Legal Responsibility of Insurance Companies for Actions of Default in Insurance Agreements

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Abstract

Insurance is one way to help the community in diverting risks from events that are not necessarily going to happen. In this case the insurance company as the insurer has an obligation to fulfill the agreement that has been agreed by him with the insured which is called the policy agreement. However, in practice, not a few insurance companies default on insurance agreements. This study uses a normative juridical method with a qualitative descriptive analysis. Based on the results of the study it was concluded that the legal responsibility that must be carried out by the insurance company against default in the insurance agreement is the fulfillment of the rights of the policyholder as the insured of the insurance, namely compensation to the insured for achievements that were not carried out by the insurance company. The insured party can sue the insurance company if it defaults, besides that if the insurance company defaults, the insurance company can be given sanctions such as written warnings, fines, restrictions on business activities, up to revocation of business licenses.

I. Introduction

Human life cannot be separated from risks that cannot be predicted in advance. Therefore, people are required to always increase awareness of their own protection. One thing that can be done is to take part in an insurance program (Susanto, Muizz, & Marwa, 2021). Insurance is one way to help people transfer risks. Insurance is an alternative to help resolve uncertainty regarding future events that cause losses and risks.

Insurance in Dutch is called (verzekering) which means coverage, in English it is better known as Insurance (Simorangkir, 2009). In general, insurance is an agreement in which one party promises to provide guarantees to the guaranteed party. The guaranteed party will provide a certain amount of premium money as compensation for losses that he or she may suffer from an event that may not necessarily occur.

The insurance company as the insurer will provide services such as property destruction or life protection which will be provided to the policy holder as the insured (Wilatikta & Parwata, 2017). Insurance companies are an alternative for people to reduce the risk to a person's life or property by transferring the losses they experience to the insurance company. Insurance companies that have the role of insurer provide a solution for the public as the insured who will transfer their risks to the insurer.

The transfer of risk from the insured party to the insurance company is a form of realization of the insurance agreement which is automatically active from the moment the insured party gives the premium to the insurance company. This agreement is stated in an agreement document called a 'policy'. A policy is an agreement or contract that has a standard nature which contains clauses offered by the insurance company to the public as the insured (N & Setiawati, 2018).

The parties, both the insurer and the insured, who have agreed to an insurance agreement are obliged to carry out and comply with the contents of the agreement. If one of the parties violates the agreed agreement, the agreement can be canceled and legal sanctions can be given. This also applies to insurance companies as policy holders if they do not carry out the contents of the agreed agreement then they are considered to have committed a breach of contract. Through the study in this research, the author tries to analyze the legal responsibility of insurance companies for acts of default in insurance agreements

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2. Research Method

The research method used in this research is normative juridical which focuses on secondary data such as statutory regulations, legal principles and legal doctrine to help answer the problems faced. After the data is collected it will be analyzed descriptively qualitatively.

3. Results and Discussion

Insurance according to Article 1 Paragraph (1) of Law No. 40 concerning Insurance is defined as an agreement between two parties, namely the insurance company and the policy holder.
As a premium recipient, the insurance company is obliged to provide compensation such as:

1. Compensate for losses to the policy holder or insured due to damage, losses, costs incurred, loss of profits, and legal liability to third parties which may occur by the insured as the policy holder due to events that are not certain to occur; and or

2. Paying costs based on the death of the insured or payments based on the life of the insured with benefits whose amount has been determined based on the results of fund management that have been agreed upon through the policy

In an insurance agreement there are 2 (two) legal subjects, the legal subject is a person or legal entity that has a personality and is based on demands for the needs of society which legal rules have recognized as having inherent obligations and rights (Ali & Mashudi, 1995). These subjects are the parties who actively implement an insurance policy, namely the insured and the insurer. Both of them, who are legal subjects, mutually agree on an insurance agreement for objects that are of interest to the insured (Purba, 1995).

An insurance agreement is written in a document better known as an 'insurance policy'. However, an insurance policy is not a condition for an insurance agreement (Bestaansvoorwaarde). This opinion gives the impression that the policy is no longer needed, however the insurance policy still has an important role for the insured, this is because the insurance policy is perfect evidence of the basis and reasons for the agreement in an insurance agreement. In the absence of an insurance policy, it will be difficult for both the policy holder and the insurer to provide proof if a dispute arises (Prakoso, 1991).

In entering into an insurance agreement with the insured, the insurer has obligations to carry out and fulfill to the insured, including:

1. Provide insurance documents, namely the policy, to the insured as a condition for fulfilling the agreement
2. Pay compensation for compensation insurance and pay the amount of compensation agreed by both parties
3. Carry out premiums as stated in the provisions of Article 281 of the Criminal Code which states that in all cases where the insurance agreement in whole or in part is declared invalid and/or void and has been carried out in good faith, the insurer must provide a refund of the premium, either in whole or in part, regardless of whether have not encountered any dangerous events

The obligation of the insurer to fulfill compensation to the insured is a right owned by the insured which will only be exercised if the agreed event occurs. Apart from the obligations that must be carried out, the insurance company as the insurer has rights obtained from the insured, including (Junaedy & Ganie, 2011):

1. The insurer has the right to receive a premium from the insurance company, the amount of which has been determined by agreement in the insurance agreement
2. Receive notification from the insured party as stated in Article 251 of the Criminal Code which states that all notifications are untrue or hidden regarding circumstances unknown to the insured even though they were made in good faith which made the agreement not carried out or entered into on the same terms as if the party If the insurer knows about the actual circumstances of this matter, this will cause the coverage to be declared void
3. Other rights given as compensation for the obligations of the insured party if the insurance agreement is included in a reciprocal agreement, then from this it will be seen that the insurer has rights parallel to the obligations that must be carried out by the insured.
4. Demand that the promised event has occurred and has a premium. For events that occur due to the fault of the personal insured
5. Have premiums that have been received in the event of insurance or failure due to fraud on the part of the insured.

Apart from the rights and obligations of the insurer, the insured party also has rights and obligations as a human or legal entity bound to the insurer.
The insured's obligations include:
1. Pay premiums to the insured (insurance company)
2. Tell the true condition of the goods insured
3. Notify the insurance company as the guarantor if an incident has occurred that befell the insured object along with efforts to prevent it
4. As well as special obligations for the insured stated in the insurance agreement

The rights owned by the insured that the insurer is obliged to provide include:
1. Obtain an insurance document called an insurance policy
2. The insured party is entitled to compensation if certain events occur which form the basis and agreement that has been mutually agreed upon between the insurer and the insured in the insurance agreement
3. Prosecute for the return of the premium, either in part or in full, if the insurance agreement is invalid or cancelled
4. Through a court mechanism, the insured party can free the insurer from its obligations in the future, then the insured will be able to re-insure its interests with another insurer with the same danger and time as the original insurance
5. And other rights as compensation for the obligations of the guarantor

An insurance agreement which is proof of the legal relationship between the insurance company and the insured at the time of the agreement through ratification of a signature that has been given. In the insurance agreement there are standard clauses that must be adhered to by both parties who have agreed. However, the standard agreement in the policy often places the insured as the policy holder in an unequal position with the insurance company. Several factors that cause an unbalanced standard contract include (Munir, 2003):
1. There is no or insufficient opportunity for one of the parties to negotiate the contents of the agreement which means that one of the parties does not properly understand the clauses in the agreement
2. Drafting contracts carried out unilaterally, this is often done by insurance companies where they have provided a standard contract first and may have consulted with experts, while the party who is given the contract document does not have much time and opportunity to think and understand the clauses in the contract which are given
3. The party given the standard contract has a pressured position and this makes it a matter of "take it or leave it".

The principle of "take it or leave it" which means "take it or leave it" is an important principle for prospective policy holders if they want the legal consequences that occur when the insurance agreement is made. This means that if the policy holder agrees then sign it and if they don't want it then leave it. This character is identical to the standard agreement in the legal relationship of every insurance company which makes policy holders have a weaker position. Therefore, there is a need for legal protection and guarantees for policy holders as consumers who utilize and use the services of insurance companies (Husain, 2016).

In Article 246 of the Criminal Code, insurance is a reciprocal agreement that has terms and conditions that cannot be predicted when the event will occur. Apart from being a reciprocal agreement, an insurance agreement is also a conditional agreement. A reciprocal agreement is an

agreement that creates the rights and obligations of the insured and the insurer. A conditional agreement is an agreement that creates obligations for the insurance company as the guarantor if conditions (evenements) occur (Sembiring, 2014).

Insurance has several principles such as (Suryono, 2020):

1. Principle of interests
   In insurance, the insured party has an interest that can be insured
2. Indemnity
   This means that the principle of balance of loss and compensation will apply to loss insurance only and does not apply to life insurance.
3. Good Faith
   It is understood that the insured has an obligation to tell the insurer everything about what is known or what should be known
4. Reinsurance
   Having an understanding that it is possible for the insurer to be responsible for the insurer
5. Subrogation
   Subrogation is a transfer of rights from the insured party to the insurer towards third parties who are connected to the loss

Every agreement will have legal consequences, one of which is breach of contract. Default in Dutch is called "Wanprestastie" which means failure to fulfill obligations as agreed upon in an agreement. Default is the actualization of an agreement that is not at the right time and the actualization is not based on what should not have been done (Harahap, 1986).

There are 2 (two) possibilities that are the basis for someone's achievements not being fulfilled. Firstly, because of the debtor's mistake, which was done intentionally or because of his mistake, and secondly, because of a forceful situation that was beyond the debtor's capabilities (Susanto et al., 2021). If it is related to insurance law, there are 3 ideas that must be understood first. First, the assumption that insurance in the relationship between the insured and the insurer is insurance that acts as a risk transfer medium.

Article 255 of the Criminal Code states that an insurance agreement is made through an insurance policy. An agreement through an insurance policy occurs because there is agreement from the policy holder to transfer the risks they will face to the insurance company as the guarantor. The risk transfer process is carried out through an insurance agreement mechanism called an insurance policy. After the insured and the insurer agree through the insurance policy, at that time the rights and obligations of both the insurer and the insured come into effect. As a result of a reciprocal agreement, insurance has a consensual nature where from the moment the insurance agreement is entered into, rights and obligations arise that will be mutually balanced between both the insurer and the insured.

An agreement will give rise to legal responsibility for the parties. A person is obliged to compensate if he commits an unlawful act (onrechtmatige daad) which causes a person to suffer losses (Prodjodikoro, 2000). This responsibility is based on an agreed agreement or on the laws and regulations that regulate it, especially in relation to insurance as regulated in Law No. 40 of 2014 concerning Insurance. There are several provisions regarding the rights and obligations that must be carried out by insurance companies as insurers, namely to fulfill the rights of the insured and fulfill the obligations of the insurer as follows:

Insured's Rights:
1. Ask the insurer to sign the policy
2. Demand that the policy which has been declared valid be given to the insured
3. Make compensation for events that have been agreed upon in the insurance policy agreement

Insurer's Obligations
1. The insurer is obliged to pay the cash value agreed upon in the agreed policy
2. The insurer is obliged to pay the insured's insurance benefits

In various acts of default committed by the insured party as an insurance company, one of which is failure to pay which is included in the violation as stated in Law No. 40 of 2014 concerning Insurance in Article 31 (4) which states that: "Insurance companies are prohibited from carrying out actions that can delay settlement or payment of claims, or not taking action that should be taken, resulting in delays in settlement or payment of claims." Furthermore, insurance companies will be given sanctions if they violate as stated in Article 31, the sanctions stated in

Article 71 paragraph 2 include:
1. Written Warning
2. Restrictions on business activities in whole or in part
3. Prohibition on marketing of insurance products and sharia insurance products in certain business lines owned by the company
4. Business license revoked
5. Cancellation of registration statements to reinsurance brokers, insurance brokers and/or insurance agents
6. Cancellation of registration statements to actuarial consultants, appraisers, public accountants, and parties who provide services to insurance companies
7. Given an administrative fine
8. Prohibition on becoming a shareholder, director, controller, commissioner or their equivalent in a legal entity in the form of a joint venture or cooperative

Policyholders who feel disadvantaged due to the insurance company's breach of contract can file a lawsuit. Actions of default by insurance companies will result in consumer disputes. Consumers who feel disadvantaged by acts of default from insurance companies according to POJK No 1 /POJK.07/2012 Article 39 regulates the resolution of disputes known as consumer complaints, namely:
1. If an agreement to resolve the complaint cannot be reached, the consumer can resolve the dispute outside the court or court
2. Dispute resolution carried out outside of court in paragraph 1 is carried out using an authorized dispute resolution institution
3. If the resolution of a dispute is not carried out using an alternative institution that has the authority to resolve disputes, the consumer can apply to the Financial Services Authority to provide facilities to assist in resolving the dispute between the consumer and the insurance company

In essence, the legal responsibility for acts of default in an insurance agreement is to compensate the policyholder for the losses they experience. If the insurance company does not carry out its obligations to carry out the agreement agreed with the policy holder, the policy holder as a consumer can file a lawsuit against the insurance company. If the insurance company

commits violations such as default and does not fulfill the agreed policy, the insurance company can be given sanctions such as written warnings, fines, restrictions on business activities, up to revocation of business permits.

4. Conclusion

The legal responsibility that must be carried out by the insurance company for acts of default in the insurance agreement is to fulfill the rights of the policy holder as the insured of the insurance, namely compensation to the insured for achievements that were not carried out by the insurance company. The insured party can sue the insurance company if it defaults. Apart from that, if the insurance company defaults, the insurance company can be given sanctions such as written warnings, fines, restrictions on business activities, up to the revocation of business permits.

Refrences

Ali, M. C., & Mashudi. (1995). *Hukum Asuransi*. Bandung: CV Mandar Maju.

Harahap, Y. (1986). *Segi - Segi Hukum Perjanjian*. Bandung: Alumni.

Husain, F. (2016). Perlindungan Hukum Terhadap Pemegang Polis Asuransi Menurut UU No 40 Tahun 2014 tentang Pengasuransian. *Lex Crimen2*, *5*(6).

Junaedy, & Ganie. (2011). *Hukum Asuransi Indonesia*. Jakarta: Sinar Grafika.

Munir, F. (2003). *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis)*. Bandung: Citra Aditya Bhakti.

N, S., & Setiawati. (2018). Perlindungan Hukum Terhadap Pemegang Polis Asuransi Dalam Menyelesaikan Sengketa Klaim Asuransi. *Jurnal Spektrum Hukum*, *15*(1), 150–168.

Prakoso, D. (1991). *Asuransi di Indonesia,*. Semarang: Percetakan dan Penerbitan Effhar dan Dahara Prize.

Prodjodikoro, W. (2000). *Azas-azas Hukum Perjanjian*. Bandung: Mandar Maju.

Purba, R. (1995). *Memahami Asuransi di Indonesia*. Jakarta: CV Taruna Grafika.

Sembiring, S. (2014). *Hukum Asuransi*. Bandung: Nuanla Aulia.

Simorangkir. (2009). *Kamus Hukum*. Jakarta: Sinar Grafika.

Suryono, A. (2020). *Pengetahuan Dasar Hukum Asuransi*. Surakarta: UNS PRESS.

Susanto, H. M., Muizz, N. F., & Marwa, M. H. M. (2021). Penerapan alternatif penyelesaian sengketa wanprestasi atas premi pemegang polis di PT. Asuransi Jasindo Yogyakarta. *Borobudur Law Review*, *3*(2), 84–98.

Wilatikta, G. L., & Parwata, G. O. (2017). Pemegang Polis yang Melakukan Wanprestasi Pembayaran Premi dalam Perjanjian Asuransi Jiwa. *Jurnal Hukum Bisnis*, *3*, 54–67.