AL RISALAH: Jurnal Ilmu Syariah dan Hukum

VOLUME 26 NO 1, MAY 2026
P-ISSN: 2252-8334 / E-ISSN: 2550-0309
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https://doi.org/10.24252/al-risalah.vi.67724

Legal Liability of Mutual Insurance Entities and Policyholder Protection in Indonesia: A Comparative Study of AJB Bumiputera with Japan and Australia

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Article history:
Received in revised form: 28 April 2026
Acceptance date: 22 May 2026
Available online: 28 May 2026

Keywords:
Mutual Companies; Mutual Insurance; Legal Liability; AJB Bumiputera; Demutualization.

How to Cite:
Fattah, A. K., Meliala, A. J., & Winanti, A. (2026). Legal Liability of Mutual Insurance Entities and Policyholder Protection in Indonesia: A Comparative Study of AJB Bumiputera with Japan and Australia. Al-Risalah Jurnal Ilmu Syariah Dan Hukum. https://doi.org/10.24252/al-risalah.vi.67724

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Abstract

Indonesia, as a Rechtsstaat, recognizes both natural persons and legal entities, with mutual companies (Usaha Bersama) serving as a unique form with profound historical relevance within the national insurance sector. However, the absence of a specific organic law for mutual legal entities creates significant legal uncertainty regarding organizational structure and liability patterns, particularly when facing financial crises such as those experienced by AJB Bumiputera. This research employs a normative juridical method with statutory, conceptual, and comparative approaches, analyzing primary legal materials like the 1945 Constitution and international insurance regulations from Japan and Australia. The results indicate that the current regulation of mutual companies in Indonesia is fragmented and regressive as it imposes losses on members, contrasting sharply with Japan and Australia, which transitioned to demutualization to ensure industry transparency and solvability. It is concluded that while the mutual form aligns with the "family principle" in Article 33 of the Constitution, its liability structure must be reconstructed through an amendment of the Insurance Law to ensure consumers are not burdened by managerial failures.

INTRODUCTION

Classification of legal subjects into the categories of natural persons (*natuurlijke persoon*) and legal entities (*rechtspersoon*) reflects the sociological and legal need to distinguish between biological entities and fictional entities created by law. Natural persons hold a particularly significant status as they are directly linked to human dignity and the protection of human rights, which are absolutely guaranteed by the constitution. On the other hand, the existence of legal entities as independent legal subjects enables the mobilization of capital and the organization of group interests, as these entities possess the legal capacity to perform legal acts just as ordinary individuals do. The state's role in protecting natural persons is carried out through guarantees of inalienable fundamental rights, while for legal entities, protection is realized through transparent registration and recognition mechanisms. Legal certainty in the registration of legal entities is crucial so that third parties engaging in transactions have assurance that the entity possesses a structure and assets separate from its founders.[1] The existence of these two types of legal subjects in the development of Indonesian law has shaped distinct patterns of liability, yet both ultimately converge on the same legal objective: order. The internal structure of each legal subject determines how rights and obligations are distributed and how potential future conflicts will be resolved.

Indonesian legal system recognizes a wide variety of legal entities, each designed for economic, social, or community purposes, with increasingly specific and comprehensive regulations. This diversification of legal entity forms reflects the flexibility of the law in responding to the needs of society, which requires different vehicles to express its legal interests. The most dominant and established form is the Limited Liability Company (LLC), which has a strong legal foundation under Law No. 40 of 2007 on Limited Liability Companies. The LLC offers a highly rigid structure with a strict separation of assets, making it the primary choice for large-scale industries and global investments. Additionally, to accommodate non-profit or social activities, the state provides the framework of a Foundation, which is regulated in detail under Law No. 16 of 2001 and updated by Law No. 28 of 2004.[2] A Foundation has unique characteristics in that it has no members and its assets are segregated to achieve specific social, religious, or humanitarian objectives. The systematic provisions in both laws provide clarity regarding the bodies responsible for managing and overseeing operations in an

[1] FenceM Wantu, "Mewujudkan Kepastian Hukum, Keadilan Dan Kemanfaatan Dalam Putusan Hakim Di Peradilan Perdata," *Jurnal Dinamika Hukum* 12, no. 3 (2012): 479–89.
[2] Muhammad Rafi Muharnis, "Tanggung Jawab Pengawasan Perseroan Perorangan Dalam Mewujudkan Prinsip Akuntabilitas Pada Good Corporate Governance" (Universitas Islam Indonesia, 2023).

accountable manner. Thus, the existence of these various legal instruments demonstrates that the state is actively establishing a framework that supports legal certainty for every organizational entity in Indonesia.

In addition to Limited Liability Companies and Foundations, there are also Cooperatives that play a strategic role as the backbone of the national economy, with further regulations set forth in Law No. 25 of 1992 on Cooperatives.[3] As a legal entity based on the principle of solidarity, cooperatives have a distinctive accountability structure that prioritizes member welfare through the fair distribution of surplus profits. However, on a broader scale, legal challenges arise regarding business entities not organically regulated under a single specific law, namely joint business entities. This joint business legal entity is specifically mentioned and regulated only in Law No. 40 of 2014 on Insurance, making it a highly sector-specific and fragmented entity.[4] The absence of an umbrella law governing joint businesses in general creates disparities in legal treatment compared to PTs, Foundations, and Cooperatives, which already have overarching regulations. These four forms of legal entities indirectly possess their own unique legal statuses and serve highly varied strategic purposes across various industries in Indonesia. These differing regulations require a comprehensive understanding to prevent overlapping jurisdictions or legal vacuums in their operational implementation. As a master's-level research study, it is crucial to examine how harmonization among these various regulations can be achieved to strengthen the national legal entity accountability framework.[5]

Specifically regarding mutual company legal entities, there is a legal problem where this form is recognized and operates exclusively within the insurance industry regime governed by Law No. 40 of 2014. This exclusive recognition within a single industrial sector indicates that the mutual company form is not yet considered a general legal entity applicable to other economic sectors. Although the Insurance Law mentions the existence of mutual companys, it does not provide in-depth technical guidance on how the organizational structure should be established. This has led to uncertainty regarding the status of the governing bodies within mutual companys—whether they are equivalent to

[3] Hilda Halnum Salsabil Hilda, Muflih Munazih, and Siti Kunarti, "Tinjauan Hukum Administrasi Negara Terhadap Pembentukan Koperasi Desa Merah Putih Melalui Instruksi Presiden," *JURNAL USM LAW REVIEW* 8, no. 2 (2025): 901–22.
[4] Aluysius Prianka Driyarkara and Natalia Yeti Puspita, "Tanggung Jawab Badan Hukum Usaha Bersama (Studi Kasus: Asuransi Jiwa Bersama Bumiputera 1912)," *Jurnal Paradigma Hukum Pembangunan* 8, no. 1 (2023): 67–78.
[5] Gunawan Widjaja, "Pengaturan Dan Pengawasan Badan Usaha Milik Negara (Bumn) Dalam Perspektif Hukum Administrasi Negara," *ADMIN: Jurnal Administrasi Negara* 3, no. 2 (2025): 49–56.

the board of directors and commissioners in a limited liability company or the board of directors in a cooperative. The absence of comprehensive regulatory references often causes practitioners and academics to struggle in interpreting the legal capacity of these entities when engaging in legal transactions with third parties. The state appears to grant legal recognition but has failed to provide adequate regulatory infrastructure for the growth and protection of such entities. Consequently, the existence of mutual companys within Indonesia's corporate legal framework is extremely fragile and vulnerable to conflicting legal interpretations. This structural ambiguity is a fundamental issue that must be resolved through serious legal research to ensure the principle of legal certainty is upheld.[6]

A further consequence of merely mentioning mutual companys in the Insurance Law without specific regulations is the lack of clarity regarding legal liability mechanisms should such an entity experience systemic failure. Since this is not addressed in depth by any legislation, the boundaries of liability between managers and members in a mutual company become highly ambiguous and lack certainty. Under general corporate law principles, the separation of assets is absolute; however, in mutual companys, this boundary is often blurred due to the concept of shared ownership.[7] The absence of rules regarding dissolution, liquidation, and procedures for settling obligations to third parties makes mutual companys high-risk entities for the stability of the financial industry. This creates a paradox where a legal entity is recognized by the state yet is not provided with guidelines on how it should be held legally accountable for its actions. This unclear internal structure also hinders the oversight process conducted by relevant authorities due to the absence of standardized benchmarks for performance evaluation. Systematically, this situation reflects a legal lacuna—a significant legal gap—that poses a serious threat to consumer protection within the insurance industry. Therefore, this study aims to delve deeper into how liability standards should be applied to mutual company legal entities to ensure they are on par with those of other legal entities.

The issue becomes particularly urgent when we consider the context of liability in cases of failed claim payments to AJB Bumiputera policyholders, which have accumulated over the past few years. The inability of this mutual enterprise to fulfill its policyholders' rights demonstrates that the current internal structure is incapable of effectively mitigating financial risks. Policyholders, who are supposed to be both owners

[6] Imelda Martinelli et al., "Keterbukaan Dan Kepastian Hukum Dalam Teori Kontrak Roscoe Pound," *UNES Law Review* 6, no. 2 (2023): 4099–4107.
[7] Ath Thaariq Takbir Nugraha, "Kekuatan Hukum Pengaturan Perusahaan Perasuransian Yang Berbentuk Badan Hukum Usaha Bersama" (Universitas Islam Indonesia, 2023).

and members under the concept of mutualism, have instead become the most disadvantaged party due to the lack of certainty regarding the source of funds for their claims. The relevance of the legal form of a mutual enterprise is highly questionable, as in practice it has failed to provide the protection expected by policyholders. This claims crisis reveals that an unregulated mutual business model is no longer adaptable to modern consumer protection demands. The state bears a significant responsibility to address this failure, yet the absence of clear rules regarding the liability mechanisms of management hinders the legal process. Liability that should be borne by the corporation often shifts to become a collective burden on members who are economically vulnerable and in need of protection. Through deductive analysis, this failure demonstrates that without a strong legal framework, any business structure will experience functional collapse when faced with a crisis of public trust.[8]

Indonesia's vision of a rule-of-law state grounded in justice cannot be realized if the accountability mechanisms of its legal entities remain ambiguous and inaccessible to the general public. The very purpose of the law—legal certainty—is lost when legislation fails to provide equal protection for policyholders within mutual companys compared to policyholders in limited liability companies. This legal discrimination arises from negligence in drafting regulations that bridge the differences between conventional legal entities and mutual entities. Every legal subject is entitled to clarity regarding their status and the fate of the investments they have made in an institution recognized by the state. If the state allows this uncertainty to persist, it indirectly neglects its constitutional duty to protect the entire nation. Ambiguous accountability creates room for abuse of authority by managers who hide behind the absence of clear rules. This demonstrates that legal reform regarding mutual companies is no longer an option but a necessity to uphold the integrity of the national legal system. Holistically, legal certainty is the essence of a rule-of-law state, and without it, the existence of mutual companies will merely become a historical burden hindering economic progress.[9]

Based on the systematic background analysis outlined above, there is a clear academic and practical urgency to re-examine the existence of mutual legal entities in Indonesia. The complexity of the issues surrounding AJB Bumiputera, as the sole representative of this legal form, demands fundamental and sustainable legal solutions. An examination of the nature of legal entities, the diversity of legal structures, and the failure of

[8] Hanif Abdullah et al., "Kajian Masalah Kewangan Yang Dihadapi Kontraktor Bumiputera Semasa Fasa Pembinaan," *Research in Management of Technology and Business* 2, no. 1 (2021): 812–30.
[9] Keysha Nashwa Aulia et al., "Kepastian Hukum Dan Keadilan Hukum Dalam Pandangan Ilmu Komunikasi," *Journal Sains Student Research* 2, no. 1 (2024): 713–24.

accountability mechanisms serves as the central thread guiding this research toward a sharp focus. The disparity between the historical values sought to be preserved and the reality of a claims crisis that harms the public constitutes a crucial point that must be analyzed in depth. Furthermore, global demands for standards of good corporate governance compel Indonesia to reflect on more modern international legal practices. These complex issues cannot be resolved through short-term policies alone but require comprehensive theoretical and normative analysis. As an initial step toward providing legal solutions, a problem formulation is needed that addresses both the theoretical and practical aspects of these challenges.[10]

In this context, the research problem statement is deductively designed to address the legal concerns outlined above. First, this study will examine the regulatory frameworks for mutual business entities from a comparative law perspective with other countries, to identify an ideal model that can be adapted by the Indonesian legal system. Second, this study will analyze the relevance of the legal form of mutual business entities within the framework of corporate liability in Indonesia, particularly in providing safeguards for insurance policyholders.

METHODS

This study employs a normative legal research method focused on a literature review of positive legal norms and legal principles governing the existence of joint business legal entities in Indonesia.[11] Through a statutory approach, this study conducts an in-depth examination of the regulatory hierarchy that serves as the operational foundation for joint businesses, using primary legal sources such as Article 33(1) of the 1945 Constitution of the Republic of Indonesia, Law No. 40 of 2014 on Insurance, and Financial Services Authority Regulation No. 7 of 2023 to identify conflicts of norms and legal gaps regarding liability structures. Furthermore, a conceptual approach is applied to analyze the doctrine of legal persons, the principle of mutualism, and the theory of separate legal personality by referring to secondary legal sources such as corporate law literature, academic journals, and the consensus of legal scholars (*communis opinio doctorum*) to construct a theoretical argument regarding the relevance of the mutual entitiy form.[12] Finally, this study is reinforced by a comparative approach that compares the national legal system with legal practices in other countries, such as Japan through the Insurance

[10] Setyo Widagdo, "Pengesahan Perjanjian Internasional Dalam Perspektif Hukum Nasional Indonesia," *Arena Hukum* 12, no. 1 (2019): 195–214.
[11] Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Prenada Media, 2017).
[12] S H I Kristiawanto, *Memahami Penelitian Hukum Normatif* (Prenada Media, 2022).

Business Act (1995) and Australia through the Life Insurance Act (1995), as international references to evaluate the effectiveness of the demutualization process in providing protection for insurance consumers. The data analysis technique used was descriptive-prescriptive to generate findings regarding the punishments discussed. Furthermore, the data collection technique employed a literature study, which collected library data relevant to the punishment issue. The systematic integration of these three approaches aims to produce a comprehensive legal reconstruction to ensure legal certainty and justice for policyholders in the future.

RESULTS AND DISCUSSION

1. Legal Framework for Mutual Company Legal Entities from a Comparative Law Perspective with Other Countries

The legal framework governing joint-venture entities within Indonesia's legal system occupies a uniquely distinct position, as their existence is specifically recognized only through sectoral legislation regulating the insurance industry. Deductively, this indicates that the Indonesian legislature views mutual enterprises not as a general form of legal entity, but as a functional entity specifically designed to manage shared risks within an insurance framework. This regulatory framework emphasizes the principle of unity among policyholders, where premiums paid serve not only as costs for risk protection but are also considered capital directly contributed to the legal entity. Consequently, the status of policyholders in a mutual insurance company transforms them into both owners and capital guarantors, granting them voting rights and proportional rights to the company's profits. This characteristic fundamentally distinguishes the mutual enterprise from a limited liability company, where there is a strict separation between customers and shareholders as capital owners. This practice is evident in the operations of Bumiputera Mutual Life Insurance, which remains the sole historical representation of the mutual legal entity form in Indonesia. This legal phenomenon has sparked deep academic interest, particularly when examining how this collective ownership structure interacts with national corporate law provisions that tend to be individualistic. Through a comprehensive understanding, it can be concluded that mutual enterprises constitute a legal anomaly requiring further study to ensure their status remains aligned with the principle of legal certainty.[13]

[13] Driyarkara and Puspita, "Tanggung Jawab Badan Hukum Usaha Bersama (Studi Kasus: Asuransi Jiwa Bersama Bumiputera 1912)."

This study found an anomaly in the hierarchy of Indonesian legislation, wherein fundamental technical regulations are actually contained in Financial Services Authority Regulation (POJK) No. 7 of 2023. This regulation provides detailed provisions on the governance and institutional structure of insurance companies organized as mutual companys, covering aspects ranging from structural arrangements to the highest decision-making mechanisms. Systematically, this raises significant questions regarding the consistency of the legislature, as provisions concerning other legal entities such as limited liability companies (PT), foundations (*Yayasan*), and cooperatives are always comprehensively regulated at the level of organic laws.[14] Delegating regulation too far down to the level of technical regulations risks undermining the legal legitimacy of the mutual company entity itself in the eyes of the public and stakeholders.[15] 4The POJK appears to bear the regulatory burden that should rightfully fall to the primary legislature to provide a more stable and permanent legal foundation. This situation creates uncertainty for industry players and members, as regulations at the regulatory authority level are more susceptible to administrative and fluctuating changes. Thus, there is a gap between the political will to maintain mutual companys and the seriousness in establishing a legal framework on par with other legal entity forms. This discussion indicates an urgent need to elevate such technical regulations into a standalone law to fully ensure legal certainty.[16]

The context of more specific and structured regulation at the POJK level is fundamentally at odds with the spirit of legal certainty typically provided by the legislature through the legal foundations of other legal entities. Within the Indonesian legal system, provisions regarding the liability of governing bodies and mechanisms for third-party protection should be enshrined at the statutory level to secure stronger enforceability. Reliance on POJK No. 7 of 2023 results in joint business legal entities appearing to be "stepchildren" within the national corporate legal framework. Although this POJK seeks to provide a more organized structure, legally it cannot exceed the authority that should be governed by a parent law regulating legal subjects in general.[17]

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[14] Muhammad Naruddin Subhan, Nana Nawasiah, and Eka Sudarmaji, "Koperasi Indonesia, Apa Kabar?(Tinjauan Terhadap Aset, Volume Usaha Dan Benefit Bagi Anggota)," *ISEI Economic Review* 2, no. 2 (2018): 26–39, http://jurnal.iseibandung.or.id/index.php/ier.

[15] Otoritas Jasa Keuangan, "Peraturan Otoritas Jasa Keuangan (POJK) Nomor 27 Tahun 2024 Tentang Penyelenggaraan Perdagangan Aset Keuangan Digital," n.d.

[16] Linda Gröning et al., "Remodelling Criminal Insanity: Exploring Philosophical, Legal, and Medical Premises of the Medical Model Used in Norwegian Law," *International Journal of Law and Psychiatry* 81 (2022): 101776.

[17] Nugraha, "Kekuatan Hukum Pengaturan Perusahaan Perasuransian Yang Berbentuk Badan Hukum Usaha Bersama."

This creates uncertainty in the enforcement of civil law, particularly when disputes arise between members and the management of a mutual company. Legal certainty cannot be fully achieved if the legal basis governing the existence and governance of an entity lacks the same binding force as other laws. The state should ensure that every legal entity, without exception, stands on a solid legal foundation that is not fragmented. Therefore, the discussion regarding this regulatory hierarchy is a crucial point in critiquing the current direction of corporate law policy in Indonesia. This imbalance must be addressed immediately to prevent overlapping authority or legal vacuums that could harm members' interests in the future.

The loss allocation mechanism stipulated in Article 126(1) and (2) of POJK No. 7 of 2023 reflects a regressive liability pattern that is highly detrimental to members' positions. Deductively, these provisions stipulate that losses from the mutual company are first borne by the enterprise's reserve fund; however, if that fund is insufficient, the burden is fully shifted to the members. This indicates that members—who are, in essence, insurance policyholders—actually bear the highest financial risk for managerial failures that may not have been caused by their own actions. This concept is highly contradictory to the principles of modern insurance, which should provide protection against risk, not impose new financial burdens on policyholders. This provision appears to disregard the fact that members have entrusted the management of their premiums with the expectation of future protection. Imposing losses directly on members creates a very real imbalance in bargaining power within the legal structure of mutual company in Indonesia. Consequently, this provision requires a thorough re-examination as it has the potential to violate consumer rights and the principle of distributive justice in civil law. This analysis confirms that there is a logical flaw in the regulation, which prioritizes the survival of the institution over the protection of its individual members.

The worst-case scenario of implementing this provision is the emergence of extreme legal uncertainty, in which members not only lose their insurance benefits but also have to bear the legal entity's debts or losses. This mechanism places a burden on people who, from the outset, placed their full trust in the promise of professional fund management by the mutual company legal entity. In practice, members often do not receive their premium refunds as they should because the funds have been exhausted to cover the company's operational losses.[18] This phenomenon is starkly different from what is regulated in a limited liability company, where shareholders' liability is limited to the capital they have contributed and does not extend to their personal assets. This legal

[18] Asri, "Doktrin Piercing The Corporate Veil Dalam Pertanggung Jawaban Direksi Perseroan Terbatas."

injustice becomes increasingly evident when one considers that members of a cooperative often lack direct access to effective managerial control yet must bear the consequences of its failures. This ambiguous concept of liability undermines the primary legal objective in Indonesia's rule-of-law framework: the achievement of justice and the public good. The public has become hesitant to participate in mutual company models due to unmeasurable legal risks that tend to be repressive toward members' interests. Therefore, regulatory reform is needed to establish clear limits on the extent to which members can be held liable for losses without sacrificing their fundamental rights as stakeholders. This discussion calls on legislators to immediately formulate a more moderate and humane liability framework for cooperative business models in Indonesia.[19]

Japan serves as an example of a country that has progressively phased out the legal form of cooperative business entities within its insurance industry regime to maintain the stability of the national financial system. Through the enactment of the Insurance Business Act (Hoken Gyoho) in 1995 (which took effect in April 1996), Japanese legislators consciously promoted a process known as demutualization. These legal provisions provided a framework for mutual insurance companies to change their legal status to joint-stock companies in order to improve access to capital markets. The primary reason behind this move by Japanese lawmakers was to address the legal uncertainty arising from the unclear allocation of liability within the mutual business structure. Japan recognized that in a dynamic global economy, the traditional mutualism model often struggled to meet strict solvency standards without the certainty of a defined capital structure. By abolishing the mutual business structure, Japan has succeeded in creating greater transparency in the mechanisms of managerial accountability to shareholders and policyholders. This reform was implemented to prevent systemic failures that could undermine public confidence in the insurance industry as a whole. Through this policy, Japan has demonstrated that modernizing legal structures is an essential step toward providing more effective consumer protection.[20]

The abolition of mutual companys in Japan was also driven by a desire to establish clearer boundaries between the obligations of members as customers and the obligations of the entity as a risk manager. Japanese legislators view the concept of collective ownership in mutuals as often hindering the audit process and strict oversight by

[19] Rizcha Indah Mustamilinda, "Ketidakadilan Hukum Bagi Masyarakat Miskin Dihubungkan Dengan Teori Keadilan Menurut Aristoteles Dan Thomas Aquinas," *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 2, no. 01 (2024).
[20] Sukarno Aburaera, Muhadar, and Maskun, *Filsafat Hukum: Teori Dan Praktik*, *Sustainability (Switzerland)*, vol. 11 (Jakarta: Kencana, 2019).

financial services authorities. By transitioning to a corporate structure, liability mechanisms become more rigid and measurable in accordance with generally accepted international accounting standards. This demutualization process not only saved the industry from bankruptcy but also provided stronger protection guarantees for policyholders who transitioned into shareholders. This offers a valuable lesson for Indonesia: maintaining an outdated legal form without strong operational relevance will only prolong a crisis of confidence. Japan chose to adopt a pragmatic approach by prioritizing legal certainty over the romanticism of traditional legal structures. This step was taken to ensure that every cent of premium paid by the public receives maximum legal protection within a sound corporate structure. The result of this policy is the creation of giant insurance companies that are financially more resilient and legally more accountable. Therefore, Japan's experience can serve as a primary reference in formulating the future direction of mutual business entities in Indonesia, which is currently facing a similar crisis. [21]

In addition to Japan, Australia is another country that has undergone a massive transition away from mutual business entities, particularly through reforms in the Life Insurance Act 1995. Prior to these reforms, many large life insurance companies in Australia operated as mutual organizations owned by their policyholders. However, as the need for capital for expansion and stricter risk oversight increased, the Australian government facilitated a demutualization process that transformed these entities into publicly listed companies. The correlation with the relevance of mutual business entities there is the realization that the mutual structure is no longer capable of competing in terms of cost efficiency and speed of technological adaptation. The existence of mutual businesses was eventually eliminated or significantly reduced because they were considered to create moral hazard, where management lacks sufficient incentives to act efficiently on behalf of members. Australia views the limited liability company structure as providing better checks and balances through market oversight and stronger shareholder rights. Thus, the elimination of this form in Australia is part of a national strategy to strengthen the integrity of the insurance system and customer protection.[22]

The failure of the mutual model in Australia to provide competitive returns for its members became a strong reason for legislators to push for a change in legal structure.

[21] Dea Amanda Putri, Gilang saka Maulana, and Muhammad Choir Rivaldi, "Pendekatan Multidimensional Terhadap Aspek Hukum Dalam Studi Kelayakan Bisnis: Tinjauan Yuridis, Prosedur Perizinan, Pembentukan Dan Legalitas Badan Usaha, Serta Implikasinya Terhadap Keberlanjutan Dan Pertumbuhan Ekonomi Di Indonesia," *Jurnal Ilmiah Nusantara* 2, no. 2 (2025): 557–70.
[22] Khusnul Abidatul Adawiyah, "Perlindungan Hukum Atas Ketidakamanan Data Nasabah Financial Technology Pada Sektor Peer to Peer Lending" (Universitas Islam Negeri Maulana Malik Ibrahim, 2020).

The relevance of mutuals there has faded as the public began to realize that their rights as "owners" in the mutual model are often illusory and difficult to enforce in daily practice.[23] Demutualization provides policyholders with the opportunity to receive compensation in the form of shares or cash, which legally confers a clearer status than that of a mere mutual member. This step also makes it easier for Australian insurance regulators to intervene if there are indications of a company's solvency failure. Systematically, the elimination of mutual enterprises in Australia demonstrates that the global trend toward more formal and measurable corporate structures is inevitable. Indonesia can learn that the relevance of a legal entity must be measured by its ability to provide tangible protection for the public even under the most difficult economic conditions. If a legal form instead becomes a burden on its policyholders, then the lack of such relevance must be addressed through bold legal reform. This analysis reinforces the argument that Indonesia needs to conduct a critical evaluation of the sustainability of AJB Bumiputera within the framework of the cooperative business model, which is currently faltering. Through comparison with Australia, this study provides a strong comparative foundation for recommending strategic steps for the relevant authorities in Indonesia.[24]

Table 1. Comprehensive Comparison: Indonesia, Japan, and Australia

Comparative Criteria	**Indonesia**	**Japan**	**Australia**
Primary Legal Basis	Law No. 40/2014 & OJK Regulation (POJK) No. 7/2023	Insurance Business Act (1995)	Life Insurance Act (1995)
Status of Existence	Retained (AJB Bumiputera)	Abolished/Converted (Demutualization)	Abolished/Converted (Demutualization)
Member Liability	Article 126 of POJK 7/2023: Bearing losses if reserve funds are exhausted.	Limited liability as shareholders (post-demutualization).	Limited liability as shareholders (post-demutualization).

[23] M Lutfi Khakim and Mukhlis Ardiyanto, "Menjaga Kehormatan Sebagai Perlindungan Nasab Perspektif Maqashid Syari'ah," *Nizham: Jurnal Studi Keislaman* 8, no. 01 (2020): 32–41.
[24] Vicky Katiandagho, Diana Darmayanti Putong, and Isye Junita Melo, "Undang--Undang Perlindungan Data Pribadi Memperkuat Undang--Undang Perbankan Dalam Menjaga Rahasia Data Nasabah Dan Untuk Melindungi Data Pribadi Masyarakat Indonesia," *Jurnal Hukum To-Ra: Hukum Untuk Mengatur Dan Melindungi Masyarakat* 9, no. 1 (2023): 106–14.

Regulatory Hierarchy	Predominantly in Technical Regulations (POJK) rather than Organic Laws.	Comprehensively regulated in Primary Laws.	Regulated in Primary Laws and Capital Market Regulations.
Legislative Intent	Historical accommodation and the continuity of a single entity.	Legal certainty, transparency, and access to capital.	Market efficiency, transparency, and customer protection.
Solvency Mechanism	Dependent on member/premium contributions.	Through the strengthening of share capital (Equity Market).	Through the strengthening of share capital and strict audits.
Supervisory Mechanism	Conducted by the Financial Services Authority (OJK) under POJK No. 7/2023; oversight remains administrative and reactive, without specific prudential standards designed for the mutual insurance entity structure.	Conducted by the Financial Services Agency (FSA) with strict prudential standards under the Insurance Business Act, including periodic solvency margin examinations and on-site inspections.	Conducted by the Australian Prudential Regulation Authority (APRA) through risk-based supervision, capital adequacy reporting, and prudential standards under the Life Insurance Act 1995.
Policyholder Protection	Weak: no dedicated policyholder guarantee scheme; protection depends solely on company reserves; AJB Bumiputera's failed-claim crisis reveals systemic	Strong: the Policyholders Protection Corporation of Japan (PPCJ) guarantees claims in case of insurer insolvency; through demutualization, former members	Strong: the Financial Claims Scheme and APRA's resolution framework protect policyholders; demutualization converted policyholder interests into tradeable shares

	vulnerability for policyholders.	obtained legally enforceable shareholder rights.	with verifiable market value.
Corporate Governance Model	Hybrid model with the Board of Directors and Members' Representative Meeting under POJK; no clear separation between ownership and management, leading to internal conflicts and weak accountability.	Joint-stock company model under the Companies Act with the Board of Directors, Audit & Supervisory Board, and GMS; mandatory independent directors and transparent disclosure to shareholders.	Listed company model under the ASX Corporate Governance Principles; an independent board majority, audit committees, and continuous disclosure obligations to shareholders.

2. Relevance of Mutual Legal Entity Form within Structure of Legal Entity Liability in Indonesia

The current legal framework for mutual business entities within the national legal system indicates that such entities are recognized exclusively and limited solely to the strategic insurance industry sector. A review of the applicable regulatory instruments reveals no general provisions for mutual business entities outside this legal regime, indicating a highly specialized regulatory approach by the legislature. Historically, the existence of this legal entity cannot be separated from the fundamental role of Asuransi Jiwa Bersama (AJB) Bumiputera, which has established the foundations of mutualism since the pre-independence era of Indonesia.[25] AJB Bumiputera holds a privileged status regarding this legal entity due to its historical significance, as it was originally conceived as a mutual insurance instrument to protect the economic interests of the people. This historical relevance is the primary reason lawmakers continue to recognize the existence of mutual enterprises, even though Indonesia's corporate legal system tends to prioritize profit-centered corporate structures. This recognition grants AJB Bumiputera a unique legal status as the sole entity operationally implementing mutual insurance principles

[25] Rivaldi Raihan Abiyyu, "Pelaksanaan Kebijakan Penurunan Nilai Manfaat Pada Perusahaan Asuransi Jiwa Bersama Bumiputera 1912 Dalam Penyelesaian Klaim Asuransi" (Universitas Andalas, 2024).

under the supervision of financial services authorities. This sui generis legal status reflects the state's efforts to preserve the legacy of a national financial institution rooted in the principles of mutual aid and collective self-reliance. Therefore, an understanding of mutual enterprises must be situated within a deep historical framework to see how a concept from the past attempts to adapt amidst the current modernization of corporate law.

The special status granted to AJB Bumiputera as the sole holder of the right to the legal form of a mutual company carries highly complex legal implications within the structure of legal entities in Indonesia. This exclusivity signifies that the cooperative form is not an open option for new business entities seeking to enter the insurance industry under the current national legal framework. Deductively, this creates a legal vacuum where the mutualism form is permitted only for entities that existed prior to the enactment of the new organic law.[26] The state appears to grant highly personalized legal protection to AJB Bumiputera to preserve the values of mutualism that form the core of its founding identity. However, this legal policy also raises challenges regarding how oversight and regulatory standards can be applied fairly when compared to other legal entities subject to more general regulations. Historical relevance does provide moral legitimacy, but it does not automatically provide a solution to the need for robust and transparent corporate structures in the global era. In the context of legal master's research, this phenomenon highlights a dualism between the desire to preserve national heritage and the need for more modern legal entity standardization. The balance between historical values and legal certainty is a crucial point determining whether this form of mutual company remains worthy of preservation or requires radical transformation.

The relevance of mutual company legal entities following the enactment of Law No. 40 of 2014 on Insurance has actually given rise to profound legal issues regarding their liability structure. This issue becomes particularly critical when examining how mutual companys must fulfill their obligations to creditors and policyholders during a financial crisis.[27] Systematically, the current insurance legal regime in Indonesia has not established rigid boundaries regarding the extent to which members' personal assets may be liable when the legal entity faces business failure. The fact that ultimate liability in this model falls on the members—who also serve as policyholders—creates a vicious-cycle

[26] Lou Fatahilla and Zainarti Zainarti, "Analisis Swot Strategi Pemasaran Asuransi Jiwa AJB Bumi Putera 1912: Abstrak, Pendahuluan, Metodelogi Penelitian, Hasil Dan Pembahasan, Kesimpulan Dan Daftar Pustaka," *Jurnal Ilmiah Ekonomi Dan Manajemen* 3, no. 2 (2025): 513–18.
[27] RDIP Sari and R A Diah Irianti, "Penyelesaian Klaim Perjanjian Asuransi Secara Ex Gratia Ditinjau Dari Undang-Undang Nomor 40 Tahun 2014 Tentang Perasuransian Dan Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa," *Pamulang Law Review* 2, no. 1 (2019): 47–54.

legal risk for the policyholders themselves. The actual relevance of the legal entity structure of mutual insurance companies is highly questionable, as it appears to shift the burden of risk from the managers to the very parties who should be receiving protection. The trust that policyholders have placed in this entity erodes when they realize that their position is not merely that of a consumer, but also that of the ultimate risk-bearer. This creates a dilemma within the insurance industry, which is fundamentally built on the principle of transferring risk from the policyholder to the insurance company, not the other way around. Therefore, the ambiguity of this liability framework becomes the primary obstacle to achieving fairness for all stakeholders involved in the mutual insurance ecosystem.[28]

An in-depth analysis of the complexities of trust in the insurance industry reveals that policyholders generally expect a clear separation between their premium funds and the company's operational liabilities. However, under the mutual insurance legal framework, the blurring of roles between policyholders and capital owners actually undermines policyholders' financial safeguards against potential insolvency. Comprehensively, this reflects a failure to construct a liability model that is adaptable to the specific characteristics of mutual insurance in Indonesia. The state bears the responsibility to ensure that every recognized legal entity has a mechanism for settling obligations that does not infringe upon the fundamental rights of its members. The disparity in liability levels between mutual enterprises and other conventional legal entities fuels legal uncertainty that can undermine the overall stability of the insurance market.[29] Sociological realities indicate that the majority of policyholders are unaware of the legal consequences of their status as members who share in the company's losses. This necessitates a legal reorientation capable of providing consumer protection without disregarding the underlying principle of mutualism. Without clarity regarding liability, the cooperative business model will merely become a hidden threat to policyholders who expect financial security in the future. This study posits that strengthening liability regulations is the key to restoring the integrity of cooperative businesses within the national legal framework.

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[28] Anggraeni Rosliana Dewi, Potler Gultom, and others, "Hukum Pemberian Ganti Kerugian Terhadap Penumpang Dalam Kecelakaan Pesawat Udara Sipil Indonesia Dan Kewajiban Asuransi Oleh Maskapai Penerbangan Berdasarkan Undang-Undang No. 1 Tahun 2009 Tentang Penerbang," *Iblam Law Review* 4, no. 3 (2024): 80–90.

[29] Radika Azmi Puteri, "Tinjauan Hukum Pelaksanaan Pencairan Klaim Asuransi Jiwa Mitra Proteksi Mandiri Pada AJB Bumiputera 1912 Kantor Cabang Sukaramai Wilayah Pekanbaru" (Universitas Islam Riau, 2022).

Insurance Law, in its normative sense, recognizes the diversity of legal entities; however, its recognition of mutual enterprises is accompanied by very strict temporal limitations. Provisions of Article 6(1) of the Insurance Law clearly stipulate that the only recognized mutual companys are entities that already existed at the time the law was enacted, which implicitly refers to AJB Bumiputera. This restriction creates a legal anomaly where a legal form is recognized but prohibited from being replicated by other insurance businesses in the future. Problems arose when AJB Bumiputera, as the sole representative of this form, experienced an internal crisis that led to a phenomenon of overclaims by its policyholders. The company's collapsing condition revealed the fragility of the mutual company structure in facing economic turmoil and demands for mass withdrawals of funds by members. The failure to manage the mounting claims indicates that the mutual business model in Indonesia lacks sufficient capital buffers to withstand systemic crises. This provision appears to allow an entity with a high-risk structure to continue operating without any obligation to convert to a more stable form, such as a limited liability company. Therefore, the crisis experienced by AJB Bumiputera must be viewed as an emergency signal regarding the need to evaluate the relevance of Article 6(1). Legal recognition of mutual enterprises must not be merely a formality but must be accompanied by a robust accountability system capable of mitigating the risk of collapse.[30]

Phenomenon of overclaims occurring at AJB Bumiputera reveals that the internal mechanisms within the mutual company are unable to quell policyholder panic when financial uncertainty arises. In a rule-of-law state, the absence of tangible solutions for policyholders whose rights are neglected due to the company's deteriorating internal conditions constitutes a failure of legal protection. The limited legal recognition of mutual insurance organizations constitutes a weak point in financial industry oversight due to their nature, which differs significantly from standard corporate structures. Internal issues leading to failed claim payments demonstrate that the principle of solidarity within mutual insurance organizations is often powerless against the harsh realities of market forces. This context is highly detrimental to the broader public who have placed their hopes for life protection and education on these insurance institutions. It must be understood that the existence of legislation should provide a way out for entities facing a crisis, not merely grant them legal recognition. If the law merely acknowledges their

[30] Almas Syifa Norra, Benny Riyanto, and Marjo, "GUGATAN TENTANG PENCABUTAN HAK ASUH ANAK DI PENGADILAN AGAMA SEMARANG (STUDI PUTUSAN NOMOR 2389/Pdt.G/2010/PA.Sm.)," *Diponegoro Law Journal* 6, no. Gugatan, Pencabutan Hak Asuh Anak, Pertimbangan Hakim,Putusan Pengadilan Agama (2017): 1–20.

existence without establishing clear mechanisms for rescue or liquidation, then injustice toward policyholders will persist. A critical evaluation of the legal status of mutual insurance companies is urgently needed to prevent the recurrence of similar crises in the future. This study emphasizes that structural reform is inevitable if the mutual insurance model can no longer fulfill its function as a risk protector for the general public.

Mutual legal entity has factually begun to demonstrate ineffectiveness when confronted with the demands of legal certainty regarding liability toward creditors and policyholders. This uncertainty is rooted in the absence of a strict concept of separation of assets between the legal entity and the members who concurrently serve as capital owners. If we perform a comparison with other legal entity regimes such as limited liability companies, there exists the principle of separate legal personality which provides a protective barrier for the personal assets of the company owners. This separation of assets is the primary key to the relevance of a modern legal entity because it provides clear and measurable limits of liability for all parties. In limited liability companies or established cooperatives, the financial stability of the owners remains maintained because the risk of loss is limited only to the amount of capital contributed to the company. Conversely, in a mutual company, the blurring of liability results in the economic stability of members becoming highly vulnerable because they may be required to collectively bear the losses of the legal entity. This condition causes the mutual company to lose its relevance amidst the demands of a business world that requires transparent accountability and rigid asset protection. Without clear asset separation, the liability of the legal entity toward the business owners becomes highly fluid and difficult to enforce fairly. Therefore, the reconstruction of the principle of liability within mutual company has become an urgent necessity to align with the security standards of other legal entities.[31]

Absence of a robust principle of separation of assets in a mutual venture results in the credibility of this entity in the eyes of third parties becoming very low. Creditors often feel hesitant to provide financial support or enter into large transactions because the execution mechanism against the assets of a mutual legal entity is considered less certain.[32] Deductively, this lack of clarity also impacts the quality of service to policyholders who ought to receive certainty over the funds they have invested. In the

[31] Nanda Sahputra Umara, "Pemisahan Pertanggungjawaban Perampasan Barang Dalam Penguasaan Pihak Ketiga Yang Beritikad Baik Dalam Putusan Tindak Pidana Korupsi," *Jurnal Hukum Novelty* 8, no. 2 (2017): 232–51.
[32] Catur Diah Ayu et al., "Keterkaitan Danantara Dengan Stabilitas Keuangan Makro Di Indonesia: Sebuah Pendekatan Teori Ekonomi Makro," *Indonesian Research Journal on Education* 5, no. 2 (2025): 1026–31.

global corporate law regime, the protection of the personal wealth of managers and owners is the primary attraction that drives economic growth and investment. Mutual ventures in Indonesia, which still rely on traditional liability patterns, appear to lag behind in providing asset protection guarantees for their customers. This triggers a fundamental question regarding the extent to which the state can allow a legal subject to operate without standardized liability benchmarks. This structural weakness must be immediately rectified through legislative intervention capable of presenting more humane and measurable limits of liability. If the principle of separation of assets is not immediately and effectively adopted, then the existence of mutual ventures will merely become a historical burden that disadvantages modern society. Consequently, strengthening the juridical foundation regarding the assets and liabilities of the legal entity is a strategic step that can no longer be delayed. This research concludes that the relevance of a legal entity in the modern era is highly determined by the decisiveness in separating risks between the institution and the individuals within it.

Lack of clarity regarding the position of customers in a mutual venture results in an imbalance in consumer protection as guaranteed by general consumer protection laws. When customers are considered owners, their rights as consumers entitled to compensation automatically become weak because they are deemed to be suing "themselves."[33] Comprehensively, this legal logic is highly detrimental to the lay public who do not possess a deep understanding of the organizational structure of mutualism legal entities.[34] The problem of overclaim liability serves as clear evidence that this fusion of roles is a time bomb that can explode at any moment when the company experiences a liquidity crisis. The state should be present to rectify this ambiguity by providing boundaries stating that owner status shall not eliminate the contractual rights of customers as purchasers of insurance products. The integration between capital components and premiums must be separated accounting-wise and juridically to provide better transparency for the parties. Without a strict separation of roles, public trust in the mutual insurance business model will continue to decline sharply. Improvements to this legal regime demand new thinking that places greater emphasis on protecting the interests of customers as the economically weaker party. Through this legal reconstruction, it is hoped that the mutual venture model can rediscover its relevance without having to sacrifice the certainty of its customers' rights in the future.

[33] Shidarta, *Hak-Hak Konsumen* (Jakarta: Grasindo, 2022).
[34] Yoyo Arifardhani, "Kemandirian Badan Usaha Milik Negara: Persinggungan Antara Hukum Privat Dan Hukum Publik," *Jurnal Hukum Kenotariatan Otentik's* 1, no. 1 (2019): 54–72.

Table 2 Comparison of Legal Entity Concepts in Indonesia

Aspect of Comparison	**Limited Liability Company (PT)**	**Cooperative (Koperasi)**	**Mutual Venture (Usaha Bersama)**
Legal Basis	Law No. 40 of 2007	Law No. 25 of 1992	Law No. 40/2014 & POJK 7/2023
Ownership	Based on Share Ownership	Based on Membership	Based on Policyholders
Primary Objective	Profit-seeking (Profit)	Member Welfare	Mutual Risk Protection
Asset Separation	Very Strict (Limited Liability)	Strict (Limited Liability)	Less Strict (Collective Risk)
Business Capital	Paid-up Capital/Shares	Principal & Mandatory Savings	Premiums Paid by Customers
Decision Maker	GMS (General Meeting of Shareholders)	Member Meeting	Member/Representative Session
Customer Status	External Consumer	Member (Owner and User)	Member (Owner and Customer)
Risk of Loss	Limited to Paid-up Shares	Limited to Savings (Unless Negligent)	Can be Charged to Members

Relevance of the mutual legal entity form currently appears unsustainable when viewed from the lack of clarity in legal liability mechanisms that disadvantage the wider community. Nevertheless, the idea of totally abolishing the existence of mutual ventures has the potential to collide with the constitutional values contained in Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Our Constitution explicitly mandates that the national economy shall be organized as a mutual endeavor based upon the principle of the family system (*asas kekeluargaan*), which is the primary soul of the establishment of mutual ventures. This spirit of kinship should not be eliminated; rather, it must be accommodated through a more modern and equitable reformulation of legal liability. Abolishing mutual ventures would be equivalent to

negating one of the pillars of the people's economy pioneered by the nation's founders since the era of the struggle for independence. Therefore, the challenge for legislators today is to perform a reconstruction of liability without having to directly impose company losses onto the consumers who are the target market. Amendments to the Insurance Law must be directed toward strengthening core capital and supervisory systems so that the risk of loss no longer flows into the personal pockets of policyholders. Thus, the value of kinship is maintained, but within a framework of consumer protection that remains professional and provides legal certainty.[35]

The reconstruction of mutual legal entity liability must be carried out to provide a stronger guarantee of legal certainty for all consumers in the future. If this form is to be maintained as part of the national economic identity, then its governance standards must be elevated to be equivalent to world-class insurance companies. This regulatory expansion step must include a more solid policy guarantee mechanism as well as heavier limits on the liability of management in the event of managerial negligence. Legal certainty will not be achieved as long as customers are still haunted by the uncertainty of their premium fund status when the company is in an emergency condition.[36] The state must play an active role as a mediator ensuring that the principle of mutualism is not used as a shield to evade corporate responsibility toward the public. This reform is expected to create an insurance ecosystem that is healthier, more transparent, and accountable for all levels of Indonesian society. The integration between the spirit of kinship and corporate legal professionalism is the key to the sustainability of mutual ventures amidst global economic competition. Ultimately, consumer protection must be the highest priority in every effort to change national insurance regulations. Through this comprehensive approach, the mutual venture form can become relevant again and a point of pride within Indonesia's equitable economic system.[37]

CONCLUSION

Comparative analysis shows that the regulation of mutual legal entities in Indonesia is an anomaly compared to developed countries such as Japan and Australia, which have modernized through the process of demutualization to increase capital access and transparency. In Indonesia, fundamental regulation is instead centralized in technical

[35] Soedjono Dirdjosisworo, *Hukum Perusahaan Mengenai Bentuk-Bentuk Perusahaan (Badan Usaha) Di Indonesia* (Mandar Maju, 1997).
[36] Raju Moh Hazmi, "Konstruksi Keadilan, Kepastian, Dan Kemanfaatan Hukum Dalam Putusan Mahkamah Agung Nomor 46P/HUM/2018," *Res Judicata* 4, no. 1 (2021): 23–45.
[37] M Irfan Rizqi et al., "Analisis Perekonomian Empat Sektor: Dampak Ekspor Dan Impor Terhadap Pertumbuhan Ekonomi," *Jurnal Ekonomi Bisnis Dan Manajemen* 2, no. 1 (2024): 153–63.

regulations at the level of POJK Number 7 of 2023 and not in organic laws, thereby creating a **legal lacuna** that makes the position of AJB Bumiputera juridically fragile and difficult to compete within global market dynamics. Therefore, international experience proves that the modernization of the legal entity form is an indispensable step to provide more effective and juridically accountable consumer protection.

The relevance of the mutual venture form is currently eroded by a regressive liability structure, wherein Article 126 of POJK 7/2023 imposes losses directly onto policyholders who concurrently serve as members, thereby undermining the basic principle of insurance as a risk protection instrument. To align with the spirit of Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia without sacrificing legal certainty, the government must immediately reconstruct liability through a revision of the Insurance Law so that company losses no longer flow into the personal pockets of customers. Strengthening the juridical foundation and the strict separation of roles between capital owners and insurance consumers are the primary keys to maintaining public trust and ensuring justice within the national economic system.

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