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APPLICATION OF THE PRINCIPLE OF JUSTICE IN AN EFFORT TO PROVIDE LEGAL PROTECTION TO INSURANCE POLICY HOLDERS

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Abstract:

The agreement that occurs between the insurer and the insured in insurance is stated in a written deed called a policy. Issuance of policies in insurance has been prepared in advance by the insurance company. This can bring a sense of injustice to the parties, namely the insured, who feels their position is weak because they do not participate in determining the contents of the agreement, resulting in an interpretation that the insurance company tends to protect its interests in such a way by stipulating a number of provisions that limit the rights of the insured so that the contract The standard has the potential to become a one-sided clause. Therefore we need a form of legal protection for the insured.

Keywords: Insurance, Policy; Legal Protection.

I. Introduction

Feeling safe from all dangers that threaten is something that every human being always wants. In human life, various possibilities can occur. An uncertain event may be profitable. But it may not be profitable. If something that is uncertain turns out to be a loss, then that is a risk. Risk is always attached to human life. Risks can occur due to human activities themselves, can also occur due to natural events, such as floods, earthquakes, storms, risks can cause losses both material and immaterial.

There are several ways that humans can do to overcome the possibility of adverse risks,

including: (1) avoiding risks; (2) prevent the occurrence of risks; (3) transfer the risk to the insurance company. Transferring risk through insurance is considered the best way to manage risk. [1]

Insurance companies according to their provisions can cover insurance products both in the form of objects and lives. Insurance that guarantees objects is called loss insurance, while insurance that guarantees life is called money insurance. In the event that the agreement that has been agreed between the Insurance Party and the Insured Party is stated in the insurance policy. If seen in practice in insurance companies, insurance policies have been prepared in advance by the insurance

company so that it is a form of standard agreement.

Munir Fuady in the book *The Development of Contract Law Outside the Civil Code* written by Salim H.S provides a standard contract definition, namely:[2] "a written contract made only by one of the parties to the contract, even often the contract has been printed in certain forms by one of the parties. one party, which in this case when the contract is signed generally the parties only fill in certain informative data with little or no changes to the clauses, where the other party in the contract does not have the opportunity to negotiate or change the clauses that have been made by one of the parties, usually the standard contract is very one-sided.

The party to whom the standard contract was offered does not have the opportunity to negotiate and is only in a "take it" or "leave it" position." In terms of the preparation of a policy that has been prepared in advance by the insurer, it brings benefits to the insurer itself, where the party has a strong position compared to the position of the insured, because the company has the right to determine the contents of the agreement while the insured is in a weak position because he does not participate in determining the agreement. the contents of the agreement, a form of legal protection is needed for the insured (consumer)

In terms of the contents of the agreement in the policy tends to benefit the company so that there is an imbalance between the rights and obligations of the parties. This means that the insurance company tends to protect its interests in such a way by setting a number of provisions that limit the rights of the insured so that the standard contract has the potential to become a one-sided clause.

II. Legal Materials and Methods

The type of research used is normative legal research with a normative juridical approach. Normative legal research is a process to find the rule of law, legal principles and legal doctrines in order to answer the legal issues faced. Based on the division of normative legal research, this research includes research that focuses on research on the statute approach and conceptual approach. [3]

Case approach in normative research aims to study the application of legal norms or rules in legal practice. The case approach is indeed empirically meaningful, but in a normative study, these cases are studied to obtain an overview of the impact of the norming dimension in a rule of law in legal practice, and to use the results of the analysis for input in legal explanations

1. Data Type

The data source is the place where the data is obtained. The data sources used in this study are secondary data, consisting of primary legal materials, secondary legal materials, and tertiary [4] legal materials. The type of secondary data is data obtained from library materials, including legislation, books, scientific journals, scientific writings, documentary materials and other written sources. According to Soerjono Soekanto, secondary data sources consist of three legal materials, namely:

- A. Primary Legal Materials, namely binding legal materials. In this research, the primary legal materials used consist of:
 - 1) Indonesian laws and regulations regarding insurance
 - 2) Civil Code
 - 3) Commercial Code
 - 4) Law Per Insurance
- B. Secondary Legal Materials, namely legal materials that provide an explanation of primary legal materials, such as books and scientific journals related to insurance law.
- C. Tertiary Legal Materials, namely legal materials that provide instructions and explanations of primary and secondary legal materials, such as legal dictionaries, encyclopedias.

2. Data Collection Techniques

In normative legal research, several data collection techniques can be carried out. Data collection techniques in this study consisted of:

- 1) Literature Study (Library Research) Literature study is very important as a basis for theory and supporting data. This data collection tool is obtained by reading, reviewing, and studying scientific writings, books, documents, laws and regulations, journals and other data related to this legal research.
- 2) Documentary Study Documentary study is a study that examines various documents. Both related to laws and regulations and existing documents.

III. Result and Discussion

A. Insurance Overview

Article 1 point (1) of Law Number 40 of 2014 concerning Insurance Business provides

the definition that insurance is an agreement between 2 (two) or more parties, whereby the insurer binds himself to the insured by receiving insurance premiums, to provide compensation to the insured due to a loss, damage or loss of expected profits or legal liability to third parties that may be suffered by the insured, arising from an uncertain event or to provide a payment based on the death or life of an insured person.

Article 246 of the Commercial Code (KUHD) stipulates that insurance is an agreement whereby an insurer binds himself to an insured, by receiving a premium, to provide compensation to him for a loss or loss, damage or loss of expected profits that may be incurred, suffered by an uncertain event. Based on article 246 of the KUHD we can draw important elements in insurance or coverage, namely:

1. Parties, namely the insurer and the insured.
2. Status of the parties. The insurer must have the status of a legal entity which can be in the form of a limited liability company (PT), a cooperative company, the insured can be an individual, partnership or legal entity.
3. The object of insurance, can be in the form of objects of rights or interests attached to the object, and a number of so-called premiums or compensation.
4. Insurance events, namely legal acts (legal acts) in the form of approval or agreement of the insured regarding the object of insurance, uncertain events (evenements) that threaten the insurance object and the conditions that apply in insurance.
5. Insurance relationship, is a legality bound arising from a free agreement

Insurance adheres to special principles or principles, as lex specialist from article 1320 of the Civil Code. These principles include: first, the principle of insurable interest, this principle emphasizes that an insured must have a relationship with the insured object. Second, the principle of utmost good faith, where an insured is obliged to inform about the insured object. Third, the principle of indemnity, an insured only gets compensation for the loss borne. Fourth, the principle of subrogation, an insured is not justified in asking for compensation from

another party who causes a loss.[5] These four principles are the most widely used, although there are other principles.

B. Insurance Policy Overview

A policy is a document that contains an agreement between the insured and the insurer (insurance) regarding the risks to be insured. The policy is proof of the insurance closing agreement. Standard policies usually consist of:

1. Schedule (Summary of coverage).
Contains the main things that the insured needs to know.
2. Opening
3. Guarantee (operative clause)
4. Exception
5. Signature of the guarantor
6. Description

Information regarding the insured and the insured object can be seen in the original document or a duplicate of the policy summary. The insurer advises the insured to take the time to study the contents of the policy that has been received so that the rights and obligations of each party can be clearly identified, especially when a claim occurs.[6]

Article 1 point (1) Decree of the Minister of Finance of the Republic of Indonesia Number 422/KMK.06/2003 concerning Business Conduct of Insurance Companies and Reinsurance Companies provides the meaning of insurance policies or agreements, or by any name, as well as other documents which are an integral part of the insurance agreement, including proof of insurance participation for the insured, between the insurer and the policy holder or the insured.

C. Overview Principles or principles in the Insurance Agreement

In the insurance agreement, there are several insurance principles that apply, namely:

- 1) The principle of insurable interest (principle of Insurable Interest)
Every interest can be insured, both material interests and rights interests. As long as the interest fulfills the requirements stipulated in Article 268 of the KUHD, namely: it can be valued in money, can be threatened with danger, and is not excluded from the law.

- 2) The principle of utmost good faith
The principle of good faith is regulated in Article 251 of the KUHD. In general, perfect good faith can be interpreted that each party in the insurance agreement has an obligation to provide complete information or information.
- 3) Principle of Indemnity
The function of insurance is to transfer or share risks that may be suffered or faced by the insured due to an uncertain event. The amount of compensation received by the insured must be balanced with the loss he suffered, this is the core of the principle of indemnity (Indemnity).
- 4) The principle of indemnity is a balance between the risk transferred to the insurer and the loss suffered by the insured as a result of an unexpected event.
- 5) Principle of Subrogation
Article 1365 of the Civil Code states as follows: "Every act that violates the law, which obliges the person who because of his fault published the loss, compensates for the loss". In the KUHD, this principle is explicitly regulated in Article 284 of the KUHD. The principle of subrogation means that the insured who has received compensation from the insurer will still receive another payment from a third party. The important role of the principle of subrogation in insurance is to maintain a balance as the purpose of the insurance agreement itself.
- 6) The Principle of Contribution (Principle of Contribution)
That is, if the insured party insures an object to several insurance companies, then there will be what is called a contribution in providing protection from each of these companies.
- 7) Principle of Proxima Cause
An active and efficient primary cause that causes a loss in a series of events. The claim provisions in this insurance principle are that if the insured object experiences a disaster or accident, the first thing the insurance company must and will do is to find the main active and efficient cause that can move an

uninterrupted series of events which eventually causes the accident. From these considerations, the number of claims received by the policyholder can be determined.

D. Overview of Consumer Rights and Obligations

Insurance consumer is every person who uses insurance services in society, whether for the benefit of himself, his family, or other people by binding himself to an insurer, by receiving a premium, to provide compensation to him for a loss, damage, loss of expected profit, which maybe he will suffer because of an unspecified event

The legal relationship between the insurance consumer (the insured) and the insurance company (the insurer) is stated in a written agreement called an insurance policy. Consumer protection related to the use of standard clauses in normative juridical insurance policies is regulated in the Consumer Protection Law no. 8 of 1999 . Consumer rights are regulated in Article 4 UUPK, among others:

- a. the right to comfort, security, and safety in consuming goods and/or services;
- b. the right to choose goods and/or services and to obtain such goods and/or services in accordance with the exchange rate and the promised conditions and guarantees;
- c. the right to correct, clear and honest information regarding the condition and guarantee of goods and/or services;
- d. the right to have their opinions and complaints heard on the goods and/or services used;
- e. the right to obtain proper advocacy, protection, and efforts to resolve consumer protection disputes;
- f. the right to receive consumer guidance and education;
- g. the right to be treated or served correctly and honestly and not discriminatory;
- h. the right to obtain compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or not properly;
- i. rights regulated in the provisions of other laws and regulations.

Consumer obligations are regulated in Article 5 of the UUPK including:

- a. read or follow information instructions and procedures for the use or utilization of goods and/or services, for security and safety;
- b. in good faith in making transactions for the purchase of goods and/or services
- c. pay according to the agreed exchange rate;
- d. follow the legal settlement of consumer protection disputes properl

E. The Importance of the Principle of Justice in an Insurance Policy

The legal relationship between the insured (consumer) and the party. Insurance is born because of the policy approval. In terms of the manufacturing process, the policy tends not to reflect the principle of justice because the insured party or the consumer is not given the right to negotiate, where the policy has been issued first. In terms of the contents of the agreement in the policy tends to benefit the company so that there is an imbalance between the rights and obligations of the parties. This means that the company tends to protect its interests in such a way by setting a number of provisions that limit the rights of the insured.

The definition of principle according to Sudikno Mertokusumo's opinion that legal principles are not concrete laws, but are general and abstract basic thoughts, or are the background of concrete regulations contained in and behind every legal system that is embodied in statutory regulations and judge decisions which are positive law and can be found by looking for the properties or characteristics that are common in the concrete rules.

Justice according to Ulpianus in the book of Agreement Law on the Principle of Proportionality in Commercial Contracts written by Agus Yudha argues that justice is a continuous will and continues to give to each what is his or her right (*constans et perpetua ius suum cuique tribuendi*). This formulation explicitly recognizes the rights of each person to the other and what is and what should be a part of it, and vice versa.

The principle of justice has an important role in the insurance policy being the basis in the insurance agreement requiring everyone to get the same rights so that everyone may not take more profit than their proper share and must not harm others. With the principle of justice, it will provide guarantees of justice to humans as legal subjects so that they obtain the right and proper obligations.

IV. Conclusion and Suggestion

Insurance policies generally do not apply the principle of justice. Injustice occurs

in the process of making an agreement that is non-negotiable or contained in the application of standard clauses on insurance policies that are detrimental to the insured or

the consumer. The new insurance policy fulfills the principle of justice if the parties can obtain the right and proper obligations. One of them is by providing correct, clear and honest information about insurance benefits and guarantees. In terms of supervision from the government for insurance services in providing protection to consumers, it is very necessary, especially supervision in terms of the use of standard clauses in insurance policies, so that the application of the principle of justice in insurance policies does not only benefit one party, namely the insurance party but also for the insured (the consumer).

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