as the principal and the agent. When an agency contract is signed, that means the insurance company as the principal agrees to give their authority to the agent to act on their behalf, representing the principal to make decisions within the scope of the authority given.

Theoretically, there are 3 types of liabilities that may arise from the legal relationship between an insurance company and its agent. The first one is the insurance agent’s liability. Every individual who works as an insurance agent is legally responsible for acting on the principal’s

behalf in a business transaction (marketing and selling an ULIP product). The second one is the insurance company's liability as the principal who is responsible for the damages or losses experienced by policyholders as long as they are not caused by the insurance agent's fault. The last one is the vicarious liability that the insurance company has to carry for the unlawful acts committed by their insurance agents.

The indirect liability that insurance companies have to carry is actually based on the idea that they may have benefited from the negligent acts done by the insurance agents. In the case of mis-selling, when an insurance agent mis-sells an ULIP product, the insurance company directly receives the premiums paid by the policyholder, which explains why the one who should be responsible when a mis-selling case happens is the insurance company.

In spite of the fact that insurance companies are the ones who are held responsible for the negligent acts done by their insurance agents, this does not necessarily mean that the insurance agent can not be held liable for misrepresenting the extent of their authorities to act on the behalf of the insurance company. Even if insurance companies are liable for their agents' action, the agents are also liable for actions that exceed or beyond their authorities. In other words, if an insurance agent did something that is not within their scope of authority, they should be responsible for their own wrongful actions.

In connection with a mis-selling case, many insurance companies implement insurance clawbacks, where they request repayment of commissions which has been paid out to their insurance agents, sometimes with a penalty such as fines, contract termination, and et cetera. In a mis-selling case where the insurance agent intentionally mis-sells a product, they can also be held criminally liable. According to the Article (75) of the PPSK Law, every individual who deliberately does not provide information or provide incorrect, false, and/or misleading information regarding the risks, benefits, obligations, and charges or costs of a product to policyholders shall be punished with imprisonment for 5 years (maximum) and fined Rp. 5.000.000.000,00 (maximum).

The PPSK Law also explicitly emphasizes the vicarious liability that every insurance companies have to carry on Article (27) Paragraph (3) of the PPSK Law, which reads: "Every actions and legal acts carried out by Insurance Brokers, Reinsurance Brokers, and Insurance Agents as intended in Paragraph (1) is the responsibility of the Insurance Brokerage Company, Reinsurance Brokerage Company, Insurance Company, and Sharia Insurance Company." Therefore, insurance companies can also be held liable if they fail to adequately instruct their agents negligently. In contrast to the old insurance law, the PPSK Law emphasizes more on the responsibility of insurance companies to not only supervise, but also control every insurance agents working under them for the sake of policyholders' legal protection against mis-selling cases. For an instance, the Financial Service Authority Circular Letter Number 5/SEOJK.05/2022 concerning ULIP states that every insurance companies are responsible for the precision and accuracy of the informations given to customers during the marketing process of ULIP.

Although insurance agents are the ones who carry out the role of marketing the product, the current law still obligates every insurance companies to be held accountable for the actions of their agents. To summarize, when a mis-selling dispute occurs, insurance companies and their agents are liable for the all of the losses caused by it, however the liability that insurance companies have to carry depends whether the agents' actions are within the scope of their authorities or not.

## **CONCLUSION**

ULIP and its complexity has caused a stir in the insurance world. As the intermediaries between insurance companies and its policyholders, many insurance agents recklessly mis-sell ULIP products. When an insurance agent commits a mis-selling practice, a number of effects will

leave a devastating impact on both the insurance company and the policyholder, such as financial losses and reputational damages. In a long run, mis-selling can also cause people to lose trust in the insurance sector which then will leave negative implications on the country's economic prosperity.

Referring to the results and discussion above, it is concluded that the main reason why mis-selling practice happens is because many insurance agents lack the knowledge of ULIP and how the product and/or investment works, despite undergoing a series of trainings, which then leads to mis-selling. Many insurance companies also struggle to ensure and measure the capabilities of their agents. Furthermore, since insurance agents have sales target to fulfill, many tend to use hard-pressure sales techniques to persuade policyholders into buying ULIP despite knowing that ULIP might not fit the policyholders' financial capabilities or needs.

Based on the legal relationship between an insurance company and their insurance agent, an insurance company as the principal of the agency contract is held liable when the agent they hire to become their sales representative commits a mis-selling practice, since they also benefit from the premiums acquired through the ULIP products their agent mis-sold. The current PPSK Law also emphasizes that every actions committed by insurance agents should become the company's responsibility. Moreover, through commisions clawbacks, insurance agents can also held liable for the negligent actions they committed beyond their authority.

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