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Application of Insurance Principles According to the Book of Trade Law and Law Number 40 of 2014

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Public awareness of the importance of protecting oneself from various risks, which may occur at any time, is one of the causes for the presently high number of insurance users. Risks can result in loss of life or property. This is an advantage for insurance companies that provide insurance services. Insurance is created by the agreement between an Insurance Party and an Insured Party. An insurance agreement is made in the form of a written agreement called a policy. A policy contains rights and obligations for its parties. The Insurance Regulations are found in Article 246 of the Commercial Law and Law Number 40 of 2014. In the provisions of Commercial Law, Insurance must contain insurance principles, namely the Principle of Insurable Interest, the Principle of Utmost Good Faith, the Principle of Indemnity, the Principle of Subrogation, the Principle of Contribution, and the Principle of Proxima Causa. In practice, not all insurance principles apply to insurance agreements. Not applying the principles of insurance results in losses for the insured, i.e. the compensation is not paid to the insured. The issue is that while the application of insurance principles is only aimed at the insured, the guarantor is not, thus causing injustice for the parties. Issues raised in this writing are the Application of Insurance Principles in accordance with the provisions of the prevailing laws and regulations, and the procedures carried out by the Insured in obtaining compensation. The purposes of this paper are to ensure that the principles of insurance are applied in accordance with the provisions of the applicable regulations so that the compensation received by the insured is not obstructed; and to explain what procedures are carried out by the insured in obtaining compensation. The legal research method that will be used by the author is empirical juridical. This is a type of empirical research done by examining primary data from interviews comprising questions related to the application of insurance principles, while also juridically

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using secondary data to analyse the rules and regulations relating to insurance

Key words: *Principles of Insurance, Claims, Insured, Insurers.*

Introduction

The feeling of being safe from all threats is something that every human desires. In human life, various possibilities can occur. An event that is uncertain may be profitable, but it might also be unprofitable. This uncertain event must meet the criteria, namely the event must risk a loss; the incident cannot be predicted in advance; it must come from economic, natural, and human factors; and it must risk harm to oneself, one's wealth, and/or one's responsibility (Abdulkadir, 2006). If something uncertain turns out to cause harm, then that is a risk. Risk is always inherent in human life. Risks can occur due to the factors of human activities themselves, and they can also occur due to natural events, such as hurricane floods. The risk can cause losses both material and immaterial.

There are several ways that humans can overcome the possibility of adverse risks, including avoiding risks, preventing the occurrence of risks, and transferring those risks to insurance companies (Suparman, 2003). Transferring risk through insurance is considered the best way to manage risk (Editorial, 2003).

Insurance arising from the Profit Agreement is known in Dutch as konsovereen komst. The definition of consoverments or chancy agreements contained in Article 1774 of the Civil Code is an action whose results, namely regarding the advantages and disadvantages of both parties and for the parties, depend on an uncertain event.

Insurance consists of two types, namely Insurance Losses and Money Insurance. Object loss insurances use collateral in the form of objects, such as Retail Fire Insurance and Motor Vehicle Insurance. Other insurances are for a number of objects, which in Insurance is a Life, such as Aviation Insurance, Health Insurance and others.

Loss insurance regulations are contained in the Commercial Law Act (KUHD), while the Life Insurance Regulations are in Law Number 40 of 2014.

Insurance agreements are stated in a written deed called a policy. An insurance policy or contract is a civil legal relationship between the guarantor as a business actor and the insured party, which can be individuals or legal entities. The guarantor is bound to take risks of loss that may arise/be experienced by the insured as a result of an uncertain event in the future. The insured is required to pay the premium (Ricardo, 2007).

An insurance agreement must be made based on the Principles of Insurance so that in the end, all interests are protected. These principles are: first, the Principle of Insurable Interest; second, the Principle of the Best and Honest Faith (Utmost Good Faith); third, the Principle of Indemnity; fourth, the Subrogation Principle (Principle of Subrogation); fifth, the Principle of Contribution; and sixth, the Principle of Proxima Causa.

If the application of the Principles of Insurance is not carried out in accordance with the provisions of the applicable laws, either by the insurance company or by the insured, and the insured is denied compensation by the insurer, this can cause a dispute. In the event of a claim, the Insured must adhere to procedures that are in accordance with the Insurance Standard Policy.

Formulation of the Problem

1. How to apply insurance principles based on the provisions of applicable laws and regulations.
2. How does the Insured proceed in obtaining compensation.

Research Methods
Types and Nature of Research

Empirical or sociological juridical research is an approach that starts from primary data (Soejono, 1999). This study can provide a careful and systematic answer to the above problems. Specifically, this research aims to report systematically, factually, and accurately on a particular population or area according to its characteristics or factors (Bambang, 1998).

Data and Data Sources

To answer research problems, data is needed to support an analysis that is clear and fair. The data collection methods needed are:

a. Primary data
Primary data is data obtained directly from the community. The authors obtained primary data by visiting data sources that are relevant to the research problem by conducting interviews and questionnaires. These sources were the customers of PT.
b. Secondary Data
Secondary data is data obtained through library materials or from documentation in the form of legal material (Soejono, 1999).

Population and Sample Determination Techniques

a) Population

Literally the population comes from English, population which means a number of residents. The population or universe can also be interpreted as a whole unit or as humans (can also be a symptom, or event) that have the same characteristics. The population that the author uses in this study was all insurance customers at PT. Asuransi Jasa Indonesia Padang Branch

b) Samples

The sample is a part of the population that was procedurally chosen such that it is expected to represent the population.

Data Collection Techniques

Data collection techniques were conducted through document studies and library studies, both of which are methods of data collection that are required to answer research problems taken from documents, library materials, or literature. The required data were written and obtained by another person or an institution. In retrieving this data, the researchers conducted literature searches or library studies, both the literature that the researchers had themselves and the literature that was available in the literature

Data Processing and Data Analysis

a. Data processing

In processing this data, the author used editing techniques with the intent to avoid data that is irrelevant, wrong, or could cause doubt. The editing process was done by classifying the data obtained into their respective categories, in accordance with the results of the research into their respective categories. This was to ensure that the writing was orderly and systematic

b. Data analysis technique

Data that has been processed and presented is then analysed using qualitative analysis, which is an analysis of data that cannot be calculated, is monographic, or is in the form of cases that did not use statistical tools. In this case, the author evaluated the data obtained in the field with applicable legal norms, the views of experts, theories, and common sense.

Discussion Results

Application of the Principles of Insurance According to Regulations Per Law

Insurable Principle of Interest

Insurable Interest gives a person the right to insure because of a financial relationship recognised by law between the person and the insured object. The definition of Insurable Interest is as follows: "The legal right to insurance of financial relationships recognized at law, between the insured and the subject matter of insurance." This means that a person's right to insure arises from the existence of a financial relationship, recognized by law, between the person and the insurance object (Ransom, 1996).

Furthermore, in the Criminal Procedure Code, there are provisions that govern insured interests: "If someone is responsible for himself, or someone who is insured by a third party, at the insured time does not have an interest in the insured object, the insurer does must compensate (Development Foundation)."

Thus, the insured party (the Insured) must be able to prove that he has an Insurable Interest because if he does not have an interest in the insured object, there will be no compensation. The Insured must have a financial relationship when an event affects an insured object and causes financial losses; however, when there is no financial loss for the Insured, it means that there is no Insured Interest in the insured object.

From the above definition regarding Insurable Interests, we can conclude 4 (four) essential things:

1. There must be objects, rights, interests, souls, and/or responsibilities that can be insured.
2. These objects, rights, interests, souls, and/or responsibilities must be insured objects.
3. The Insured must have a financial relationship with the insured object.
4. The relationship between the Insured and the insured object must be recognized/lawful (Soejoedi).

The principle of Insurable Interest is intended to prevent gambling and prevent insurance from being a high moral hazard. If there are no such provisions, someone who does not have an interest in an insurance object will be able to cover the insurance for the object. As a result, without suffering losses, the person will receive compensation if an event happens to the intended object. In other words, the rationale for the principle of Insurable Interest is to prevent insurance institutions from being used as gambling games (Suparman, 2003).

Insurable interest can be sourced from:

1. Interest as owner.
2. Interest as representative of the owner, tenant, or creditor.
3. Interest arises because of an agreement/contract.
4. Interest arising from legal responsibility (Sonni, 1994).

Even if someone has money or is able to pay an insurance premium, he or she is not entitled to compensation for loss from an event guaranteed in the insurance policy if he or she does not have an interest in the insured object.

The Best and Honest Faith Principle (Principle of Utmost Good Faith)

The Principle of the Best and Honest Faith demands that the parties, both the Insured and the Insurer, must communicate as honestly and completely as possible in all matters related to the negotiation of an insurance agreement. The obligation of the Insured must be made clear from the submission of a request for closure or during the period of coverage. If the Insured either intentionally or unintentionally hides information that is relevant to the insured object, the Insurer can have the right to terminate the insurance agreement. The Best and Honest Faith must also be on the part of the guarantor (reciprocal duty). Namely, when the insurance is closed, the Insurer must notify and explain the extent of the guarantee and the rights of the Insured because the Insured is the guarantor. The Best and Honest Faith definition contained in Article 251 KUHD is as follows:

“Any information that is wrong or incorrect, or every not telling things that are known by the insurer, however good faith it is, which is so, so that if the insurer has known the actual situation, the agreement will not be closed with the same conditions, resulting in cancellation of the engagement.”

Based on the provisions of Article 251 of the KUHD above, if the Insurer discovers that the data and information provided by the Insured is different from the actual condition of the insured object, then the Insurer can cancel the policy regardless of whether the premium has been paid or the insured object has suffered losses. In the insurance agreement, the element of mutual trust between the Insurer and the Insured is very important. Insurers believe that the Insured will give all information correctly. On the other hand, the Insured also believes that in the event of an incident (Development Foundation, 1994), the pensioner will pay compensation. Mutual trust is basically good faith. The Principle of Good Faith must be upheld in each agreement. In the Insurance Agreement Law there are several articles, in addition to Article 251, that contain elements of the Principle of Good Faith, namely Article 252 KUHD, Article 276 KUHD, and Article 277 KUHD. In the insurance of legal liability for motor vehicles, the Principle of the Best and Honest Faith and Insurable Interest are very important because the Insurer does not know in detail the type of vehicle, the police number owned by the Insured. Even though the guarantor can check directly, the Insurer will verify the data and information provided by the Insured.

Principle of Indemnity

The function of insurance is to divert or share risks that are likely to be suffered or faced by the insured due to an uncertain event. Therefore, the amount of compensation received by the insured must be balanced with the loss suffered, this is the core of the Principle of Compensation (Indemnity) (Sastrawidjaja, 1994). From the definition of Article 246 KUHD, the insurance agreement (loss) is a compensation agreement or indemnity agreement. Insurance, in this case is a loss insurance that only replaces the losses actually suffered by the Insured. The Principle of Compensation (Indemnity) is a mechanism for paying compensation with money, which, in a sense, includes a couple of things: 1. Financial compensation; and 2. Restoration of the Insured's financial position to his financial position just before the loss occurred. This principle is intended so that insurance is not misused to seek profit, and the compensation provided by the Insurer must be balanced with the losses suffered by the Insured. To strike a balance between the losses suffered by the Insurer, the value or price of the insured object must be known. Article 252 KUHD states that: "Except as stated in the provisions of the law, a second liability may not be held, for the period of time that has been insured for the full price and thus for the threat of cancellation of the second insurance."

From the above provisions, insurance is cancelled if a second insurance is held on an insured object with full value at the time the second insurance agreement is held. Article 252 of the Criminal Procedure Code states an exception under the law for multiple insurances. Thus Article 252 KUHD aims to prevent losses that exceed the losses suffered and requires a balance between compensation and the value of the insured object. In this regard, the principle of compensation or indemnity only applies to insurance whose interests can be valued with money, namely insurance (schade vergering). If the interest in insurance amount (sommen verzekering) cannot be valued with money (striped ideal), the insurance agreement is not held with the aim of replacing a loss suffered by the Insured. In other words, the principle of indemnity does not apply to insurance amount (Radik, 1997).

Subrogation Principles (Principle of Subrogation)

Article 1365 of the Civil Code states as follows: "Each act violates the law, which requires the person who caused the wrong to issue the loss, compensates for the loss". In the implementation of the insurance agreement, the possibility of a loss occurring can be caused by a third party. Based on Article 1365 of the Civil Code above, if the Insured has received compensation from the Insurer, the Insured is also permitted to claim compensation from the party that caused the loss, meaning the Insured can receive compensation that exceeds the loss suffered.

This problem is different in an insurance agreement because an insurance agreement is not like a normal or general agreement, and to avoid this in the insurance agreement, the Subrogation Principle applies. This principle is an integral part of the Principle of Indemnity; in essence, it states that the Insured cannot obtain compensation in excess of the losses suffered. Article 284 of the Criminal Procedure Code provides for subrogation as follows:

“An insurer who has paid for the loss of an insured item, replaces the insured in all rights obtained from the third person relating to the issuance of said loss, and the insured is responsible for each actions that can give the insurer the right to third people."

From the article, it can be seen that subrogation is the replacement of the financial position of the Insured by the Insurer, who carries out the rights of the Insured to the third party that caused the loss. On the other hand, with the Principle of Subrogation, the third party causing the loss will not be free of responsibility, because compensation is demanded by the insurer. As in the Principle of Compensation, the Principle of Subrogation applies only to insurance losses (scheverzekering) and does not apply to insurance amounts (sommenverzekering)

Principle of Contribution

This principle actually supports the principle of subrogation, the Principle of Contribution arises when the object is insured by more than one insurance company. If a loss is guaranteed and one of the insurance companies has paid the full loss, then the right to claim compensation from another company switches to the company insurance that has paid the full compensation. The Principle of Contribution is also only valid in the insurance of losses (scadeverzekering) and does not apply to insurance amounts (sommenverzekering). The Principle of Contribution applies or arises when the following conditions are met:

1. There are 2 (two) or more indemnity policies.
2. The policies guarantee the same subject matter.
3. The policies cover the same interest.
4. The policies cover the same object.
5. The policies are valid at the same time, that is, when the loss occurs.

This principle applies to prevent the Insured from taking advantage of insurance, or in other words, so that the Insured does not receive compensation greater than the loss suffered.

Principle of Proxima Causa

Insurance provides guarantees against losses caused by certain risks. In other words, the existence of an insurance agreement creates an obligation for the Insurer to provide compensation if the Insured suffers a loss; however, determining the cause of loss is often difficult because there may be more than one such event or a series of correlative events may occur simultaneously.

This principle is related to causal relationship: determining the cause of the loss and whether the cause is guaranteed by the insurance policy. The reason for the Principle of Proxima Causa is that the Insurer will be responsible for the losses suffered by the Insured if the loss is indeed the responsibility of the Insurer. If not, then the insurer can be released from the obligation to pay compensation, which is not the responsibility of the guarantor. Thus, the although loss arises from the person responsible, not all causes are the responsibility of the guarantor. Even though policies may have an 'All Risk' clause, i.e. the policy bears all risks, this does not mean that all risks are guaranteed; there are always exceptions.

Compensation Claims Settlement Procedure

The Insured will submit a claim for compensation to the Insurance Company through the procedures stipulated in the PSKBI and the claim policy book:

1. The Insured submits a report regarding the existence of a claim that is guaranteed by the policy no later than 5 (five) days after the loss occurs, along with the chronology of the event. This report can be done by telephone or facsimile. If the office is notified of the claim verbally, then it must be submitted in writing.
2. The Insured reports the incident to the local police, who ask for a statement about the event causing loss.
3. The Insured gives an opportunity to the Insurer to conduct a survey of the place of the incident.
4. The Insured submits the claim in writing by attaching the claim document as follows:
    - Letter of claim.
    - Statement letter.
    - Certificate from the police.
    - Loss report that has been completely filled-in. The loss report must signed by the insured.
    - Proof of costs incurred by the Insured to pay compensation of loss to third parties in the form of original receipts.
    - Photocopy of complete letters.
5. If there is damage to a vehicle, a reimbursement partner works.

6. If the Insured needs treatment at the hospital, then the medical expenses are paid in advance by the Insured and the insurance company will pay the amount of the bill, provided that the receipt does not exceed the insured sum.
7. If the Insured is sued before the court, the Insurer will provide assistance with litigation fees of at most 10% of the sum insured. Documents that must be submitted by the Insured are letters from the court to the Insured, receipt for costs incurred by the Insured for litigation fees, and fees for assistance by legal experts.

Conclusion

1. The application of the Principles of Insurance must be carried out in accordance with the provisions of the applicable Regulations, namely the Commercial Law and Law No. 40 of 2014. The Principles of Insurance consists of the Principle of Insurable Interest, the Principle of Utmost Good Faith, the Principle of Indemnity, the Principle of Subrogation, the Principle of Contribution, the Principle of Proxima Causa

In the Revolutionary Era 4.0, the application of the Principles of Insurance can have positive and negative impacts. Among the positive impacts of the data input application system is that the Insurance Principles can be replaced by technology. Entering computer data online helps both the Insurer and the Insured in the insurance process. The negative impact of human resources, such as insurance officers, will be reduced because their work can be replaced by a digital system that can be used anywhere.

2. The procedure for receiving compensation must be carried out by the Insured in accordance with the provisions of the Indonesian Insurance Standard Policy. In the Revolutionary Era 4.0, this procedure can be done through a digital system by entering the necessary data into a computer. This can be done wherever the Insured is located.

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