

Assessing the Effectiveness of Rice Farming Corps Insurance in Protecting Farmers and Ensuring Legal Certainly

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Abstract : *Indonesia is an agricultural country because most of the Indonesian population works in the farm sector, including rice farming. Ironically, rice farming has not developed much and has become a mainstay for the Indonesian people even though this business has long been known and cultivated by most Indonesians living in rural areas. The factor of disasters due to climate change, especially in Java Sumatra, Sulawesi, and parts of Kalimantan, is often the reason why farmers are reluctant to farm so the agricultural sector has not developed much. This research aims to determine the validity of Rice Farming Business Insurance (AOTP) from the aspect of national insurance law and the effectiveness of AOTP as a means of protection for farmers. This research is normative juridical research that focuses on secondary data analysis, which comes from primary, secondary and tertiary legal materials related to AOTP, while the data collection technique used is literature study or document study. The research typology used is analytical descriptive, namely describing fully and comprehensively the application of AOTP as a means of protecting rice farmers from the potential for crop failure to be further analyzed so that solutions can be found to existing problems. The research conclusion shows that juridically AOTP meets all the requirements for the existence of an insurance agreement so that AOTP is valid and has legal certainty even though AOTP is not specifically regulated in the Commercial Code; AOTP has not been effectively used as a means of protecting rice farmers because it still faces internal obstacles originating from the farmers themselves and externally. In order for AOTP to be effective in providing protection for farmers in Indonesia, it is necessary to carry out increasingly massive outreach to AOTP and optimize the use of technological facilities.*

Keywords : *Rice farming, crop insurance, protection, AOTP*

Abstrak : Indonesia merupakan negara agraris karena sebagian besar penduduk Indonesia bekerja di sektor pertanian, termasuk usaha tani padi. Ironisnya, usaha tani padi belum banyak berkembang dan justru menjadi andalan bagi masyarakat Indonesia padahal usaha ini sudah lama dikenal dan digeluti oleh sebagian besar masyarakat Indonesia yang tinggal di pedesaan. Faktor bencana akibat perubahan iklim terutama di Jawa Sumatera, Sulawesi, dan sebagian Kalimantan, kerap menjadi penyebab petani enggan bertani sehingga sektor pertanian belum banyak berkembang. Penelitian ini bertujuan untuk mengetahui keabsahan Asuransi Usaha Tani Padi (AOTP) dari aspek hukum asuransi nasional dan efektivitas AOTP sebagai sarana perlindungan bagi petani. Penelitian ini merupakan penelitian yuridis normatif yang menitikberatkan pada analisis data sekunder, yang bersumber dari bahan hukum primer, sekunder, dan tersier yang terkait dengan AOTP, sedangkan teknik



pengumpulan data yang digunakan adalah studi kepustakaan atau studi dokumen. Tipologi penelitian yang digunakan adalah deskriptif analitis, yaitu menguraikan secara lengkap dan komprehensif penerapan AUTP sebagai sarana perlindungan petani padi dari potensi gagal panen untuk selanjutnya dianalisa sehingga dapat ditemukan solusi atas permasalahan yang ada. Kesimpulan penelitian menunjukkan bahwa secara yuridis AUTP memenuhi semua syarat adanya perjanjian asuransi sehingga AUTP sah dan memiliki kepastian hukum meskipun AUTP tidak diatur secara khusus dalam Kitab Undang-Undang Hukum Dagang; AUTP belum efektif digunakan sebagai sarana perlindungan petani padi karena masih menghadapi kendala internal yang berasal dari petani sendiri maupun eksternal. Agar AUTP efektif dalam memberikan perlindungan bagi petani di Indonesia, perlu dilakukan sosialisasi AUTP yang semakin masif dan mengoptimalkan pemanfaatan sarana teknologi.

Kata Kunci : Usaha tani padi, asuransi tanaman pangan, perlindungan, AUTP

I. INTRODUCTION

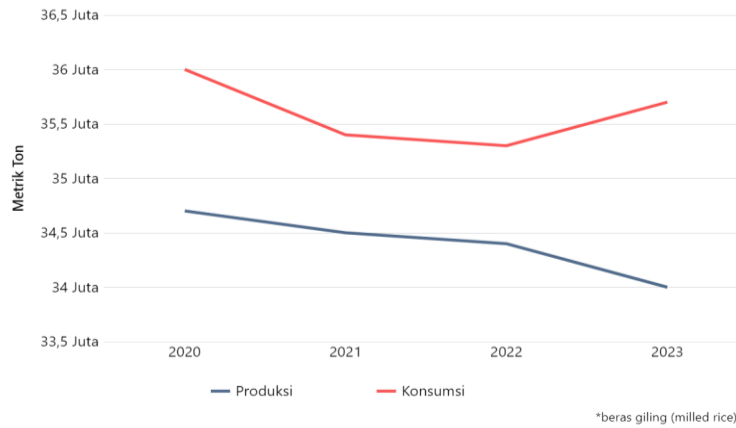
The agricultural sector is one of the most volatile business sectors because in its management it is always faced with various risks, such as natural disasters, market risk, technical risk, financial risk, and government policy risk. These risks are easily visible in the rice sector, which in recent years has been experiencing problems due to the impact of El Nino,¹ which causes many rice farms to experience drought and unproductive. This condition confirms the analysis of the World Bank and Asian Development Bank, that “Climate change is expected to have an impact on agricultural production, including rice, which is one of the strategic foodstuffs in Indonesia. Rice production is vulnerable to changes and duration of the rainy season influenced by El Nino events, which are expected to become more frequent as a result of climate change. Based on the results of the study, rice production is very sensitive to changes in temperature, where an increase of 1 degree Celsius is estimated to reduce national rice production by 10-25%.”²

The decline in national rice production, one of which is caused by climate change, is seen in the period 2023. Ironically, Indonesia's rice consumption in the same year shows an increase, as shown in the graph below:

Chart 1
Indonesia's Rice Production and Consumption Volume (2020-2023)

¹ Badan Meteorologi, Klimatologi, dan Geofisika (BMKG) memproyeksikan puncak siklus El Nino terjadi mulai Agustus sampai Oktober 2023. Pada saat itu sejumlah daerah akan dilanda kekeringan parah, terutama di daerah yang memiliki curah hujan relatif lebih rendah dibandingkan daerah lain. Prediksi lain menyebutkan fenomena berlanjut hingga Februari 2024.

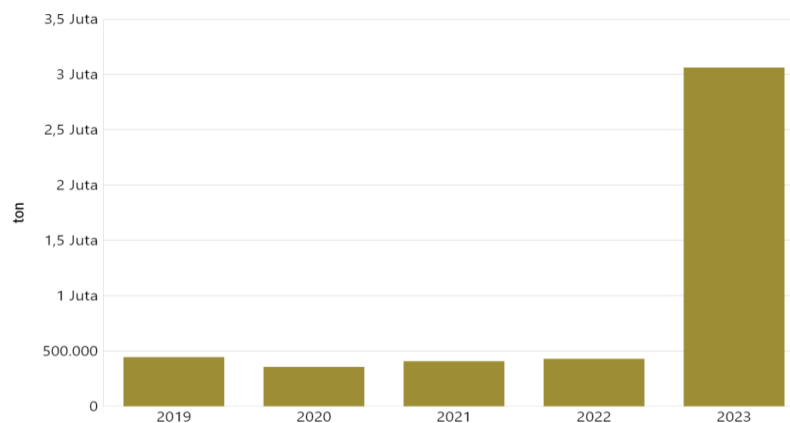
² World Bank dan Asian Development Bank (2021). Profil Risiko Iklim: Indonesia



Source: United States Department of Agriculture, 2023

Among the various potential risks faced by farmers, the risk of crop failure due to weather and climate change seems to be the main reason why farmers are no longer interested in managing rice farms. Moreover, weather and climate changes in Indonesia almost occur throughout the year. For farmers, crop failure causes them to lose income and thus no longer able to fulfill their household needs, while for the State due to crop failure there is a decrease in rice production which impacts on the increase in rice prices and dependence on imports.³ In fact, to fulfill the national rice needs by importing, the government must spend a very large amount of funds.⁴ Even though the rice import policy has been widely rejected because it can erode the State's finances, it seems that the government still maintains this policy in order to meet national rice needs, as shown in the table below:

Table 1
Indonesia's Rice Import Volume (2019-2023)



Source: Badan Pusat Statistik 2023

³ <https://unair.ac.id/el-nino-berdampak-pada-gagal-panen-ahli-ekonomi-soroti-dampak-luas-dan-strategi-mitigasi-el-nino-berdampak-pada-gagal-panen-ahli-ekonomi-soroti-dampak-luas-dan-strategi-mitigasi/>. Dikutip 15 Maret 2024

⁴ Sebagai gambaran, Badan Pusat Statistik mencatat Indonesia telah mengimpor beras sebanyak 2,53 juta ton sepanjang Januari hingga November 2023 senilai US\$1,45 miliar atau setara Rp22,48 triliun (asumsi kurs Rp15.507 per dolar AS).

Considering the potential for crop failure due to extreme weather and climate change, it is natural that farmers are lazy to manage agricultural land because they do not want to bear the risk of experiencing losses. However, this condition should not be allowed to occur for a long time because farmers can lose income and reduce national rice production. Moreover, Monica, et.al, in their statement estimated that: Globally, the risk of crop failure is predicted to increase in the future. The probability of crop failure is projected to be 4.5 times higher by 2030 and up to 25 times higher by 2050 across global food storage. Crop production failures are expected to be 4.5 times more likely by 2030 and up to 25 times more likely by 2050 throughout global breadbaskets⁵.

Risks faced by farmers during the growing season are generally caused by several external factors, such as climate change, environmental conditions, pest and disease attacks, and natural disasters.⁶ If not properly anticipated, this risk can lead to crop failure, causing farmers to suffer losses. To overcome the losses caused by crop failure, the government through the Ministry of Agriculture officially launched a program to help provide farm business protection in the form of agricultural insurance, as stated in Law No. 19 of 2013 concerning Farmer Protection and Empowerment which was then followed up with the issuance of Minister of Agriculture Regulation No. 40 of 2015 concerning Agricultural Insurance Facilitation.

The existence of agricultural insurance is actually a form of the State's presence in providing protection for every citizen, including farmers, as stipulated in the constitution Article 28H paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states: "every person has the right to social security that enables his/her full development as a human being with dignity". In addition, referring to the constitutional mandate above, it is also emphasized that every individual, including farmers, has the right to obtain adequate social protection from the state or the community where they live (= do business). This view is based on the belief that all people have the basic right to live with dignity, security and adequate welfare.

The important role of insurance as a means of protecting farmers from potential crop failure is evident from Balcilar's statement: "If this risk is not properly anticipated, crop failure will occur, resulting in losses for farmers. The ever-present threat of crop failure causes uncertainty for farmers, leading to the emergence of a need for insurance protection along with and in line to increased uncertainty⁷. Even in the context of protecting family life (farmers), according to Jerry White: Crop Insurance it's a risk management tool that is used to put a safety net under cash income. In times of low production and damaging weather such as hailstorms, wind storms, and drought, crop

⁵ Caparas, Monica, et al. "Increasing risks of crop failure and water scarcity in global breadbaskets by 2030." *Environmental Research Letters* 16.10 (2021): 104013.

⁶ Arifuddin Lamusa, 2015, *Risiko Usaha Tani Padi Sawah Rumah Tangga di Daerah Impensmo Provinsi Sulawesi Tengah*. Jurnal Agroland, Fakultas Pertanian Universitas Tadulako, Sulawesi Tengah, 17(3), 226–232

⁷ Balcilar, Mehmet, et al. "Insurance and economic policy uncertainty." *Research in International Business and Finance* 54 (2020): 101253.

insurance enables farm families to meet their financial obligations, both business and personal, and helps ensure the survival of the farm business.⁸

The potential use of insurance as a means of protecting farmers in the event of crop failure is very large. This is inseparable from the existence of insurance as a means of transferring risk. Even according to Terungwa “Insurance as a fair transfer of risk of loss, from one entity to another, in exchange for periodic payments.”⁹ In other words, insurance is a system created to protect people, groups or business activities against the risk of financial loss by sharing or spreading the risk through the payment of a premium.

The insurance used as a means of protection for farmers is the Rice Farming Business Insurance (AUTP) which aims to provide protection to farmers from the risk of crop failure so that if farmers experience crop failure, they will receive compensation funds which can be utilized by farmers as capital in carrying out business activities in the following season. Thus, AUTP is part of disaster mitigation that helps farmers protect their land due to crop failure. Moreover, agricultural land tenure is decreasing every year, meaning that the area of critical land is increasing.¹⁰

AUTP is an agreement between the farmer as the insured and the insurance company as the insurer with the aim of binding themselves in the risk coverage of Rice Farming Business. Through AUTP, farmers get protection from potential crop damage due to floods, droughts, and attacks by pests and plant diseases or plant pest organisms (OPT). In Indonesia, AUTP is a relatively new type of loss insurance compared to other loss insurance, so its existence leaves problems both from the juridical aspect related to its validity as a loss insurance agreement and the effectiveness of AUTP as a means of protection for farmers.

Even though AUTP can be an alternative solution for farmers in overcoming the problem of crop failure, in practice not all farmers have participated in AUTP membership so that when farmers face crop failure they have to overcome it themselves with their own resources and funds. In this research, the author examines the juridical aspects of AUTP from the perspective of national law as well as the effectiveness of AUTP as a means of protecting farmers in facing crop failure.

Research related to AUTP has been conducted by Thalia Malirisa Marphy and Dina Novia Priminingtyas from Brawijaya University with the title: Analysis of Factors Affecting the Level of Farmer Participation in the Rice Farming Business Insurance Program (AUTP) in Watugede Village, Singosari District, Malang Regency, 2019, where the objectives of this study are to analyze the level of farmer participation in the Rice Farming Business Insurance program (AUTP) and analyze the influence of age, education,

⁸ Jerry White, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/http://cceonondaga.org/resources/why-buy-crop-insurance

⁹ Terungwa A, “Risk Management and Insurance of Small and Medium Scale Enterprises (SMEs) in Nigeria, International Journal of Finance and Accounting, No. 1, 2012, hlm. 8

¹⁰ Gunawan Wibisono dan Yeni Widowaty, “Urgensi Perlindungan Lahan Pertanian Pangan Terhadap Alih Fungsi Lahan di Daerah Istimewa Yogyakarta,” KRTHA BHAYANGKARA, Vol. 17, No. 1(2023), hlm. 96

farming experience, land area and income factors on farmer participation in the AOTP program.

In this study it is concluded that: 'The level of farmers' participation in the AOTP program in Watugede Village according to the Likert Summated Rating is included in the high category with a total score of 582. In addition, age, education, farming experience, land size and income simultaneously have an influence on the level of farmer participation in the AOTP program. Age, education and farming experience have a positive and significant impact on the level of farmers' participation in the AOTP program while land size and income have a negative and insignificant influence on the level of farmers' participation in the AOTP program.

Another research was conducted by Zednita Azriani, Refdinal, and Cindy Paloma from the Agribusiness Study Program, Andalas University, with the title: Implementation of Rice Farming Insurance in Improving Food Security in Padang City, 2018. This research aims: Describing and evaluating the implementation of rice farming insurance in Padang City, and Identifying factors that affect farmers' awareness of agricultural insurance in Padang City. The results of the study concluded that the implementation of AOTP in Padang City has only been effectively running for 2 years, the realization of insured rice fields is still below the specified target. The implementation of AOTP is still in the form of a program approach, farmers' participation tends to be forced. Farmers' knowledge about insurance and AOTP is quite good, but farmers' awareness to join AOTP is still low, around 20% of farmers who join AOTP. The factor that affects farmers' awareness to join AOTP is their position in the farmer organization. Meanwhile, the damage experienced by farmers does not affect their awareness to join the AOTP program.

The difference with the author's research is: The author's research is more focused on the juridical aspects of AOTP, especially by looking at its validity in terms of national law and the effectiveness of AOTP in providing protection for farmers.

II. RESEARCH METHOD

This type of research is normative juridical, namely legal research that uses secondary data as the basis for study, which is sourced from primary, secondary and tertiary legal materials. The normative juridical approach is used to study and examine legal principles, and legal norms that exist in legislation, especially those that have a relationship with Rice Farming Business insurance to be further associated with existing legal problems. In this legal research, the data collection technique used is literature study or document study. The research typology used is descriptive analytical, which is to fully and comprehensively describe the application of AOTP as a means of protection for rice farmers from potential crop failure to be further analyzed from juridical aspects related to its validity and legal certainty as well as its effectiveness for efforts to realize farmer protection.

III. DISCUSSION

A. Rice Paddy Business Insurance as a legal agreement

The losses caused by climate change are not only felt by the agricultural sector, but also other sectors, so the losses are very large. According to Finance Minister Sri Mulyani: “Gradually, Inflationary pressures may arise due to disruptions in National and International supply chains due to weather changes such as droughts, floods, storms, and sea level rise which have the potential to result in large financial losses. Indonesia is estimated to potentially have economic losses due to climate crisis reaching 112.2 trillion or 0.5 percent of GDP by 2023.”¹¹

For farmers who run farming businesses with conventional (traditional) patterns, the risk of crop failure is considered as the fate of the Almighty God so that farmers only resignedly accept it. In contrast, for modern farmers, the risk of crop failure is seen as an opportunity to increase business productivity in the future. One way to utilize the opportunity as well as to protect farmers from the potential of crop failure is to participate in the Rice Farming Business Insurance (AUTP). Through AUTP, crop failure that was originally borne by the farmers themselves is transferred to other parties (insurance companies) in the form of compensation to farmers so that the compensation funds obtained by farmers can be used to finance farmers' businesses in the following season so that farmers are expected to be able to manage their businesses again.

Insurance is also called a risk transfer institution because the risk that should be accepted by one party (the insured) is transferred to another party, namely the insurance company (insurer) by providing a sum of money (compensation) in accordance with the factual loss experienced by the insured party, in other words, transferring risk means that the risk that will be faced or become his responsibility asks the other party to accept it.¹² Therefore, according to Mehr and Cammack: “The basic function of insurance is to handle risk.”¹³

As a contra achievement of the risk borne by the insurance company (insurer), the insured party has an obligation to pay a premium in a certain amount and period of time according to the agreement. The agreement made between the insured party and the insurer is outlined in a written agreement or policy, which includes the terms and conditions of the agreement, such as the rights and obligations of the parties, the object and scope of the insurance agreement, the period of insurance, the amount of coverage, the amount of premium, and dispute resolution.

AUTP is a type of insurance that was born along with the development of society and grew out of the awareness of the importance of farmers getting protection when carrying out their activities, especially from the potential for crop failure. The existence of AUTP as a type of insurance agreement is juridically recognized based on Article 1319 of the Civil Code (KUHPerdara) in conjunction with Article 247 of the Commercial Code (KUHDagang), although in both laws there is no specific mention of AUTP.

Article 1319 of the Civil Code states: “All agreements, whether they have a special name, or are not known by a certain name, are subject to the general rules, which are

¹¹ <https://www.kemenkeu.go.id/informasi-publik/publikasi/berita-utama/Ancaman-Krisis-Iklim-Dapat-Lebih-Luas-Dari-Pandemi>. Dikutip 7 Februari 2023

¹² M Suparman Sastrawidjaja, *Hukum Asuransi: Perlindungan Tertanggung, Asuransi Deposito, Usaha Perasuransian*, Alumni, 1993, hal. 51-51.

¹³ Robert I Mehr and Emerson Cammack, *Principles of Insurance*, Seventh Edition, Homewood: Richard D. Irwin Inc, Illinois, 1980, pg. 18

contained in this chapter and the last chapter.” This provision contains a juridical recognition of the existence of types of agreements that do not have a specific name, meaning that they are not specifically mentioned in the Civil Code or the Commercial Code. AUTP is included in the qualification of the type of agreement that is not mentioned by a specific name (specifically), so the existence of AUP as an agreement is valid and legally recognized. However, in order for the existence of AUP as an agreement to bind the parties who make it, the making of AUP must fulfill the provisions in Article 1320 of the Civil Code regarding the validity of an agreement, which include: agreement, capacity of the parties, specific object and lawful cause.

If we pay attention to the existing provisions in the Trade Code, we find the legal basis for recognizing the existence of several types of liability insurance, as stated in Article 247 of the Trade Code, namely: “The insurances are, among others, regarding:” The use of the word “among others” in Article 247 of the Commercial Code indicates the recognition of the existence of other new types of liability insurance beyond those mentioned in Article 247 of the Commercial Code. Thus, referring to the provisions of Article 1319 of the Civil Code and Article 247 of the Commercial Code, AUP as an agreement that grows and develops in the community is valid and legally recognized.

In order for a type of insurance to be qualified as loss insurance, it must fulfill the elements of loss insurance contained in Article 246 of the Commercial Code, which states: “Insurance or coverage is an agreement, by which an insurer binds himself to an insured, by receiving a premium, to provide compensation to him because of a loss, damage or loss of expected profits that he may suffer due to an unspecified event.” From the contents of the above provisions, it can be seen that the elements of a loss insurance are: agreement, parties (insurer and insured), premium, compensation and an uncertain event. The question is, does AUP fulfill the qualifications as a loss insurance so that it is valid and legally certain? Below are described the elements contained in AUP.

a. Agreement

It has been explained above that AUP falls under the qualification of an agreement that is not mentioned by a specific name (unnamed agreement) and is an insurance that grows and develops in the community, as mentioned in Articles 1319 of the Civil Code and 247 of the Commercial Code. However, for AUP to qualify as an agreement, the requirements for the validity of an agreement stipulated in Article 1320 of the Civil Code must be fulfilled, which include: (1) agreement (2) capacity to perform legal acts (3) certain matters and (4) lawful cause. The juridical implication of an agreement is that it contains the rights and obligations of the parties which must be carried out properly and correctly with the threat of compensation claims for parties who do not carry it out (default). Therefore, if we pay attention to the clauses in AUP, there are several rights and obligations of the insured and the insurer. Even though the AUP agreement is standardized (standard agreement), because all the contents (clauses) in AUP are prepared by the insurer (insurance company) without the involvement of the farmers, AUP does not violate the elements of agreement in Article 1320 of the Civil Code so that AUP remains a valid and legally enforceable agreement.

b. The insurer and the insured

Loss insurance involves 2 (two) parties, namely the Insurer, which is the party that provides compensation in the event of an uncertain event (eventement). The insurer is also called the party who bears the risk. Generally, the insurer is an institution/company.¹⁴, and the Insured, which is the party who receives compensation payments if an uncertain event occurs or in other words the party facing the risk. The insured party can be in the form of an institution/company or an individual.

AUTP also involves 2 (two) parties, namely the Farmer as the insured, which is the party that transfers the risk to the insurer, is obliged to pay the premium as the price of risk and gets the right to file a claim if the insured object suffers a loss guaranteed by the policy. The farmer referred to in AUTP is someone who has the main livelihood of cultivating land for rice cultivation.¹⁵ The other party in AUTP is the insurer, which is the party that accepts the risk transfer from the insured, issues the policy and receives the insurance premium and is obliged to pay the claim in the event of a claim and guaranteed by the policy.¹⁶ In AUTP, the insurer is the Insurance Company, namely PT Jasa Asuransi Indonesia (Jasindo).

C. Loss, damage or loss of profit

In loss insurance, the insurer pays equal compensation to the insured if the insured suffers loss, damage or loss of profit. This is one of the implementations of the indemnity principle. In AUTP, the insurer pays compensation if the farmer (the insured) experiences crop failure because with crop failure the farmer experiences loss, damage or loss of profit. The amount of loss borne by the insurance company is in accordance with the real (factual) loss experienced by the farmer. Payment of compensation (claims) to farmers is made not in cash but through overbooking to the farmer group or farmer account.

d. Premium

In order for the risks faced by farmers to be transferred to the insurance company, farmers are required to pay a premium whose amount has been determined by a certain formula and can be paid in stages or at once. This is in accordance with the provisions of Article 256 number 7 of the Commercial Code which states: "Every policy, except for a life insurance, must state the premium for the insurance." Regarding the obligation of the insured to pay the insurance premium, Wirjono Prodjodikoro said: "Because paying the premium is the obligation of the assured (=insured), if the assured does not pay it, the

¹⁴ Berdasarkan Pasal 17 ayat (1) Undang-undang No. 40 Tahun 2014 tentang Usaha Perasuransian, Perusahaan Perasuransian hanya dapat dimiliki oleh: a. warga negara Indonesia dan/atau badan hukum Indonesia yang secara langsung atau tidak langsung sepenuhnya dimiliki oleh warga negara Indonesia; atau b. warga negara Indonesia dan/atau badan hukum Indonesia sebagaimana dimaksud dalam huruf a, bersama-sama dengan warga negara asing atau badan hukum asing yang harus merupakan Perusahaan Perasuransian yang memiliki usaha sejenis atau perusahaan induk yang salah satu anak perusahaannya bergerak di bidang Usaha Perasuransian yang sejenis.

¹⁵ Berdasarkan Angka 1.4 huruf m KEPUTUSAN MENTERI PERTANIAN REPUBLIK INDONESIA NOMOR: 03/Kpts/SR.210/B/02/2022 tentang PEDOMAN BANTUAN PREMIUJI COBA ASURANSI USAHA TANI PADI INDEKS HASIL PANEN PADI BERBASIS AREA.

¹⁶ Berdasarkan Angka 1.4 huruf j KEPUTUSAN MENTERI PERTANIAN REPUBLIK INDONESIA NOMOR: 03/Kpts/SR.210/B/02/2022 tentang PEDOMAN BANTUAN PREMIUJI COBA ASURANSI USAHA TANI PADI INDEKS HASIL PANEN PADI BERBASIS AREA.

insurer (insurer) can demand through the Judge that the assured be punished or pay the premium.”¹⁷

In AOTP, the premium is the amount of money determined by the insurance company as the insurer and paid by the Farmer as the insured as a valid condition of the insurance agreement and gives the Farmer the right to claim losses. AOTP has set the amount of insurance premium at 3% or IDR 180,000/hectare/planting season. The premium is paid by the farmer at IDR 36,000, while the government through the Ministry of Agriculture provides premium assistance at 80% or IDR 144,000/hectare/planting season.

e. Evenement

In loss insurance, the insurance company (insurer) pays compensation to the insured (farmer) in the event of an uncertain event or an event that cannot be predicted in advance. According to Emmy Pangaribuan, an uncertain event is an event that according to normal human experience cannot be expected to occur.¹⁸ In addition, the event is subjectively indeterminate as to whether or not it occurred.¹⁹ In AOTP, there are uncertain events that cause farmers (insured) to suffer losses (crop failure) due to climate and weather changes, namely Natural Disasters, Plant Disturbing Organism attacks, outbreaks of Infectious Animal Diseases, the impact of climate change; and/or, other types of risks. These events cannot be predicted in advance because they are beyond the ability of the farmer.

In addition to the elements of loss insurance above, another thing that cannot be ignored from the existence of a loss insurance agreement is that it must contain an “insurable interest”, with the insurable interest, it can be known whether the insured object or activity is something that contains an element of speculation or not. The necessity of the insurable interest aspect in an insurance object can be seen from Article 250 of the Commercial Code which states: “... at the time of the insuring does not have an interest in the insured item, the insurer is not obliged to provide compensation.” According to Purwosutjipto: “Interest is the object of coverage, and is a subjective right that may disappear or decrease, due to the occurrence of uncertain events (onzeker vooraf) or uncertain. The element of interest is an element that absolutely must exist in every coverage, both at the time of closing the coverage and at the time of the occurrence of the event,”²⁰ While the Indonesian Insurance Council states: “Anyone claiming an insurance indemnity must be able to prove that he or she at the time of the loss did have an interest which was the object of the insurance (voowerp van verzekering) concerned as stated in the policy submitted.”²¹

¹⁷ Wirjono Prodjodikoro, *Hukum Asuransi di Indonesia*, Penerbit PT Intermedia, Jakarta, 1981, hlm. 87

¹⁸ Emmy Pangaribuan Simanjuntak, *Hukum Pertanggungan Kerugian Pada Umumnya, Kebakaran dan Jiwa*, Seksi Hukum Dagang Fakultas Hukum Universitas Gadjah Mada, Yogyakarta, 1975, hlm. 67

¹⁹ Sri Rejeki Hartono, *Hukum Asuransi dan Perusahaan Asuransi*, Sinar Grafika, Jakarta, 1992, hlm 109

²⁰ HMN Purwosutjipto, *Pengertian Pokok Hukum Dagang Indonesia, Jilid 6 Hukum Pertanggungan*, Nuansa Aulia, Jakarta, hal.34

²¹ Dewan Asuransi Indonesia, *Perjanjian Asuransi dalam Praktik dan Penyelesaian Sengketa*, dalam Simposium Hukum Asuransi di Padang, 13-15 November 1978, hlm. 120.

In relation to AOTP, the interest in question must exist when the farmer insures the farming business he is cultivating as well as at the time of the occurrence of an eventuality, i.e. when the harvest fails which results in the farmer suffering losses due to loss of profits.

Other principles that are an important basis for the existence of insurance include: the principle of utmost good faith. According to Bork and Wandt, The principle of utmost good faith in ancient Roman law, translated as "uberrima fides" in Latin²². This principle is an important principle underlying the insurance contract that requires the party requiring insurance to disclose all potential risks that the insurance company should be aware of, either before or during the insurance contract runs.²³ In Indonesian Insurance Law, Article 251 KUHD is seen as the principle of utmost good faith which includes the duty of disclosure, and misrepresentation which must be fulfilled by the policyholder before the agreement is closed. Article 251 of the KUHD states: "All false or untrue notifications, or all concealment of circumstances known to the insured, even if done in good faith, which are of such a nature that the agreement would not be held, or not held on the same conditions, if the insurer knew the true state of all these things, make the insurance void."

In the context of AOTP implementation, the existence of the utmost good faith principle burdens farmers with an obligation to inform everything related to the agricultural land they are working on, whether requested or not. The information provided includes, but is not limited to, the condition of the farmland before it is cultivated, the utilization of the land before planting rice or the environmental conditions around the farmland that affect the occurrence of crop failure.

AOTP is a type of loss insurance so that the indemnity principle becomes the basis of the insurance implementation, especially when the insurer pays a claim to the insured due to a loss. The implementation of the indemnity principle in AOTP is reflected in the provision of compensation by the insurer to the insured in an amount equal to the loss suffered by the insured. The insured must not benefit from the occurrence of a loss, because insurance is not a means of investment but protection.

D. Effectiveness of AOTP as a Means of Farmer Protection

Farmer protection is an important issue to ensure the continuity of farmers' businesses in the midst of unstable agricultural business conditions due to many government policies that seem unfavorable to farmers, such as the rice import policy, and the application of government purchase prices (HPP). Farmers' problems are further compounded by the fact that modern technology has not touched farming, so that agricultural businesses have not been organized in an integrated and high-cost manner. In fact, Law No. 19 of 2013 on the Protection and Empowerment of Farmers has established

²² Bork, Kevin, and Manfred Wandt. "“Utmost” good faith in German contract law." *Zeitschrift für die gesamte Versicherungswissenschaft* 109.2-4 (2020): 243-254. <https://doi.org/10.1007/s12297-020-00478-6>

²³ Ahmad Qasim Farah, "Duty of Insured to Disclosed Risks in Terrestrial Insurance Contract in Jordan, UAE and France: An Analytical Study Upheld by Recent Decision of Courts of Cassation," *Arab Law Quarterly* 29, No. 3 (2015): 199-245

the importance of protecting farmers, as stated in Article 3 letters a and d of Law No. 19 of 2013 on the Protection and Empowerment of Farmers, that: "The objectives of farmer protection and empowerment are: to realize the sovereignty and independence of farmers in order to improve the level of welfare, quality and a better life and to protect farmers from price fluctuations, high cost economic practices and crop failure

Farmer protection is very comprehensive. Based on Article 7 paragraph (2) of Law No. 19 Year 2013 on the Protection and Empowerment of Farmers, the strategy implemented in order to provide protection for farmers is done through:

- a. Agricultural production infrastructure and facilities;
- b. Business certainty;
- c. Agricultural commodity prices;
- d. Elimination of high cost economic practices;
- e. Compensation for crop failure due to a widespread event;
- f. Early warning system and climate change impact management; and
- g. Agricultural Insurance.

Related to the strategy of protecting farmers through Agricultural Insurance, since 2015 the government through the Ministry of Agriculture has launched Rice Farming Business Insurance (AUTP) which aims to provide protection to farmers in the event of crop failure due to Natural Disasters, attacks of Plant Disturbing Organisms, outbreaks of Infectious Animal Diseases, the impact of climate change; and/or, other types of risks, so that when farmers suffer crop failure they will get compensation.

Some of the requirements that must be met at the time of entering into an AUTP agreement include:

- a. Registration time: At least one month before the start of the planting season.
- b. Premium: IDR 180,000 (Farmers pay a proportional 20% self-help premium of IDR 36,000 per hectare per planting season, while the government assistance is 80% at IDR 144,000 per hectare per planting season).
- c. Coverage: Maximum coverage of IDR 6,000,000 per hectare (ha).
- d. Farmer criteria: Tenant farmers or farmers who own a maximum of 2 ha of land per registration.
- e. Land criteria: Irrigated land or rainfed land that is close to water sources and has technical, semi-technical and simple irrigation.
- f. Compensation:
 - 1) The age of the rice has passed 10 days after planting;
 - 2) Rice age has passed 30 days (tabela/gogo ranchah);
 - 3) Damage intensity =75% (more than equal to 75%);
 - 4) Extent of damage =75% in each natural patch (more than equal to 75%)

As in other loss insurance, the AUTP policy contains risks that are not covered, namely physical damage and/or loss to the insured rice plants that are directly or indirectly caused by or as a result of:

- a. Fire;
- b. Theft and or loss during and after the occurrence of the event covered by the policy;
- c. Willful act of the Insured, the Insured's representative or any other party at the direction of the Insured;

- d. The intent of another party with the knowledge of the Insured, unless it can be proven that it occurred outside the control of the Insured;
- e. Willful misconduct or negligence by the Insured or the Insured's representative;
- f. Forest, bush, reed or peat fires;
- g. Explosion by explosive type device;
- h. Nuclear reactions including but not limited to nuclear radiation, ionization, fusion, fission or radio-active contamination, regardless of whether it occurs inside or outside the insured rice growing area;
- i. Earthquakes, volcanic eruptions and tsunamis;
- j. All forms of business interruption and similar financial losses.

AUTP as a means of protection for farmers in the face of crop failure has not been widely implemented in Indonesia. Even though the number of participants in the last few years has increased, the overall number of AUTP participants is not proportional to the total number of farmers in Indonesia. In addition, the number of AUTP participants in Indonesia is still dominated by rice farmers in Java.

From the assessment of the implementation of AUTP in Indonesia, both based on (secondary) data and field observations, it is found that AUTP has not been able to become an effective protection instrument for farmers. This is due to several factors, among others:

a. Internal Factors

- 1) In general, the financial condition of Indonesian farmers is still low so that farmers have not been able to allocate their funds to become AUTP participants. The funds owned by farmers are prioritized to fulfill the daily needs of farmers and their families.
- 2) Many Indonesian farmers are poorly educated, hence their lack of knowledge on AUTP and its benefits.
- 3) The attitude of farmers who are resigned in facing every situation that befalls their business, including in the event of crop failure, because the events that befall their business are considered a destiny from God Almighty that cannot be avoided.
- 4) There are still many Indonesian farmers who have small plots of land that are deemed inadequate to be included in AUTP;
- 5) Many farmers in Indonesia still have the status of tenants/farm laborers instead of owners, so it is considered inappropriate if their businesses are included in AUTP.

b. External Factors

- 1) The socialization and education of AUTP among farmers has not been done much, even if it has been done, the process is not sustainable, so that farmers' introduction and/or understanding of AUTP is still lacking.
- 2) The implementation of AUTP has not taken into account the characteristics of each region's farmland because AUTP is implemented uniformly.
- 3) Data management is not yet available accurately, timely, and consistently, as a result, the determination of eligible areas for AUTP implementation is not in accordance with the situation and condition of the region.

- 4) The number of field officers is still insufficient compared to the area of rice paddy fields registered for insurance so that the assistance process to farmers is less than optimal.
- 5) The payment of claims is given equally without considering the size of the land and the location of the disaster so that the amount of claims paid does not match the factual losses suffered by farmers.
- 6) The relatively small amount of compensation received by farmers is not proportional to the needs of farmers to refinance their businesses.

IV. CONCLUSIONS

AUTP is a legal agreement because its formation fulfills the legal requirements of an agreement, as stipulated in Article 1320 of the Civil Code as well as the fulfillment of all elements of loss insurance, last but not least, the AUTP agreement contains the principle of insurable interest, the principle of utmost good faith, and the principle of balance (indemnity). Conceptually, AUTP is a means of protection for farmers in overcoming crop failure, but in practice, the implementation of AUTP has not been effective because it is still faced with various obstacles both from internal (farmers) and external aspects.

V. ADVICE

In order for AUTP coverage to reach all farmers in Indonesia and become an effective tool to provide protection for farmers, it is recommended to conduct massive and continuous socialization to Indonesian rice farmers so that farmers have a correct understanding of AUTP; Optimizing the use of information technology in determining the method of assessing land damage, especially due to floods and droughts, because so far it has been done manually which requires more time and personnel, so that the results can be known quickly and effectively; It is necessary to differentiate the protection coverage because the hazards suffered by farmers are not the same in quality and quantity.

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