

Legal Protection of Policyholders for Claim Issues Insurance coverage based on positive Indonesian law

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ABSTRACT

This paper reviews the legal protection for insurance policyholders according to Indonesian positive law. This is aimed at increasing our understanding of the concept of insurance and how legal protection is for policyholders for problems with claims for insurance coverage and how the liability of the insurance company as the insurer is towards the insured, namely the policyholder. Insurance policy holders are generally individuals, many of whom are people who are unfamiliar with the law and must be confronted with insurance companies, so based on this it is important for positive law to provide legal protection for insurance policy holders from violations of the law by insurance companies and of course all forms included law violations must be held accountable.

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Introduction

Everyone in this world certainly lives in uncertainty, in this case uncertainty is defined as an unexpected event that can happen to anyone at any time. As an example of cases of burning houses, accidents, theft, and events that were never predicted before. As a result of these adverse events, family life, which was initially fine, can change due to the suffering caused by these unexpected events. One of the sufferings that will be faced is the disruption of income to meet their daily needs. Then the level of risk that occurs in every human activity will also increase, both those carrying out activities face risks to property that might disrupt business continuity or property. So that humans try to overcome it. One way for humans to overcome risk is through transferring risk to other parties, in this case through insurance institutions.

Insurance as a risk transfer and sharing institution has positive uses for society, companies and for the development of the country, where those who enter into an insurance agreement will feel at ease because they are protected from the possibility of a loss being suffered. Although there are many methods for dealing with risk, insurance is the method most widely used by the public. Insurance promises protection to the insured against risks faced by individuals and risks faced by companies.

Based on Law Number 40 of 2014 concerning Insurance. Insurance is a two-party agreement, between two parties with the name of the insurer binding himself to the insured by receiving insurance premiums to provide reimbursement to the insured or policyholder due to loss, damage, costs incurred, loss of profits, or legal liability to third parties who may suffered by the insured arising from a payment based on the death or life of the insured person (Anugerah & Disemadi, 2022).

Discussing insurance, it seems that insurance can raise another interesting issue to discuss, namely an insurance company which is a financial institution that provides a variety of insurance options to protect people and companies from financial loss and get returns in the form of premium payments. In this case the problems that arise as a result of insurance claims include the sum insured given by the insurance company or the insurer to the insured, that the insurance agreement was not carried out in good faith by the parties involved as stipulated in the insurance policy. This is where a discrepancy arises between what is expected (*das sollen*) and the reality in society (*das sein*). Therefore, insurance companies must be morally and legally responsible to insurance policy holders. Legal protection for insurance customers who hold policies is very important because the policy is the only written evidence as proof of an insurance coverage agreement as long as it is proven that they have made official payments (Gunawan, 2021).

In theory, legal protection for insurance policy holders is connected with the practice of standard agreements on insurance agreements. the application of standard agreements, causing the legal protection function of the insurance policy holders to be questioned.

One of the institutions that has the authority and function in providing legal protection is the Financial Services Authority (OJK) as stipulated in Law no. 21 of 2011 in Article 55 paragraph (1) states that: "Since 31 December 2012 the functions, duties and authorities for regulating and supervising financial services activities in the capital market sector, insurance, pension funds, financing institutions and other financial services institutions have shifted from the Minister of Finance and the Capital Market and Financial Institution Supervisory Agency to OJK"

With the aim of providing legal protection to insurance policy holders, OJK has the right to carry out legal defense which includes taking certain actions against insurance companies to resolve complaints from injured policyholders and OJK can file a lawsuit to obtain compensation from the insurance company against the policy holder as a result of violations of laws and regulations in the financial services sector (Rambe & Sekarayu, 2022). The problem is how far the insurance policyholder's protection is realized. From the description of the background above, the author will formulate several main issues as the focus of discussion in this study related to LEGAL PROTECTION OF POLICY HOLDERS ON THE PROBLEM OF INSURANCE CLAIM BASED ON POSITIVE LAW OF INDONESIA

Based on the elaboration of the background above, there are formulations of the problem that can be drawn, including: What are the legal steps for policyholders who experience problems with insurance claims based on Indonesian positive law? How is the legal protection for policyholders who experience problems with insurance claims based on Indonesian positive law?

Based on the formulation of the problem above, the purpose of this research can be put forward to find out the legal steps for policyholders who experience problems with insurance claims based on Indonesian positive law (Apriani, 2018). To find out how legal protection is for policyholders who experience problems with insurance claims based on Indonesian positive law

Research methods

This study uses a normative juridical method that refers to positive law, namely the provisions of applicable laws and regulations, especially Law Number 40 of 2014 concerning insurance, Law Number 21 of 2011 concerning financial services authorities, the Civil Code and other regulations. other legislation (Sony & Tambunan Wilson, 2019).

This study uses primary and secondary legal materials. Primary legal material is legal material that has legally binding force in the form of statutory regulations, basic norms, and non-codified laws. While secondary legal material is legal material that has close ties with primary legal material where secondary legal material helps understand primary legal material in the form of scientific papers, research results, journals, and others.

This research was carried out by means of a literature study in which the researcher studied the legal materials and then processed them based on the problems to be studied. In this study used qualitative data analysis which is a way to explain the object of the problem being studied. The purpose of this qualitative data analysis is to describe the problems in this journal so that they are clearer and more complete. Several steps in qualitative data analysis are collecting data to be examined, presenting data in a systematic and complete and easy to understand way.

Results and Discussion

A. What are the legal steps for policyholders who experience problems with insurance claims based on Indonesian positive law?

As a rule of law country, Indonesia certainly has various regulations that are used if violations occur in society. In this discussion, we will conduct research on insurance, which is currently being widely offered to the public as a form of coverage provided by companies to their customers. As one thing that is quite a lot in the community, of course the state needs to make various regulations that can oversee insurance in Indonesia to be orderly and no party is harmed (Prodjodikoro, 1960).

With various laws and regulations that have been passed, of course, settlements or legal steps have also been regulated for policyholders who experience problems when making insurance claims, especially based on insurance laws. Policyholders who experience problems when making claims can also make complaints about rejection of claims to the Financial Services Authority (OJK) and will be assisted by OJK. OJK itself has issued POJK No: 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector which was specifically made to protect consumers who feel aggrieved by insurance companies (Husain, 2016). If the insurance is refused due to the negligence of the insurer, the legal sanctions are in the form of written warnings, restrictions on business activities, and revocation of business licenses as contained in Article 77 paragraph (1) POJK No 69/Pojk.05/2016 concerning Business Conduct of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies, whereas if the insurance is refused due to the negligence of the insured, the legal consequences of the insurance company can prosecute the insured party. One of the solutions to problems experienced by policyholders is through arbitration and has been regulated in Law no. 30 of 1999 which is one of the efforts to settle disputes outside the court. In contrast to civil proceedings at the district court level, in the arbitration process it is preceded by filing a request for arbitration accompanied by a request for the appointment of an arbitrator to be chosen by the applicant to handle disputes in arbitration

to the evidence that the applicant will submit to support his application (statement of claim).

Procedures and procedures for imposing administrative sanctions on Insurance Companies are carried out in several stages, starting with administrative sanctions in the form of written warnings. The imposition of administrative sanctions in the form of written warnings is carried out a maximum of 3 (three) times in a row for each violation. The period for the imposition of administrative sanctions in the form of a written warning for each Insurance Company is no longer than 30 (thirty) days since the administrative sanctions are imposed.

In addition to settlement through arbitration, customers can also resolve it through other means such as by reporting it to the relevant institution to be held accountable from the insurance company. Munir Sjamsoeddin as Chairman of the Indonesian Insurance Council (DAI) said, if an insurance company is deemed not to be quick in resolving claims, a customer can report it to the Indonesian Insurance Council (DAI). If the problems that occur have not been resolved, the customer or the insured can report it to the Ministry of Finance of the Republic of Indonesia (Republic of Indonesia), which has granted an insurance company operating license. The above is one of the steps that a policyholder can take if they experience problems when making an insurance claim. With various choices of steps for solving that have been prepared, we hope that readers can understand and know more about what can be done if you experience problems such as the discussion of researchers. The public can also become more familiar with insurance agreements that have the potential to experience problems in the future and be more careful.

B. What is the legal protection for policyholders who experience problems with insurance claims based on Indonesian positive law?

Theoretically, insurance is an agreement between two parties, namely the insurance company (the insurer) and the policyholder (the insured) which forms the basis of a premium receipt by the insurance company as a form of compensation for providing a reimbursement to the policyholder due to loss, damage, costs incurred, arising and loss of profits as well as the existence of a legal liability to third parties that may be suffered by the policyholder due to the occurrence of an uncertain matter. Whereas a replacement for the policyholder can also be made by providing a payment based on the death of the insured or a payment based on the life of the insured with benefits based on the results of fund management. This is stated in Law Number 40 of 2014 concerning insurance.

As is well known, that insurance or coverage is an agreement in which case the insurer obtains a premium and has bound himself to the insured to provide him with compensation in the form of losses which may occur and be suffered due to an uncertain event (risk). Based on article 28 paragraph 3 of Law No. 40 of 2014 concerning insurance, it states that coverage is declared to take effect and is binding on the Parties as of the time the premium or contribution is received by the insurance agent. So, the premium received by the Insurance Agent will be given to the insurance company within the period determined by the financial services authority (OJK).

In insurance companies, there are insurance claims which have the meaning that the agreement that has been made between the policyholder and the insurer has a claim for the existence of rights that arise because the conditions in the agreement previously determined have been fulfilled. When examined further, the problems contained in insurance claims can be in the form of losses suffered by the policyholder due to non-

fulfillment of claims on a right that has been made or there is a mistake in the object agreed upon in the agreement. . Whereas in responding to problems with insurance claims that cause losses to policyholders, based on laws and regulations it is stated that there is legal protection for policyholders if there is such ambiguity.

Legal protection is an effort to protect society from arbitrary acts by authorities that are not in accordance with existing legal rules, to create order and tranquility so as to enable humans to enjoy their dignity as human beings. This is related to the weak legal protection for insurance policy holders because it is not uncommon for clauses in the agreement to benefit the insurer more than the insured. When this happens, it can cause legal consequences arising from problems when insurance claims are automatically detrimental to the insured.

With regard to legal protection given to policyholders, article 54 paragraph 1 of Law Number 40 of 2014 concerning insurance explains that insurance companies, Islamic insurance companies, reinsurance companies and sharia reinsurance companies are required to become members of a mediation institution that functions to settle disputes. between insurance companies, sharia insurance companies, reinsurance companies and sharia reinsurance companies and policyholders, insureds, participants or other parties entitled to insurance benefits. In the event of a dispute over the object of the insurance agreement, the mediation institution must obtain written approval from the Financial Services Authority so that it can settle disputes between the insurance company and the policyholder. The Financial Services Authority (OJK) also implements dispute resolution through both litigation and non-litigation channels (Amriani, 2012).

Based on article 9 letter c of Law Number 21 of 2011 concerning the Financial Services Authority, it states that OJK is an institution that has the duty to carry out supervision, examination, investigation, consumer protection, and other actions against Financial Services Institutions, perpetrators, and or supporting financial services activities as referred to in laws and regulations in the financial services sector. Thus OJK has the authority to provide legal protection to consumers, especially to insurance policyholders (insured) who become consumers of insurance companies engaged in financial services. Legal protection for policyholders is needed because it is not uncommon to see problems such as convoluted or even non-compliant agreements or rejection when the insured submits an insurance policy claim.

Article 27 of the Decree of the Minister of Finance Number 422/KMK.06/2003 concerning Business Conduct of Insurance Companies and Reinsurance Companies explains that insurance claims submitted by policyholders against the insurer must be paid immediately no later than 30 (thirty) from the day of the agreement. between the two parties, namely the insured and the insurer or there is certainty regarding the amount of claims that must be paid accordingly. Providing insurance claims must be made easily and not make it difficult for policyholders.

The occurrence of a problem with an insurance claim against the policyholder can first report this to the Financial Services Authority (OJK) so that the problem can be resolved immediately. It is stated in article 29 of Law Number 21 of 2011 concerning the Financial Services Authority that it is explained that the OJK conducts consumer complaint services which include:

- a. Prepare adequate tools for customer complaint services that have been harmed by actors in financial service institutions. This can be explained that the OJK can help and provide complaint services to policyholders in complaining about a problem in their insurance policy claim.

- b. Create a mechanism for consumer complaints that are harmed by perpetrators in financial service institutions. Based on the explanation above, the policyholder can follow the complaint mechanism that has been made by the OJK if a problem occurs with the insurer.
- c. Facilitate settlement of consumer complaints that have been harmed by actors in financial service institutions in accordance with laws and regulations in the financial services sector. Thus it can be concluded that the OJK will provide legal protection to policyholders by facilitating all dispute resolution they experience in accordance with the applicable laws and regulations.

With the intention of providing legal protection to insurance policy holders, OJK has the right to carry out legal defense which includes taking certain actions against insurance companies to resolve complaints from injured policyholders, and OJK can file a lawsuit to obtain compensation from the insurance company to the policy holder. as a result of violations of laws and regulations in the financial services sector. This is stated in article 30 of Law Number 21 of 2011 concerning the Financial Services Authority (Miru, 2020).

The procedure for resolving disputes between policyholders and insurance companies will basically reach evidence, namely the application of standard clauses that will be one-sided on the policyholders and violations of the insurance agreement can also be found in the form of refusal of insurance claims against policyholders due to mistakes made by the insurance company itself. Based on this, it is necessary to have legal protection for policyholders both preventively and repressively.

1. It should be noted that there are 2 types of legal protection that can be given to policyholders, namely:
2. Preventive Protection, which means an insurance contract in the form of a fair standard clause, which involves a number of elements in the insurance policy, between bargaining position, negotiation and proportionality, balance.

Repressive Protection means the settlement of consumer disputes outside the court (Indonesian Arbitration Mediation agency and the Consumer Dispute Settlement Agency or in court).

Based on this, it can be explained that the protection of the insured can be in the form of preventive protection which is one of the protections with the aim of preventing a dispute by involving elements in the policy and having fair standard clauses, and can also be in the form of repressive protection to guarantee justice to the policyholder in the event of a dispute in it.

Regarding preventive protection in order to prevent a misunderstanding related to all the rules that have been issued by the insurance company and also to make it easier for the insured to understand an existing rule, then in every document, especially in an insurance policy, the insurance company is required to use terms, phrases or simple sentences to be easily understood by insurance policy holders. In terms of protecting the insured, it must also be explained regarding the existence of rights and obligations towards the insured in the insurance business so that the insured knows what his rights and obligations are.

The liability that must be given by the insurance company to the policyholder. Legal liability that can be given to the insurance company as a business actor is contractual liability or what can be called civil liability on the basis of an agreement made by the insurance company for losses suffered by the policyholder due to using the services provided by the insurance holder. This civil liability can be carried out on the basis of a

breach of the previously agreed agreement. Thus based on this matter, the policyholder can file a lawsuit against the insurance company to court on the basis of default.

Default is the non-fulfillment of the achievements agreed in an agreement. In this case, achievement can be in the form of giving an item and doing an action or not doing an action. Based on the existence of problems with insurance claims, it can be concluded that the insurer did not commit an act stated in the insurance agreement policy and neglected his obligations as an insurer, causing losses to the policyholder. The insurer in this case can be said to not have good faith in carrying out its obligations to the policyholder. In accordance with article 1338 of the Civil Code, it states that all agreements made legally apply as laws for those who make them and these agreements must be carried out in good faith. Thus, if there is no good faith and one of the parties, namely the insurance company, does not carry out its achievements in an agreement, then this can be said to be a default which becomes the basis for the injured policyholder to file a civil suit to court.

Conclusion

Basically, the OJK has issued POJK No: 1/POJK.07/2013 concerning Consumer Protection in the financial services sector which explains related to legal steps that will be given to policyholders if there is a problem with an Insurance claim, namely if the Insurance refuses due to the negligence of the Insurance party, the legal sanction is in the form of written warnings, restrictions on business activities, and revocation of business licenses. Whereas if the insurance is refused due to the negligence of the insured party, the legal consequences of the insurance company can prosecute the insured party. Policyholders can also report problems with their insurance claims to the Indonesian Insurance Council (DAI). If the problems that occur have not been resolved, the insured can report it to the Ministry of Finance of the Republic of Indonesia (Republic of Indonesia), which has given permission to operate an insurance company. Insurance companies can also be subject to administrative sanctions if there are problems with the policy claims from the insured caused by the insurer.

Legal protection for policyholders is specifically regulated in Law Number 40 of 2014 concerning insurance which explains that insurance companies are required to settle disputes between insurance companies and policyholders through mediation or arbitration and litigation and must obtain approval from the OJK. In order for legal protection for policyholders to run optimally, OJK must carry out supervision, inspection, investigation, and consumer protection for insurance companies so that the rights of policyholders can be protected in becoming consumers of insurance companies. OJK also provides consumer complaint services when problems occur with insurance policy claims and provides dispute settlement facilities experienced by policyholders. In addition, policyholders can also be given preventive or repressive protection to resolve any problems with insurance policy claims.

After the authors conducted research on one of the issues that is currently being discussed by the public, namely insurance, we hope that the government of the Republic of Indonesia can pay more attention to the public, especially those who do not have knowledge in the field of law. We also hope that the government can conduct counseling regarding legal steps in the event of a legal problem to the public, especially in the insurance sector which experiences many problems when making claims. In addition to counseling on legal steps that can be taken by the community when legal problems occur, insight is also needed for the community, especially customers who hold insurance

policies, to find out about the legal protection they are entitled to. Some of the things above are suggestions from the author as an effort to achieve justice for all policyholders who experience claims problems.

References

- Amriani, N. (2012). Mediasi: Alternatif Penyelesaian Sengketa Perdata di Pengadilan.
- Anugerah, F., & Disemadi, H. S. (2022). Kajian Pembaharuan Hukum Dalam Asuransi E-Commerce. *Legal Spirit*, 6(2), 177–190.
- Apriani, R. (2018). Sanksi hukum terhadap pihak penanggung atas klaim asuransi yang tidak dipenuhi penanggung berdasarkan hukum positif. *Syiar Hukum: Jurnal Ilmu Hukum*, 16(1), 23–44.
- Gunawan, J. (2021). Perlindungan hukum bagi konsumen hewan kurban berdasarkan Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan konsumen.
- Husain, F. (2016). Perlindungan Hukum terhadap pemegang polis asuransi menurut UU No. 40 Tahun 2014 tentang Perasuransian. *Lex Crimen*, 5(6).
- Miru, A. (2020). Hukum Perikatan penjelasan makna pasal 1233 sampai 1456 BW.
- Prodjodikoro, W. (1960). *Hukum asuransi di Indonesia*. Pembimbing.
- Rambe, S. H., & Sekarayu, P. (2022). Perlindungan Hukum Nasabah Atas Gagal Klaim Asuransi Akibat Ketidaktransparanan Informasi Polis Asuransi. *JURNAL USM LAW REVIEW*, 5(1), 93–109.
- Sony, T., & Tambunan Wilson, R. G. (2019). *Hukum Bisnis*. Jakarta: Prenadamedia Group (Devisi kencana).
- Keputusan Menteri Keuangan Nomor 422/KMK.06/2003 tentang Penyelenggaraan Usaha Perusahaan Asuransi dan Perusahaan Reasuransi
- Undang-undang Nomor. 40 Tahun 2014 Tentang Perasuransian, Pasal 1 butir (a)
- Undang-Undang Nomor. 21 Tahun 2011 Tentang Otoritas Jasa Keuangan (OJK) Pasal 55 ayat (1)
- Undang-Undang Nomor. 40 tahun 2014 tentang asuransi pasal 28 ayat 3
- Undang-undang Nomor. 40 tahun 2014 tentang perasuransian Pasal 54 ayat 1
- Undang-Undang Nomor 21 tahun 2011 tentang Otoritas Jasa Keuangan Pasal 29
- Undang-Undang Nomor 21 Tahun 2011 tentang Otoritas Jasa Keuangan pasal 9 huruf c
Pasal 77 ayat (1) Peraturan Otoritas Jasa Keuangan No. 69/POJK.05/2016 tentang Penyelenggaraan Usaha Perusahaan Asuransi, Perusahaan Asuransi Syariah, Perusahaan Reasuransi, dan Perusahaan Reasuransi Syariah.