



## Dynamics and Challenges of National Insurance Law in the Context of Globalization

<sup>1</sup>Putri Nawarni Harahap, <sup>2</sup>Rizki Khoiril Waladi Siahaan, <sup>3</sup>Siti Fatimah, <sup>4</sup>Adi Syahputra, <sup>5</sup>Fitri Elisa Noviani Simatupang

<sup>1,2,3,4,5</sup>Universitas Islam Negeri Sumatera Utara

E-mail: <sup>1</sup>[riskysiahaan0101@gmail.com](mailto:riskysiahaan0101@gmail.com), <sup>2</sup>[rizkiwaladi@gmail.com](mailto:rizkiwaladi@gmail.com), <sup>3</sup>[sitifatimah90@gmail.com](mailto:sitifatimah90@gmail.com),  
<sup>4</sup>[adisyahputra55@gmail.com](mailto:adisyahputra55@gmail.com), <sup>5</sup>[fitri3ls4noviani@gmail.com](mailto:fitri3ls4noviani@gmail.com)

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### Abstract

Globalization has driven cross-border openness in various sectors, including the insurance industry. In this context, Indonesia cannot close itself off the involvement of foreign parties in the implementation of the national insurance business. The existence of insurance companies basically aims to provide protection and solutions to the risks faced by the community, but the influx of foreign capital and companies gives rise to its own legal dynamics, especially related to company ownership, supervision, consumer protection, and national legal sovereignty. This research aims to analyze the dynamics and challenges of national insurance law in the face of globalization currents, especially in relation to foreign ownership regulation and the role of the state in safeguarding national interests. The research method used is normative legal research with a statutory and conceptual approach, through the study of insurance regulations and relevant legal doctrines. The results of the study show that globalization requires strengthening national insurance regulations in order to be able to increase the competitiveness of the domestic insurance industry without ignoring legal protection for the community. In addition, the government's role as a regulator and supervisor is crucial in creating legal certainty and public trust. In conclusion, harmonization between global openness and national legal interests is key in answering the challenges of insurance law in the era of globalization.

## I. INTRODUCTION

Every individual in his or her social and economic life is never separated from the conditions of uncertainty inherent in various risks, both risks that have the potential to cause financially measurable losses and non-economic losses related to fundamental aspects of human beings, such as safety and life. These risks basically cannot be eliminated, but can only be managed through certain mechanisms, one of which is by transferring and sharing risks to other parties through insurance institutions (Anita et al., 2023). In this context, insurance is not only understood as an economic instrument, but also as a legal institution that regulates the relationship of rights and obligations between the parties involved.

However, risk management through insurance cannot be separated from the legal framework that governs it. The level of public understanding of risks and risk transfer mechanisms is highly dependent on legal certainty, public trust, and the

effectiveness of state regulations and supervision (I. Setiawan, 2023). As insurance thrives in a relatively closed national space, legal arrangements tend to focus on domestic interests. However, this condition has changed significantly as the flow of globalization has strengthened, which is marked by cross-border openness, especially in the field of trade and financial services.

In the era of globalization, Indonesia is not in a position to close itself off from international economic interactions, including in the insurance sector (S. Setiawan, 2013). Foreign involvement of foreign parties, both in the form of capital ownership, business cooperation, and penetration of cross-border insurance products, is a consequence of Indonesia's membership in various international trade regimes, including the framework regulated by the World Trade Organization (WTO) (Darnia et al., 2023). This condition presents its own legal dynamics, because on the one hand globalization opens up

opportunities to increase the efficiency and competitiveness of the national insurance industry, but on the other hand it has the potential to cause legal problems related to regulatory sovereignty, consumer protection, and alignment with the domestic insurance industry.

The change in the global landscape has also encouraged the renewal of national insurance laws through the birth of Law Number 40 of 2014 concerning Insurance. This law brings significant changes compared to previous regulations, both in terms of the scope of regulation and strengthening the supervision institution. However, the complexity of the regulations spread across various laws and regulations, including Law Number 21 of 2011 concerning the Financial Services Authority, shows the dynamics as well as challenges in realizing an insurance legal system that is consistent, effective, and adaptive to global developments (Kartika, 2022).

In addition, the recognition of the implementation of sharia principles-based insurance in the new law also reflects national legal efforts to respond to the demands of a plurality of economic systems as well as international best practices. However, the disclosure raises fundamental questions about the extent to which national insurance laws are able to maintain a balance between global interests and the protection of national interests. Therefore, a study of the dynamics and challenges of national insurance law in the context of globalization is relevant and important to be carried out, in order to assess the readiness of regulations, the effectiveness of supervision, and the direction of Indonesia's insurance legal policy in the midst of increasingly complex global trends.

## **II. RESEARCH METHODS**

This research is included in normative research, the method used by conducting a literature review, namely by examining writings in the literature and applicable laws and regulations, so that the data needed is secondary data in the form of primary legal materials in the form of laws and regulations that regulate insurance, secondary legal materials in the form of literature from the works of several authors on insurance, and about matters related to the era of globalization, tertiary legal materials related to the use of legal dictionaries, language dictionaries and popular scientific dictionaries, which are needed to understand foreign languages, as well as new terms that are not widely known. The data

collected is processed and analyzed to obtain conclusions, so that the answers to the problems studied can be found (Mahmud Marzuki, 2005).

## **III. RESULTS AND DISCUSSION**

### **A. Dynamics of Globalization and Challenges of Competitiveness of the National Insurance Industry**

In the life of the modern economy that Tagged With the opening of the market and the acceleration of global flows, the need for risk management services is increasing and complex (Purrohman et al., 2025). Insurance as one of the main instruments in risk management plays a strategic role not only in supporting national economic stability, but also in supporting cross-border trade and investment activities (Panisa & Zainarti, 2025). Therefore, the existence of a healthy, capital-strong, professional, and competitive insurance company is an absolute prerequisite in facing global economic dynamics.

In the context of globalization, insurance is no longer understood as a domestic instrument to overcome a country's internal risks, but has developed into part of international trade in services (Adi, 2025). Insurance companies are required to be able to reach a wider market, serve cross-border risks, and adapt to international standards in terms of governance, capital, and legal compliance. This condition requires the national insurance industry to be built with a strong capital structure, which is sourced not only from within the country, but also from abroad, as long as it remains within the corridor of national legal interests.

The establishment of the World Trade Organization (WTO) as a result of the Uruguay Round in Marrakesh marked a new era in the liberalization of international trade, including trade in services. The presence of the WTO is based on the assumption that increased production and trade will encourage investment, create jobs, and improve the well-being of people globally (Prince, 2024). Within this framework, the services sector, including insurance services, is an integral part of the international trade regime regulated through the General Agreement on Trade in Services (GATS). Consequently, member countries, including Indonesia, are bound by the principles of openness, non-discrimination, and equal treatment (most favored nation and national treatment) for service business actors, both domestic and foreign (Pangestu et al., 2021).

In line with the initial objective of the General Agreement on Tariffs and Trade (GATT) which aimed to maintain a balance of international trade interests, the WTO functions as an institution that protects the mechanism of trade in goods and services globally (Ambar, 2024). In practice, international trade occurs when the transaction of goods or services involves legal subjects of different nationalities, thus opening up space for foreign companies to enter and operate in the domestic market of a country. This has a direct impact on the national insurance industry, which has to compete with multinational insurers that have global capital, technology, and experience advantages.

The opportunity for the insurance business in the era of globalization is actually very large, considering that almost all human and state activities are always faced with risks, both in the economic, social, political, and security fields (Zanariyah, 2016). However, this opportunity is also a serious challenge for developing countries such as Indonesia. The inclusion of services, investment, and intellectual property rights in the global trade agenda has paved the way for transnational corporations to dominate the service sector in developing countries, including the insurance sector. Within the framework of international trade law, foreign companies operating in Indonesia must be treated the same as domestic companies, so that the space for national legal protection becomes increasingly limited (Zanariyah, 2016).

The competitiveness challenges of the national insurance industry do not only stem from external pressures of globalization, but also from internal structural problems. Various obstacles such as limited capital, uneven quality of human resources, low productivity, integrity of business actors, high operational costs, and non-ideal premium setting practices show that the national insurance industry still needs serious improvement. These factors cannot be separated from the influence of laws and regulations, legal culture community, national economic conditions, as well as the role of the government as a regulator and supervisor (Zanariyah, 2016).

Reality shows that great opportunities in the insurance industry are often more optimally utilized by foreign companies. The rapid presence of foreign insurance companies in Indonesia, as well as the dependence of national insurance companies on international reinsurance, reflect the weak bargaining position of the national

insurance industry in the global system. This condition confirms that the main challenge is not only market openness, but the ability of national law to create a fair, competitive, and oriented business climate to protect national interests.

Therefore, increasing the competitiveness of the national insurance industry must be placed as a strategic legal and policy agenda. The state through insurance legal instruments is required to be able to balance international obligations in the global trade regime and national interests in protecting domestic industries and communities as policyholders. Improving regulations, strengthening the role of the government, and building a legal culture that supports the national insurance industry are fundamental steps in facing the dynamics and challenges of national insurance law in the era of globalization.

## **B. Foreign Ownership in National Insurance Companies: Regulatory Dynamics, Justice, and Legal Politics in the Era of Globalization**

The existence of insurance law in Indonesia cannot be separated from the history of the formation of a national legal system which was initially heavily influenced by the colonial legal system (Simbolon et al., 2024). Indonesian insurance law is rooted in the provisions of civil law and commercial law sourced from the Civil Code (KUHPerdata) and the Commercial Code, which is an adoption of the Dutch *Burgerlijk Wetboek* and in turn has its roots in the French legal system. Based on the Transitional Rules of the 1945 Constitution, the legal codification remains in force as long as it has not been replaced by new laws and regulations, thus forming the initial foundation for the regulation of legal relations in the insurance sector (Hasyim, 2023).

The increasingly complex development of the insurance industry, along with the advancement of science and technology and the increasing risks in people's lives, prompted the birth of Law Number 40 of 2014 concerning Insurance as a new regulation that replaced Law Number 2 of 1992. This law is expected to be able to answer various weaknesses of previous regulations and adjust insurance legal arrangements to the dynamics of globalization and liberalization of the financial services sector. This regulatory update also marks a paradigm shift in insurance law from a mere contractual arrangement to a legal policy instrument that serves to promote financial system stability and protection of the public interest (Safitri, 2024).

One of the crucial issues in the Insurance Law is the regulation of the form of legal entity and ownership of insurance companies, especially related to the involvement of foreign parties. The provisions of Article 7 of Law Number 40 of 2014 provide space for foreign ownership in national insurance companies with certain limitations, both qualitatively and quantitatively (Dewi & SH, 2025). These restrictions show that there are efforts by the state to balance the need for foreign capital and expertise with the interest of maintaining economic sovereignty and national law.

From a qualitative perspective, the involvement of foreign parties is limited to legal entities that have similar insurance businesses or are holding companies that have subsidiaries in the insurance sector, and have adequate business experience (Zanariyah, 2016). This provision is intended so that the entry of foreign capital is not only profit-oriented, but also encourages technology transfer, knowledge transfer, and improvement of the quality of management of the national insurance industry. In the perspective of development law, this policy reflects the function of law as a means of social integration and renewal as stated by Talcott Parsons and Mochtar Kusumaatmadja.

However, the foreign ownership arrangements in the Insurance Law have not been fully supported by adequate implementing regulations. The absence of Government Regulation as the implementer of Article 7 of Law Number 40 of 2014 causes legal uncertainty, so that in practice old implementing regulations are still used, such as Government Regulation Number 73 of 1992 concerning the Implementation of Insurance Business and its amendments. This condition poses normative problems, because the substance of the old regulation is not fully in line with the spirit and politics of the new law (Zanariyah, 2016).

Under the provisions of the old implementing regulations, foreign parties' share ownership in insurance companies can reach up to 80%, with the obligation to gradually increase Indonesia's share ownership to reach at least 51% within a period of 20 years (Serlika Aprita, 2019). Juridically, this provision raises questions about the fairness and balance of interests between foreign parties and national entrepreneurs. The relatively long period of time provides greater economic benefits to foreign parties, especially in the initial phase of the company's operations, so it

has the potential to contradict the political objectives of national law to realize the welfare of the Indonesian people.

In the perspective of justice theory, this foreign ownership arrangement can be analyzed through a variety of approaches. Plato placed justice on the value of mutual benefit and good, while John Stuart Mill and H.L.A. Hart emphasized the principle of equality and the protection of individual claims (Sinaga et al., 2025). On the other hand, John Rawls through the theory of distributive justice asserts that social and economic inequality can only be justified to the extent that it benefits all parties, especially the disadvantaged groups (Marslathifah et al., 2025). If it is associated with foreign ownership in insurance companies, then the involvement of foreign parties should be regulated in such a way as to provide real benefits to national entrepreneurs and the wider community, not just profits for foreign capital owners.

Furthermore, the regulation of foreign ownership in the insurance industry must be placed within the framework of Indonesian legal politics based on Pancasila and the 1945 Constitution. National legal politics demands that legal development be directed at the creation of social justice and public welfare. Therefore, providing space for foreign investment in strategic sectors such as insurance must be accompanied by firm legal signs that are in favor of the national interest, including restrictions on foreign shareholding and strengthening the role of the state in supervising and fostering the insurance industry.

Thus, the existence of Indonesia's insurance law in the era of globalization faces a double challenge, namely the demand for openness to foreign investment and the constitutional obligation to protect national interests. This dynamic demands regulatory reform that is not only responsive to global developments, but also consistent with the values of justice and the politics of national law. The preparation of regulations for the implementation of Law Number 40 of 2014 that is comprehensive and in favor of the balance of interests is a strategic step to ensure that the involvement of foreign parties in the insurance industry truly contributes to the economic development and welfare of the Indonesian people.

#### IV. CONCLUSIONS AND SUGGESTIONS

##### A. Conclusion

Globalization has brought fundamental changes in the implementation of the insurance business in Indonesia, both from an economic and legal aspect. Insurance no longer functions solely as an instrument of risk transfer in the domestic space, but has become part of international trade in services subject to the principles of openness, non-discrimination, and free competition. In this context, Indonesia is faced with the challenge of increasing the competitiveness of the national insurance industry without neglecting the interests of national law and the protection of the public as policyholders.

The existence of Law Number 40 of 2014 concerning Insurance is a strategic step in responding to the dynamics of globalization and the development of the insurance industry. However, the law has not been fully able to answer the complexity of the legal problems that arise, especially related to the regulation of insurance company ownership by foreign parties. The absence of implementing regulations that detail the qualitative and quantitative limits on foreign ownership creates legal uncertainty, so in practice it still depends on old regulations whose substance is not entirely in line with the political spirit of national law.

The involvement of foreign parties in the national insurance industry is in principle inevitable in the era of globalization, especially to strengthen capital, increase professionalism, and encourage the transfer of technology and knowledge. However, the involvement must be regulated proportionately and fairly so as not to cause inequality of interests between foreign and national business actors. The overly dominant foreign ownership arrangement has the potential to weaken the position of national entrepreneurs and deviate from the constitutional goal of realizing the welfare of the Indonesian people.

From the perspective of legal and justice theory, insurance law should function as a means of social integration and a social engineering tool that is able to direct change towards the common good. Therefore, the national insurance law must be able to balance the demands of globalization with the values of Pancasila, the 1945 Constitution, and the politics of national law. The main challenge for Indonesia's insurance law in the future lies not only in increasing the competitiveness of the industry, but also in the ability of the law to create optimal certainty,

justice, and protection for society in the midst of increasingly complex globalization.

##### B. Suggestions

The government needs to immediately draft and establish implementing regulations for Law Number 40 of 2014 concerning Insurance, especially those that regulate in detail foreign ownership in insurance companies, in order to create legal certainty and a balance of interests. In addition, restrictions on foreign capital ownership need to be directed to the principles of fairness and partiality towards the national industry without neglecting international obligations. Strengthening the role of the Financial Services Authority in coaching, supervising, and protecting policyholders must also be optimized, along with increasing public literacy and legal culture so that trust in national insurance increases.

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