PUBLIC INTEREST THEORY AND MICRO-INSURANCE REGULATION IN NIGERIA: A CRITIQUE

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Abstract

This study offers a critical analysis of the extent to which public interest theory adequately underpins the philosophical rationale for micro-insurance regulation in Nigeria. Although this theory traditionally supports regulation as a mechanism for addressing market inefficiencies and enhancing overall social welfare, its relevance appears limited within the specific context of Nigeria's micro-insurance landscape. The paper contends that, notwithstanding the National Insurance Commission's introduction of the Guidelines for Micro-Insurance Operations in 2018—intended to expand insurance access for small and medium enterprises (SMEs) and low-income populations—the regulatory regime continues to reflect the influence of more powerful interest groups. Using a doctrinal research approach, the analysis reveals that public interest theory does not fully explain the exclusionary tendencies observed in existing regulatory practices. The paper concludes that, in the absence of a more refined philosophical framework, micro-insurance regulation in Nigeria may inadvertently reinforce social inequality and fall short of its intended developmental objectives.

Keywords: **Insurance law, Micro-insurance, Public Interest theory, Regulation, Nigeria.**

1. Introduction

This paper seeks to explore the foundational basis of the public interest theory of regulation and assess the extent to which its core assumptions and propositions can illuminate the regulatory practices and legal principles underpinning Nigeria's current micro-insurance framework.[1] Although the researcher acknowledges the existence of various regulatory theories,[2] this study focuses specifically on public interest theory. This choice is guided by existing literature, which consistently identifies public interest theory as not only the most prominent among regulatory theories[3] but also as the prevailing philosophical foundation for regulating insurance markets,[4] micro-insurance included.

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[1] It must be pointed out at the onset that there are many theories of regulation. For further details, see B. Morgan and K. Yeung, *An Introduction to Law and Regulation*, (Cambridge University Press: New York, 2007); A. Ogus, *Regulation: Legal Forms and Economic Theory*, (Hart Publishing: Oxford, 2004); J.D. Hertog, "Review of Economic Theories of Regulation," (2010) *Utrecht University Economic Paper Series, No. 10 – 18*; M.W. Berlin, "The Law of Insurance Supervision in the Russian Federation: A Study from the Perspective of Economic Theory of Law," (2006) available at <www.insur-info.ru/files/regulation> accessed on 20th March 2025.

[2] Ogus, ibid, esp. Part II.

[3] A. Ogus, 'Regulation Revisited' (2009) 2 *Public Law* 332.

[4] R.W. Klein, 'Insurance Regulation in Transition' (1995) 62 *Journal of Regulation & Insurance* 363 – 404; M.B. Adams & G.D. Tower, 'Theories of Regulation: Some Reflections on the Statutory Supervision of Insurance Companies in Anglo-American Countries' (1994) 19 *The Geneva Papers on Risk and Insurance* 156 – 177; S.L.

Moreover, the growing recognition of micro-insurance as a distinct area of academic inquiry has attracted attention from both legal and non-legal disciplines.[5] However, there remains a notable gap in the literature concerning the philosophical foundations of Nigeria's legal regime for micro-insurance. This study aims to contribute to filling that gap. It is also important to recognize that theoretical frameworks relevant to this discourse often emerge from diverse fields such as law, economics, political science, and sociology.[6] Accordingly, engaging with the literature requires an appreciation of two key conceptual distinctions that help shape regulatory theory.[7] First, some scholars maintain a clear conceptual divide between public and private actors and institutions,[8] while others argue that this boundary is often blurred in both theory and practice.[9] Second, certain regulatory theories emphasize economic goals, factors, and influences as their primary focus.[10] In any case, these theoretical assumptions on regulation, to some extent, provide considerable insight for explaining the underpinnings of the legal framework for insurance regulation in Nigeria. Also, understanding these theoretical assumptions may place reformers and policy makers in a better position to fashion out more efficient legal framework for insurance regulation in Nigeria.

The paper adopts a doctrinal research approach by reviewing and analyzing primary materials and secondary materials that are considered by this researcher as useful for the purpose of this study. The inspiration for this work is informed by the need to have a more focused theoretical approach in understanding and applying the legal regime for micro-insurance regulation in Nigeria. It is anticipated that the findings of this study will be of value to micro-insurance regulators, policy makers engaged in reform initiatives, stakeholders within the micro-insurance market, members of the academic community, as well as the judiciary.

This paper is structured into six main sections. The first section provides the introduction. Section two explores the concepts of micro-insurance and regulation, establishing a conceptual foundation for the theoretical discussion. Section three delves into the key assumptions underpinning the public interest theory of regulation. In section four, the relevance and application of this theory to the regulation of micro-insurance in Nigeria are critically examined. Section five addresses the limitations inherent in applying public interest theory within the context of micro-insurance regulation. The final section presents the study's conclusion along with recommendations.

2. Conceptualising Micro-insurance and Regulation

The concepts of micro-insurance and regulation form the core of this study. Accordingly, this section provides a brief examination of both concepts, with the aim of establishing a

Kimball, 'The Purpose of Insurance Regulation: A Preliminary Inquiry in the Theory of Insurance Law' (1960-61) 45 *Minn. L. Rev*., 506.

[5] C. Churchill (ed.), *Protecting the Poor – A Micro-insurance Compendium* (Geneva: ILO Press, 2006); C. Churchill & M. Matul (eds.), *Protecting the Poor – A Micro-insurance Compendium, Volume II* (Geneva: ILO Press, 2012); S.V. Akaayar, 'In Quest for Microinsurance in Nigeria: Tracking some Legal Challenges and Potentials for Effective Regulation' in: A. Ibidapo-Obe & B.A. Oni (eds.), *Trajectory of Nigerian Law* (Faculty of Law: University of Lagos, 2016) chap. 24.

[6] Klein (n 4); Adams & Tower (n 4); Kimball (n 4); S. Tombs, "Understanding Regulation?" (2002) vol.11 (1), *Soc. & L. St*., p.114. See also, J. Braithwaite, *Regulation, Crime, Freedom*, (Ashgate: Aldershot, 2000) pp. xix & 360; M. Clarke, Regulation. The Social Control of Business between Law and Politics, (Macmillan: London, 2000), pp. vi & 249.

[7] ibid.

[8] ibid.

[9] Morgan and Yeung (n 1) at 16.

[10] Ogus (n 1).

foundational understanding necessary for engaging with the theoretical assumptions underlying the public interest theory of regulation.

2.1. Micro-insurance

There is generally no universally accepted or consistent definition of the term 'micro-insurance.'[11] However, as the field continues to evolve, so too does its conceptual understanding. From an economic standpoint, for example, Brown defines micro-insurance as a financial service that employs risk pooling to offer compensation to low-income individuals or communities affected by specific risks or events.[12] Commercial insurers, on the other hand, often regard micro-insurance as a strategic means of accessing large, underserved segments of the market.[13] Development agencies such as the World Bank and the United Nations typically approach micro-insurance through the lens of poverty alleviation,[14] viewing it as a viable instrument for accelerating progress in global development efforts. Likewise, some financial analysts conceptualize micro-insurance in terms of the "bottom of the pyramid" market segment.[15]

The International Association of Insurance Supervisors (IAIS) offers a regulatory-oriented definition, describing micro-insurance as insurance accessible to low-income households, delivered by a range of providers, but administered according to generally accepted insurance practices, including adherence to the Insurance Core Principles (ICPs).[16] Despite the variety of perspectives, one of the most widely cited definitions, particularly for regulatory purposes, is that of the Consultative Group to Assist the Poor (CGAP), articulated in 2003.[17] According to CGAP, micro-insurance involves "the protection of low-income people against specific perils in exchange for regular premium payments proportionate to the likelihood and cost of the risk involved."[18]

This CGAP definition was formally adopted by Nigeria's National Insurance Commission (NAICOM) in its 2013 Guidelines for Micro-Insurance Operations.[19] Similarly, Churchill, in the first volume of the Micro-insurance Compendium (2006),[20] endorsed this definition but emphasized that the only distinction between micro-insurance and conventional insurance lies in the target demographic—namely, low-income individuals. In 2007, both IAIS and CGAP further refined the concept by asserting that micro-insurance is not limited to a specific product line or provider type but is defined by the demographic it serves: low-income populations.[21]

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[11] Akaayar (n 5), at p.456.
[12] W. Brown, 'Microinsurance: The Risks, Perils and Opportunities' (2001) *Small Ent. Dev. J.* 13.
[13] M. Coydon & V. Molitor, 'Commercial Insurers in Micro-insurance' (2011), No. 001*, Micro-insurance Network* 11.
[14] These conceptions are reproduced in M. Maleika & A.T. Kuriakose, 'Micro-insurance: Extending Pro-poor Risk Management through the Social Fund Problem' (2008) vol. 5, No.1*, The World Bank*, at p.2.
[15] These are the largest but poorest socio-economic group at the bottom of the world economic pyramid. See C.K. Prahalad, *The Fortune at the Bottom of the Pyramid* (Whartson Publishing: New Delhi, 2005), p.4.; A.K. Jaiswal, 'Fortune at the Bottom of the Pyramid: An Alternative Perspective' (2008) *MIT Press Journal* p.31.
[16] IAIS, 'Application Paper on Regulation and Supervision Supporting Inclusive Insurance Market' (2012) *IAIS Publications Paper* p.11.
[17] CGAP, 'Preliminary Donor Guidelines for Supporting Microinsurance' (2003) *CGAP Working Group on Microinsurance*, at p.29.
[18] ibid.
[19] The National Insurance Commission (NAICOM) Guidelines for Micro-insurance Operation in Nigeria 2013.
[20] Churchill (n 5).
[21] IAIS & CGAP, 'Issues in Regulation and Supervision of Microinsuranc e' (2007) *IAIS Issues Papers*, p.17.

A unifying thread running through these various interpretations is the understanding of micro-insurance as a form of insurance tailored specifically for economically disadvantaged or low-income groups.[22] A key regulatory challenge that arises from this understanding is determining the threshold of poverty or income level that qualifies an individual or group for coverage under micro-insurance schemes.[23] This is largely because, at the moment, there are no legal yardsticks for the country. This is further compounded as the goalpost seems to continue to be shifted. Thus, initially those living on less than $1 per day were defined as living in "extreme poverty" and those on less than $2 per day as being in "moderate poverty."[24] Those serving the poor had to adjust their approach as well: from the "poorest" to the "poor", to "insurable poor," and lately, "working poor."[25]

Given the foregoing limitations, Churchill and McCord aptly point out that the early conceptualizations of micro-insurance were devoid of regulatory clarity.[26] They observed that the initial definition adopted a target group approach by identifying low-income individuals as the primary beneficiaries. However, this definition fell short in offering practical criteria or measurable indicators to assess whether this demographic was indeed being reached. As a result, it proved inadequate as a functional tool for both insurers and regulators.[27] For instance, it will be difficult for the insurance regulator to monitor compliance with micro-insurance objectives. Similarly, insurance companies with micro-insurance department could find difficulties in delimiting the boundaries where the department starts and stops.[28]

Consequently, Churchill and McCord suggest that conceptualisation of micro-insurance for the purpose of regulation should be 'operational.' That is, it is either as:[29] target group definition;[30] product definition;[31] provider definition;[32] and distribution channels.[33] However, the 'operational approach' of conceiving micro-insurance is not without its own limitations as cogently demonstrated by the extant literature.[34] In the light of these limitations, a harmonised approach that takes into account the target group, product characteristics, providers and appropriate distributional mechanism may be preferable.[35] Moreover, this mixed approach seems to be gaining international acceptance in micro-insurance regulation. For instance, IAIS acknowledged that the operational approach to conceptualising micro-insurance for the purpose of regulation is useful or necessary when seeking to enhance inclusive insurance market regulation.[36]

It is submitted that, the foregoing studies on the conceptualisation of micro-insurance provide positive insights on the evolving nature of the definition of micro-insurance for purposes of

[22] Churchill (n 5) 12.
[23] ibid.
[24] L. Chassin (ed.), *Microinsurance Network: The Memory Book* (Microinsurance Network: 2012)12.
[25] *Ibid.*
[26] C. Churchill & M.J. McCord, 'Current Trends in Microinsurance' in: Churchill & Matul, supra, (n 5).
[27] ibid.
[28] ibid., at p.9.
[29] ibid., at pp.9 - 10.
[30] Indicating micro-insurance was for low-income people.
[31] Simply defining micro-insurance on the basis of low premium and benefit caps.
[32] This is based on the type of organisation that can provide micro-insurance products.
[33] This definition is based on the type of intermediary involve.
[34] For instance, the target-based approach is often unrealistic, as it assumes that insurers are capable of accurately assessing whether prospective policyholders are sufficiently poor to qualify for micro-insurance. For other details see Churchill & McCord (n 26) 9-10.
[35] ibid.
[36] IAIS (n 16) 31.

regulation. It has considerable influence on the regulatory reform regarding what amounts to micro-insurance in Nigeria. For instance, it appears that the NAICOM's definition as contained in the initial Micro-insurance Guidelines 2013 has been altered by the subsequent Guidelines for Micro-insurance Operation in Nigeria 2018. In order words, the initial conception has since been abandoned for an operational or mixed approach.[37] Thus, in 2018, the NAICOM reformed the GMON 2013 by the new Guidelines for Micro-insurance Operation in Nigeria 2018. Accordingly, section 1.2 of the Guideline 2018 defines the concept of micro-insurance as:

> …insurance developed for low-income population, low valued policies, micro and small scale enterprises, provided by licensed institutions, run in accordance with generally accepted insurance principles, and funded by premiums.

Thus, while it may be practically impossible to legally conceptualize micro-insurance in a manner that is universally acceptable, the NAICOM Micro-insurance Guidelines 2018 represents that goalpost for delineating the regulatory boundaries of both mainstream insurance and micro-insurance in Nigeria. It was also provide guide in analysing the theoretical underpinning of the legal framework for micro-insurance regulation in Nigeria.

2.2 Regulation

The concept of regulation carries varied interpretations across legal, political, and economic discourse.[38] Scholars have examined and classified these definitions in attempts to render the term more analytically coherent.[39] While some researchers strive to systematize the concept for analytical purposes, others refrain from offering a precise definition altogether.[40] A comprehensive exploration of these divergent perspectives lies beyond the scope of this work.[41]

For the purposes of this study, regulation is understood as the use of legal mechanisms to advance socio-economic policy goals. Within the insurance sector, this implies that both insurers and policyholders may be legally obligated to adhere to specific conduct, with non-compliance attracting prescribed penalties.[42] Such obligations might include adherence to industry standards, provision of certain types of insurance products, application of specific operational procedures, or compliance with mandated minimum commissions. Sanctions for non-compliance may range from monetary fines and custodial sentences to orders compelling settlement, injunctions preventing particular actions, forced divestitures, or even the closure of business operations. [43]

It is crucial to emphasize that regulation must be driven by legitimate objectives; regulation pursued merely for its own sake lacks merit.[44] Without a sound justification, regulatory intervention risks producing inefficiencies and infringing upon individual or corporate freedoms.[45] Therefore, regulation becomes justifiable and indeed necessary when it delivers

[37] Churchill & McCord (n 26) 10.
[38] Ogus (n 1).
[39] Hertog (n 1) 3.
[40] P.L. Joskow and R.C. Noll, 'Regulation in Theory and Practice: An Overview', in F. Gary (ed.), Studies in Public Regulation, (The MIT Press: Cambridge, 1981) 2.
[41] Ogus (n 1).
[42] Hertog (n 1).
[43] ibid.
[44] ibid.
[45] R. A. Epstein, 'Exit Rights and Insurance Regulation: From Federalism to Takings' (1999) 7 *GEO. MASON L. REV*. 293, 293–95.

meaningful benefits to society at large.[46] In line with this reasoning, the philosophical foundation of regulation can be situated within the framework of public interest regulation, a concept encapsulated by Stephen Croley's formulation as follows:

> Regulation that improves social welfare . . .delivers no rents, or, if it does, ensures that the gains to those who benefit from the regulatory decision outweigh any losses to the rest of society.[47]

Nevertheless, public interest regulation is often juxtaposed with special interest regulation, which, as Mancur Olson describes, results in the allocation of regulatory benefits, commonly referred to as "regulatory rents," to select groups, often to the broader disadvantage of society.[48] This contrast can be framed in terms of the beneficiaries and those adversely affected by regulatory measures: typically, small, organized interest groups versus larger, more dispersed populations.[49] At its core, the purpose of public interest regulation is to serve the wider public, even though certain frameworks may allow for mutual benefits to both small and large groups.[50]

Applying this perspective to the insurance sector, Olson identifies insurance firms as relatively small entities with concentrated interests, while consumers constitute a larger group with more diffuse and less organized interests.[51] Thus, regulation aimed at protecting consumers within the insurance industry is properly classified as public interest regulation, designed to promote broader societal welfare. Although the effectiveness of specific regulatory measures in advancing consumer interests remains open to debate, such evaluations are most effectively made on a case-by-case basis.[52] Regardless, the central aim remains the protection of public welfare, whether that entails safeguarding the interests of insurance companies or those of policyholders.

In alignment with the views of Olson[53] and Randall,[54] Fola articulates three fundamental objectives underlying governmental intervention in the regulation of the insurance industry.[55]

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[46] Harvard, 'Notes: Public-Private Partnership & Insurance Regulation' (2008) 121 *Harvard L. Rev.* 1367.
[47] S. P. Croley, 'Regulation and Public Interests' (2008), vol. 10, *Flo. ST. U. L. Rev.*, 67.
[48] M. Olson, *The logic of Collective Action,* (Harvard University Press: Cambridge, 1971) 1367.
[49] ibid.
[50] S. P. Croley, "Public Interested Regulation", (2000) 28 *FLA. ST. U. L. REV*. p.7, at 8. "Public interest" regulation is used in contradistinction to "special interest" regulation. The former refers to regulatory actions that promote broad, diffuse interests, while the latter describes the allocation of regulatory benefits, or rents, to narrow, concentrated groups. Public interest regulation represents a form of 'benign' regulation that stands in contrast to the 'self-serving' or 'distortive' regulation typically feared by interest group theorists. It requires no further elaboration beyond its core aim: to vindicate the preferences of the broader public without conferring undue advantage or regulatory rents on any specific group.
[51] In fact, Professor Mancur Olson identifies consumers as the quintessential broad group with diffuse interests that have difficulty organising, especially as compared with organised economic interests. See Olson (n 48) 143.
[52] The civic republican tradition posits that public interest may be advanced in public law through processes of collective deliberation and reasoned discourse. See C. R. Sunstein, 'Interest Groups in American Public Law' (1995) 38 *Stan. L. Rev*., P.29, at 45–48; F. Michelman, 'Law's Republic' (1988) vol. 97, *Yale L.J.* 1493, 1510–13. The administrative state, in turn, could be seen as the institution capable of realising this deliberative goal. See R. B. Reich, "Public Administration and Public Deliberation: An Interpretive Essay", (1985) 94 *Yale L.J*. 1617, 1631–41.
[53] Olson (n 48).
[54] S. Randall, 'Insurance Regulation in the United States: Regulatory Federalism and the National Association of Insurance Commissioners' (1999) 26 (3) *Flo. ST. U. L. Rev.* 625.
[55] D. Fola, 'Micro-insurance as Bedrock for Social Economic Development in West Africa' (a paper presented at WAICA Educational Conference, held in Lagos, from 10 – 11 November, 2008) 4.

The first is consumer protection, which involves maintaining insurer solvency, ensuring fair pricing, and guaranteeing the availability of coverage.[56] The second objective pertains to standardizing industry practices through the regulation of market entry, oversight of operational conduct, and enforcement of ethical business behavior.[57] The third objective is to foster a stable financial system[58] while encouraging healthy competition, promoting transparency, and ensuring the free flow of information within the insurance market.

Furthermore, Agomo describes the objectives of insurance regulations in the following words:

> From the nature of the business [insurance], it is trite fact that confidence and trust are needed for it to function effectively. Ability to manage the funds is a sine qua non attribute of any insurer worth its sale. Therefore, only the right caliber of insurers need be attracted into the market at all times. Once in, there must be effective supervision to ensure maintenance of standards across the board. On the other hand, atmosphere must be right for investments. Conditions must not be too hash or too liberal. They must be just right to achieve a balance of interests that may otherwise conflict.[59]

From the foregoing analysis, the following are considered in this paper as the objectives of insurance regulation; these include consumer protection; entrenching transparency and disclosure; promoting trust and confidence and ensuring market efficiency.

3. Public Interest Theory of Regulation

The Public Interest Theory of Regulation (PITR) remains one of the most widely recognized and influential frameworks in the discourse on regulatory theory.[60] As Hantke-Domas observes, the notion of 'public interest' has deep historical roots, tracing back to the very foundations of political and economic thought surrounding government intervention.[61] The theory is grounded in the belief that regulation is instituted primarily to protect and promote the welfare of the general public, particularly in instances where market failures or imbalances threaten societal well-being. Pale and Maxwell also observed that:

> Some sort of equivalent to the notion of the "public interest" is as old as political philosophy itself. For example, Aristotle referred to the idea of the "common interest"; Aquinas to the "common good"; Locke to the "public good of the people"; Hume to the "public good";

[56] ibid.
[57] ibid., 6.
[58] ibid..
[59] C.K. Agomo, *Modern Nigeria Law of Insurance*, 2nd Ed., (Concept Publication: Lagos, 2013) 227.
[60] V.S. Akaayar, 'Reconstruction the Current Legal Regime for Building Insurance in Nigeria: A Public Interest Perspectives' (2015) vol.4, *University of Benin Journal of Private and Property Law* 1 at 21.
[61]M. Hantke-Domas, 'The Public Interest Theory of Regulation: Non-Existence or Mis Representation?' (2003), vol. 15, *European Journal of Law and Economics* 166; V. Held, *The Public Interest and Individual Interest*, (Basic Books: New York, 1970) 3.

> Madison to the "public", "common" or "general good";
> Rousseau to the "common good.[62]

The Public Interest Theory of Regulation (PITR) is arguably the most prominent among regulatory theories. As Hantke-Domas notes, the notion of the "public interest" is deeply rooted in the historical evolution of political and economic thought surrounding state intervention.

From a legal and regulatory standpoint, the intellectual origins of PITR are often traced back to Lord Matthew Hale's 1718 work, *De Portibus Maris*.[63] In this seminal piece, Hale proposed that once a business was licensed by the Crown, it became infused with a public interest, thereby shifting its legal status from *juris privati*[64] (private law) to *juris publici*[65](public law). For example, in the case of a licensed wharf, Lord Hale contended that the fees charged to the public for services such as cranage or wharfage must be "reasonable" and "moderate."[66] His argument stemmed from the monopolistic position such facilities enjoyed by virtue of royal license. In essence, the mere fact of being licensed or chartered by the King introduced a public dimension to what was previously a private enterprise.[67] Although Lord Hale's focus was on port infrastructure, his reasoning has been widely accepted as applicable to all forms of state-licensed economic activities in the modern regulatory landscape.[68]

Among modern literature on PITR,[69] Pigou significantly argues that regulation serves to correct "collective action problems" and address market failures.[70] Collective action problems arise when individuals are reluctant to contribute to a shared benefit unless assured that others will also contribute.[71] Market failure, on the other hand, occurs when the free market fails to allocate resources efficiently, often due to information asymmetries, negative externalities, or anti-competitive practices.[72] Pigou approached PITR from two interrelated dimensions: social and economic.[73] The social, which views regulation as necessary for promoting the collective welfare, and the economic, which regards it as a corrective mechanism for market failures.[74]

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[62] L.A. Pal and J. Maxwell, 'Assessing the Public Interest in the 21st Century: A Framework' (2004), a study prepared for the External Advisory Committee on Smart Regulation of the Canadian Policy Research Network Inc., p.3.

[63] M. Hale, M. (Sir), 'A Treatise, in Three Parts. Pars Prima, De jure maris et brchiorum ejusdem. Pars Secunda, De portibus maris. Pars Tertia, Concerning the Custom of goods imported and exported. Considerations touching the amendment or alteration of laws. A Discourse Concerning the Court of King's Bench and Common Pleas' in: A. Hargrave, *Collection of Tracts*, (1787) vol. 1. Note that, the work of Lord Hale was fundamental in two US decisions, *Allnutt v Inglis* (1810) 12 East 530, and *Munn v Illinois* (1876) 94 U.S. 113.

[64] *Juris privati* literally means, "Of private right; relating to private property or private law." See B.A. Garner, ed., *Black's Law Dictionary*, 8th ed., (Thomson and West: Texas, 2004) 867.

[65] *Juris publici* literally means, 'Of public right; relating to common or public use, or public law.' Garner. *ibid*.

[66] ibid.

[67] ibid.

[68] Pal and Maxwell (n 62).

[69] Modern literature for the purpose of this work implies writings from 1950 to the time of writing this study.

[70] A.C. Pigou, *The Economics of Welfare*, 4th ed., (Macmillan and Co: London, 1960), p. 336-380; H.N. Butler and J.R. Macey, 'Health Care Reform: Perspective from the Economic Theory of Regulation and the Economic Theory of Statutory Interpretation' (1994) vol. 79, *Cornell L.Rev*., p.1434 AT1436.

[71] Morgan and Yeung (n 1) 30.

[72] Ogus (n 1) at 29; C. Biener, et al, 'Regulation in Micro-insurance Market: Principles, Practice, and Directions for Future Development' (2013), no. 127, *Working Papers on Risk Management and Insurance*, Institute of Insurance Economics, University of St. Gallen, Switzerland, p.1, at

[73] Pigou *(*n 70).

[74] ibid.

In a similar vein, Anthony Ogus viewed regulation as a legitimate exercise of collective power by the state to safeguard the public from market-related harms such as monopolistic conduct, harmful competition, abuse of economic power, or negative externalities.[75] He emphasized that the rationale for most regulatory frameworks rests on the need to remedy market failures and protect societal interests.[76] However, Ogus also cautioned against the rigidity of defining a universal list of public interest goals, as the concept of the "public interest" is context-specific and varies according to time, place and other societal values held by a particular society.[77] Supporting this view, Wilson described government regulation as a redistributive tool aimed at correcting misallocations arising from market dysfunctions or failures.[78]

Early proponents of PITR largely assumed that market failure was a sufficient justification for government intervention through instruments of law,[79] and they operated under the assumption that regulatory action incurred negligible information and transaction costs.[80] These assumptions, however, came under scrutiny[81] in later theoretical developments, leading to the emergence of what Hantke-Domas[82] and Hertog[83] describe as the "New Haven" or "Progressive School" of Law and Economics.[84]

This progressive strand of PITR recognizes the costs associated with regulatory interventions and does not presume regulatory infallibility.[85] Rather, it contends that, among available institutional options, government regulation often offers the most cost-effective response to market failures.[86] For example, Victor Goldberg, applying this view to public utilities, argued that the transaction costs associated with regulating pricing and ensuring fair returns were lower than those incurred under unregulated market competition.[87] Similarly, Hertog postulated that social regulation may be more efficient in addressing environmental degradation or workplace safety issues than relying solely on private bargaining mechanisms between affected parties.[88] These progressive theorists thus expanded the scope of PITR beyond the mere identification of market failures. They argued that regulation not only addresses these failures but also tends to do so at a lower social cost than other institutional alternatives. Their model assumes that policymakers act in the public interest, that the political process is efficient, and that relevant information on the costs and benefits of regulation is readily available and widely distributed.[89]

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[75] Ogus (n 1), pp. 29 – 44.
[76] ibid.
[77] ibid., at p. 30.
[78] J.Q. Wilson, 'The Politics of Regulation', in: J.W. McKie (ed.), *Social Responsibility and the Business Predicament*, (The Brookings Institution: Washington, 1974), p. 138.
[79] J.W. Baumol, *Welfare Economics and the Theory of the State*, (Harvard Uni. Press: Massachusetts, 1952).
[80] Hertog (n 1) 5.
[81] H. Demsetz, 'Why Regulate Utilities?' (1968) *Journal of Law and Economics*, 55-65 (hereafter referred 'why regulate'); H. Demsetz, 'Information and Efficiency: Another Viewpoint' (1968) vol.12 *Journal of Law and Economics*, 1-22 (hereafter 'information and efficiency).
[82] Hantke-Domas (n 61).
[83] A. Ogus, 'W(h)ither the economic theory of regulation? What economic theory of regulation' in: J. Jordana, J., and D. Levi-Faur, *The Politics of Regulation*, (Edward Elgar: Cheltenham, UK, 2004) pp. 31-44; R.G. Noll, 'The Political Foundations of Regulatory Policy' (1983) vol. 139 *Journal of Institutional and Theoretical Economics*, 377-404.
[84] In any case 'progressive school' shall be the phase adopted in this present work.
[85] D.L. Whynes and A.R. Bowles, *The Economic Theory of the State*, (Martin Robinson: Oxford, 1981), p.7.
[86] ibid.
[87] V.P. Goldberg, 'Protecting the). Right to be served by Public Utilities' (1979) *Research in L.& Eco.*145-156.
[88] Hertog (n 1
[89] Noll (n 81).

Synthesizing these insights, four foundational principles can be distilled from the PITR framework: (1) government-licensed enterprises transition from private to public legal status; (2) the existence of market failure warrants intervention; (3) the pursuit of collective welfare is a core regulatory objective; and (4) a benevolent and rational regulator is assumed. Narrowing these further, PITR rests on two overarching themes: the correction of market inefficiencies and the enhancement of collective social welfare (collective good).[90]

This framework operates under the presumption that regulators possess adequate information to identify and implement optimal market solutions. The key market imperfections PITR seeks to address include barriers to market entry and exit, information asymmetries, negative externalities, particularly those affecting third parties, and unaccounted costs or benefits in transactional exchanges.[91] To mitigate these distortions, regulators may enforce controls on aspects such as market access, pricing, product standards, production methods, service obligations, and other private sector activities.

As will be demonstrated in subsequent sections of this paper, the assumptions underlying PITR carry significant implications for understanding the contemporary legal framework governing the insurance industry in general, and the micro-insurance sector in particular.

4. Implications of Public Interest Theory to Micro-insurance Regulation

The foremost implication of the PITR to micro-insurance regulation is that the act of licensing the 'business of micro-insurance' would vest its operations with public interest. No doubt, even under the mainstream insurance, from which micro-insurance evolves, scholars have for long perceived its legal framework to be vested with public interest.[92] As Adam and Tower have aptly noted, the regulation of insurance institutions has historically been justified as a means of safeguarding the public interest.[93] This perspective is encapsulated in the longstanding doctrine of "freedom with publicity."[94] Within Anglo-Saxon legal traditions,[95] for instance, Fisher and Young argue that this doctrine reflects the belief that regulatory oversight should aim to facilitate public disclosure of insurer-related information where such transparency serves the public good, while simultaneously avoiding interference with the economic utility of these entities.[96] In this context, the primary justification for a legal regime governing micro-insurance is to ensure robust protection of public interest.

In Nigeria, the regulatory framework for micro-insurance is shaped by a hybrid of instruments, most notably the *NAICOM Microinsurance Guidelines* issued in 2018, as well as broader

[90] The concept of 'market efficiency' remains a subject of considerable debate, largely due to divergent interpretations of what the term actually entails. However, for the purposes of this study, market efficiency is understood to mean that asset prices reflect all available information, such that buying or selling in the market should, on average, yield no more than a fair return (net of transaction costs) relative to the risk involved. For details see D.C. Langevoort, 'Theories, Assumptions and Security Regulation: Market Efficiency Revisited' (1992) vol.140, University of Pennsylvania Law Review 851.

[91] D.F. Spulber, *Regulation and Markets* (MIT Press: Cambridge, 1989) 9.

[92] Klien (n 4).

[93] Adams and Tower (n 4) 165.

[94] The phrase "freedom with publicity" has faced criticism for its lack of conceptual clarity. As a result, some scholars now argue that the operative regulatory principle has shifted to "freedom with responsibility," implying that government intervention in the insurance industry is justified only when insurers are perceived to be acting in a socially irresponsible manner. For detailed analysis, see Adams and Tower *ibid* at p.166.

[95] For instance, Nigeria, South Africa, and India.

[96] H.F. Fisher & J. Young, *The Actuarial of Life Insurance: A Textbook for Actuarial Students*, (Cambridge University Press: London, 1965) 5.

statutes governing the conventional insurance sector. These include the *Insurance Act* 2003, the *NAICOM Act* 1997, the *Nigerian Council of Registered Insurance Brokers Act* 2003, among other related enactments. As the analysis below will illustrate, both the regulatory framework for conventional insurance and that for micro-insurance are underpinned by statutory provisions that reflect a deliberate focus on enhancing public welfare through effective market oversight.

For instance, within the conventional insurance domain, Section 4(1) of the *Insurance Act* 2003 mandates that: "No insurer shall commence insurance business in Nigeria unless the insurer is registered by the Commission under this Act." In a parallel provision, Section 1 of the *NAICOM* Micro-insurance Guidelines 2018 stipulates: "No person shall commence or carry on any class of micro-insurance business without being registered or authorized by the Commission." Likewise, Section 3.1 of the same Guideline provides that:

> Any person or persons who wish to operate as a Microinsurer must meet the registration requirements in appendix III. Any applicant who wishes to operate as a Microinsurer must be a Limited Liability Company duly registered by Corporate Affairs Commission, Nigeria.

Thus, in line with Lord Hales' insights,[97] once government licenses an insurance company the company ceases to be 'only of private interest' and becomes affected with 'public interest.' Accordingly, the premium charged on the products and services, as well as other conditions must be fair and reasonable.

It seems that, in Nigeria, the requirement of public interest is so fundamental that, its absence may empower the insurance regulator to refuse registration or deregistration of a particular insurer as the case may be. Section 4(2) of the Insurance Act 2003 provides:

> The Commission shall not grant approval if it is satisfied that it is not in the *public interest* or in the *interest of policy holders* or persons who may become policy-holders, for it to be granted.[98]

Even though there is no equivalent of the above quoted section 4(2) in the Microinsurance Guidelines 2018, it is not unlikely that the theoretical assumptions of these statutory requirements would be extended to the legal framework for micro-insurance regulation. This is largely because section 1.2.i. of the Microinsurance Guidelines 2018 stated that micro-insurance business shall be "… run in accordance with generally accepted insurance principles." Moreover, one of the core statutory responsibilities of the National Insurance Commission (NAICOM) is the enforcement of the Insurance Act 2003.[99] It follows, therefore, that NAICOM is not expected to approve or license any micro-insurance operation that does not align with the broader public interest. This is particularly pertinent in the context of safeguarding micro-insurance clients, the majority of whom often face significant disadvantages due to limited literacy, especially in understanding insurance terminology and the technical workings of modern insurance contracts.

[97] Hale (Sir) (n 63) 14.
[98] Emphasis added.
[99] Insurance Act 2003, s.101.

Additionally, the public interest rationale can also be extended to explain the statutory provisions relating to insurer solvency.[100] Specifically, within the framework of micro-insurance regulation, it is arguable that proprietors of micro-insurance entities may have reduced incentives to uphold robust solvency standards or ensure financial soundness, particularly when their personal assets are not exposed to the risks of business failure. Furthermore, such providers might overlook the potential liabilities to policyholders that could arise in the event of insolvency.[101] It is also important to recognize that for the average micro-insurance consumer, it is both difficult and costly to effectively evaluate the financial soundness of a provider, especially in relation to pricing and service quality. This asymmetry of information can result in the inadequate provision of insurance services, thereby increasing the likelihood of market failure. Thus, this creates the need for a legal regime for solvency of the micro-insurance providers. Taking a cue from the legal framework for the mainstream insurance, for instance, the above may be explained as the basis for the requirement of the insurer's authorised minimum capital under Insurance Act 2003[102] and the subsequent NAICOM guidelines.[103] In particular, Section 4 of the Micro-insurance Guidelines 2018 provide the mandatory solvency funds and standards that shall be kept and maintained by a micro-insurance company carrying business in Nigeria. By so providing, the financial strength of the micro-insurer and the prospect of it meeting the future claims could be better enhanced.

Furthermore, the foundational assumptions of the Public Interest Theory of Regulation (PITR) suggest that the regulatory authority over micro-insurance is not confined merely to setting operational standards for the industry. Rather, it extends to the active protection of small and medium-sized enterprises (SMEs) and low-income clients, who constitute the primary demographic for micro-insurance products. This interpretation aligns with the broader legal framework governing conventional insurance.

In this regard, Section 35(1) of the *National Insurance Commission (NAICOM) Act* 1997 provides:

> The Commission may, at any time with the approval of the Board, order a special inspection or investigation of the books and affairs of an insurance institution where he suspects, or is satisfied that –
>
> (a) It is in the *public interest* so to do;
>
> (b) The insurance institution has been carrying on business in a manner detrimental to the *interest of its policy holders*; or

[100] P. Munch and D. Smallwood, 'Solvency Regulation in the Property-Liability Insurance Industry: Empirical Evidence' (1980) vol. 24, *Bell J. Eco*. 261 – 282.
[101] ibid.
[102] Insurance Act 2003, s.9.
[103] For instance, the 2005 NAICOM directives on insurance recapitalization required a minimum of N2billion for life insurers and N3 billion for non-life insurers. See H.O. Yusuf and T. Yusuf, 'Nigerian Insurance Companies in an Age of Regulation' (a study presented at the 3rd ECPR Regulatory Governenece Standig Group Conference on 'Regulation in an Age of Crisis,' at University College, Dublin, 18 June, 2010) 9.

> (c) The insurance institution does not have sufficient assets to cover its liabilities to the *insuring public* and it is necessary to do so…[104]

Furthermore, the provisions of Section 35(1) of the NAICOM Act 1997 are equally applicable to micro-insurance, given that the Micro-insurance Guidelines 2018 were issued pursuant to the powers vested in NAICOM by the said Act. Consequently, the public interest considerations that inform NAICOM's general regulatory mandate would also underpin its implementation and enforcement of the Micro-insurance Guidelines. Thus, the protection of vulnerable policyholders remains central to the Commission's regulatory approach across both conventional and micro-insurance sectors.

In addition, particularly from economic perspectives on PITR, micro-insurance regulation is designed to solve collective action problem and market failures. For instance, an action of independent rational micro-insurance provider or regulators may produce irrational results for collective good of micro-insurance market. Also, micro-insurance market failure may occur where there are unhealthy competition and offering of substandard micro-insurance services to clients who are already poor. Similarly, from the perspective of the 'progressive school',[105] government intervention, through instrument of law, in the insurance of SMEs and low-income households is comparatively cost efficient for regulating micro-insurance in public interest because the parties involved (micro-insurer and micro-insured) are with unbalanced bargaining powers. Nevertheless, the PITR is not devoid of shortcomings.

5. Limitations of the Public Interest Theory in the Regulation of Micro-Insurance

While the Public Interest Theory of Regulation (PITR) presents a compelling framework and continues to serve as a foundational pillar in contemporary regulatory approaches, it exhibits notable limitations when applied specifically to the regulation of micro-insurance. In several key respects, PITR alone is insufficient to fully address the unique challenges and complexities inherent in this sector. For instance, the theory focuses only on licensed micro-insurance business. Accordingly, it assumes that only licensed micro-insurance businesses are vested with public interest, while remaining silent on the unlicensed or informal providers already existing among the SMEs and low-income households. Thus, there is no philosophical explanation for regulating the behaviour of those unlicensed or informal market participants.

Drawing on insights from Richard Posner's work,[106] the Public Interest Theory of Regulation (PITR) can be critiqued for its limitations as both an explanatory and predictive framework in the context of micro-insurance regulation. This critique stems primarily from PITR's inability to adequately account for the behaviors observed within the micro-insurance market. Specifically, the theory makes problematic assumptions, including: (a) that market, including micro-insurance, are inherently prone to inefficiency and inequity if left unregulated; and (b) that policymakers invariably weigh the benefits of regulatory intervention as outweighing any potential negative consequences.[107] However, this is not the case. Besides, micro-insurance sector is at its emerging stage; hence its regulation is certainly not without costs. Thus, if not effectively regulated, these costs may be transferred to the final consumers by a form of price

[104] Italics are mine for emphasis only.
[105] Ogus (n 3).
[106] R.A. Posner, 'Theories of Economic Regulation' (1974) vol.5, *The Bell Journal of Economics and Management Science,* at pp.335 - 358.
[107] ibid., at pp.336 – 340.

for micro-insurance products or services. Yet affordability will be another challenge. Such market behavior remains unexplained within the framework of the Public Interest Theory of Regulation.

Furthermore, it is argued that inappropriate regulation can cause more harm than benefit. Therefore, the mere establishment of a legal framework for micro-insurance operations is insufficient unless it aligns effectively with the specific behaviors and dynamics of the market. Additionally, scholars have demonstrated that policymakers are not always impartial actors motivated solely by social welfare goals.[108] In many cases, public interest can be manipulated by policymakers pursuing self-interested objectives, such as securing re-appointment or political favor. These realities appear to be inadequately addressed within the framework of the Public Interest Theory of Regulation (PITR).

Furthermore, proponents of PITR often assume that the government possesses a near-superhuman ability to accurately identify and remedy market failures in micro-insurance. However, as Jonathan Macey and Enrico Colombatto have aptly noted, "the (public-interest) approach assumes an all-knowing, benevolent government, and this is not a very credible theory of government regulation."[109] What is even more problematic, especially when applied to micro-insurance regulation, is PITR's failure to account for real-world observations, for example, instances where government intervention occurs despite minimal or no evidence of market failure.[110] In Nigeria, in particular, the reality is that micro-insurance market is still evolving and may not have been fully established to be judged as being a failure. In essence, the regulation may be better viewed as promoting the micro-insurance market, rather than correcting its failure.

Similarly, even in the context of the legal regime on mainstream insurance, the history insurance regulation in Nigeria tells us that, not every insurance legislation could have emerged as a consequence of market failure. For instance, the first Insurance Act in Nigeria (the Insurance Companies Act 1961) seems to be as a result of need to enhance indigenous insurance sector after independence in 1960.[111] Moreover, at the moment, the conventional insurance market excludes the SMEs and low-income households who form majority of the households. But, there was no government intervention via appropriate regulation until the NAICOM introduced the Micro-insurance Guidelines in 2013 as repealed in 2018. Consequently, identifying clear indicators of market failure proves particularly challenging in the context of the micro-insurance sector.

Again, it may be argued that PITR is insufficient for micro-insurance regulation from two additional perspectives. The first is the foundation of the theory itself – *public interest*.[112] Research has rightly showed that there is no certainty regarding what amounts to 'public interest.'[113] Indeed the proponents of PITR are not unanimous on what amounts to public

[108] G. Peirson and A.L. Ramsey, 'A Review of the Regulation of Financial Reporting in Australia' (1983), vol. 1, *Companies and Securities Law Journal*, at pp.286 – 300.
[109] J.R. Macey and E. Colombatto, 'A Public Chioce Model of International Economic Cooperation and the Decline of the Nation State' (1996) vol.8, *Cardozo Law Review*, p.925, at 928.
[110] *Ibid*, at p.929.
[111] For further details on the history of insurance law in Nigeria, see Agomo, supra, (n 57); O. Yerokun, *Insurance Law in Nigeria* (Nigeria R.P. Publications: Lagos, 1992); J.O. Irukwu, *Insurance Law and Practice in Nigeria*, (Heinemann: Ibadan, 1991); F. Adeyemi, *Nigerian Insurance Law*, 2nd ed. (Mbeyi: Lagos, 2007).
[112] Ogus (n 1).
[113] ibid.

interest.[114] For example, in one breath, it is assumed to be an economic benefit that is shared by the community as a whole.[115] In another, it is assumed to be a non-economic benefit that is shared by the community as a whole.[116] Evidently, the definition of public interest in the context of micro-insurance regulation can differ significantly across countries. Even within a single country, the concept of public interest may fluctuate depending on factors such as location, place, time, culture,[117] or the specific role of the market participant, whether as a provider or a consumer. The above dynamics are not adequately explained by the assumptions of PITR.

Secondly, the public interest perspectives cannot provide explanation for non-inclusion of particular insurance services for the SMEs and low-income under the present legal framework for the mainstream insurance business.[118] Findings show that micro-insurance services and products are essentially aimed at reducing poverty in the society.[119] That is, micro-insurance enhances social welfare; hence may be adjudged to be a market 'in the public interest.' Yet, it is difficult for the SMEs and low-income households to access affordable mainstream insurance products as a result of unfavourable legal regime amongst other reasons. This, to a large extent, cast strong doubts on the philosophical assumptions that government intervention in the insurance market, via the instrument of regulation, is aimed at maximising social welfare.

The above criticisms, notwithstanding, the perspectives of PITR should not be totally ignored. In particular, the Public Interest Theory of Regulation (PITR) provides valuable guidance by highlighting that when the mainstream insurance market fails to efficiently distribute the social benefits of insurance to SMEs and low-income households, government intervention through regulation becomes necessary to maximize social welfare.[120] This intervention aims to improve economic access to financial services for these underserved groups. Accordingly, it is submitted that policymakers and reformers should give due consideration to these insights when undertaking reforms of the legal framework governing micro-insurance regulation in Nigeria.

6. Conclusion and Recommendations

This study examined the concepts of micro-insurance and regulation, as well as the theoretical implications of micro-insurance regulation in Nigeria. It highlighted the challenges in definitively determining what constitutes micro-insurance; however, for the purposes of this study, the definition provided in the NAICOM Micro-insurance Guidelines 2018 has been adopted. Regarding the Public Interest Theory of Regulation (PITR), the study explored its foundational premises and evaluated its applicability to Nigeria's legal regime for micro-insurance regulation. While the PITR offers valuable insights and positive implications for regulating micro-insurance, the theory also presents notable limitations. These shortcomings were discussed, culminating in a recommendation that policy reformers more consciously consider the assumptions of the public interest theory when pursuing future reforms of Nigeria's micro-insurance regulatory framework.

[114] ibid.
[115] C.J. Friedrich, (ed.), *The Public Interest*, (Prentice Hall: New York, 1962), ch.17.
[116] B. Mitnick, *The Political Economy of Regulation: Creating, Designing and Removing Regulatory Forms,* (Columbia University Press: New York, 1980), ch.5.
[117] Ogus (n 1) 29.
[118] C. Churchill, 'What is Insurance for the Poor?' in: C. Churchill, (ed.) (n 5) 12.
[119] ibid.
[120] Hantke-Domas (n 61).

Based on the findings of this study, the following recommendations are put forward:

i. The GMON 2018 (Guidelines for Micro-insurance) should be reformed to provide a clear and context-specific definition of what constitutes public interest in micro-insurance regulation in Nigeria. This clarification will better align regulatory objectives with the goal of maximizing social welfare.
ii. The Insurance Act 2003 and GMON 2018 should be amended to incorporate the interests of unlicensed and informal market participants, recognizing their potential influence on the micro-insurance sector and the need for their appropriate regulation.
iii. The cost of regulation must be carefully considered in the implementation of micro-insurance policies to avoid the unintended consequence of transferring regulatory costs to consumers through increased prices for micro-insurance products and services.
iv. The primary objective of NAICOM and other relevant micro-insurance regulators should be to promote the growth of the micro-insurance sector and maximize social welfare, rather than solely focusing on correcting traditional insurance market failures.
v. The enforcement of GMON should reflect the realities of Nigeria's micro-insurance market as closely as possible, ensuring that public interest objectives are upheld without being compromised by policymakers' self-interests.