



## Insurance Customer Protection if an Evenement (Fortuitous Event)

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### **Abstract**

This study aims to examine the legal protection of customers in the event of an event evenement (the customer dies), and barriers to customer obstacles in claiming claims for loss. The method used is a normative method with a statutory approach and a case approach. Research results prove. Legal protection for insurance customers in the event of an event (death for the Insured) has not been able to run properly. Obstacles for the customer or beneficiary in making claims for compensation are more caused by behavior and nature of dishonesty (te kwader trouw) of insurance companies, by looking for reasons so that compensation cannot be paid.

**Keywords:** *Protection; Customer; Evenement*

### **Introduction**

The service industry most regulated through government regulations is those engaged in the financial services sector that raise funds from the public. One that is increasingly developing along with the increasing prosperity of the people is the insurance industry. Insurance is very closely related to the problem of risk. Insurance activities are one way to manage risk by transferring it to others.

Facing risks, efforts can be made to overcome, avoid, reduce or minimize risks by transferring to other parties based on insurance or insurance agreements.<sup>1</sup> Insurance or insurance activities have five basic principles that must be obeyed by the parties. The five basic principles are insurable interest, indemnity, utmost good faith, subrogation and contribution.

Insurance has a role in protecting risk to provide a sense of security for the insured so that insurance is a necessity in the order of human life. Insurance as a transfer and risk sharing institution has positive uses both for the community, companies and for the country's development. For the community, someone who closes the insurance agreement will feel at peace because he gets protection from the

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<sup>1</sup> Sri Rejeki Hartono. *Hukum Asuransi dan Perusahaan Asuransi*. Sinar Grafika, Jakarta, 1992, p. 16.

possibility of a loss. For companies, a company that shifts its risk through insurance agreements will be able to increase its business and dare to set bigger goals. For state development, the premiums collected in an insurance company can be cultivated and used as funds for development efforts. The results will be enjoyed by the community.

The insurance company itself offers several insurance products, among which are policies to increase product premiums. It was created out of necessity.

In a general sense, a premium is something that is given as gift or alms, or something that is paid extra as a driver or designer, or something extra is paid above the normal payment. The customer can determine the amount of premium to be paid according to his ability. The customer can also determine the amount of the desired sum insured according to his needs. The size of the sum insured will affect the amount of insurance costs to be charged and will affect the additional benefits that can be taken. The greater the sum insured will minimize the additional benefits that can be taken. This is where the role of an insurance agent to illustrate the benefits of insurance in a balanced way. There are times when the data and information submitted by the insured to the guarantor when closing the insurance when the interest is not always the same as the actual situation or on the policy that must be signed, because at that time the data or information is incomplete or the insured wants a change in the conditions of coverage. For the addition of data / information on insured interest or changes in added risk guaranteed to the insured, additional premium surcharge is charged. Insurance premiums are usually to determine the high premium rates the need for health checks on prospective insured. If the insured does not want to, the guarantor may still receive the coverage, with the conditions concerned subject to additional premiums in addition to the basic premium.

Based on the types of life insurance is a form of voluntary insurance (Voluntary Insurance), where this insurance arises at the will of the parties concerned with the life and body or family to provide protection against the life and body safety of a person from the threat of death, where the insured party will receive compensation or guarantees when needed, this shows the basic nature of life insurance that is protection against financial losses due to loss of ability to generate income (economic value) caused by death, or old age.

Specific arrangements regarding risk weights can also be based on Article 638 KUHD, which occurs in marine insurance: ship material insurance, freight financing insurance and freight insurance. In the event of a change of direction or journey at the will of the master or owner, the responsibility of the guarantor carries the risk of stopping. In the event of loss, the guarantor is not obliged to pay compensation claims. For this reason, Warjono Prodjodikoro is of the opinion that in the event of a risk weighting it is necessary to pay attention to the provisions of Article 1338 paragraph (3) of the Indonesian Criminal Code, so that the two parties hold more negotiations whether insurance is worth continuing without changes, or changes are made, for example by increasing the amount of the premium.

The use of article 251 KUHD in solving the problem of risk weighting is related to the notification that must be made by the insured about the state of the object or object of insurance, that the insured still notifies about any changes that occur to the insurance object, so that before an event that can cause a loss arises, the guarantor can take steps or negotiate whether to terminate the contract or increase the amount of the premium. Collecting and analyzing risks is important to be done in the process (underwriting), bearing in mind that the determination of premium rates for certain risks is different from the application of ordinary (standard) rates. Kenneth Huggins and Robert D Land said that many factors that affect the level of mortality risk indicated by the prospective insured, fit underwriter is determining the presence of certain factors and the extent of its influence on the level of

risk, where these factors tend to increase the risk of death of a person the prospective insured exceeds the level normal for his age, age is only one factor that can cause death of a person. Based on the description above, the author is interested in conducting research under the title “Insurance Protection If an Occurrence occurs.

## ***Result and Discussion***

### ***1. Insurance Company Responsibilities Against Insurance Claims***

Insured protection is a term used to describe the legal protection given to the insured to meet his needs from things that can harm the insured itself. In the area of insured law, it can be said as a consumer because in the consumer protection law, the consumer is every user of goods and / or services, this term is still relatively new, especially in Indonesia, whereas in developed countries, this matter starts to be discussed together with the development of industry and technology.

With the understanding that consumer protection questions the protection (law) given to consumers in their efforts to obtain goods and services from the possibility of losses due to their use, then consumer protection law can be said to be a contradictory law regarding providing protection to consumers (the insured) in order to fulfill their needs as a consumer. Accordingly, consumer protection laws regulate the rights and obligations of consumers and producers.

### ***Principle of Responsibility***

There are two terms that refer to accountability in the legal dictionary, namely liability and responsibility. The term liability refers to legal liability, that is, accountability due to mistakes made by legal subjects while the term responsibility refers to political liability.”

In general, the principle of responsibility in law can be distinguished as follows:

- a. The Principle of Liability Based on Fault (Liability Based on Fault) where a principle that is quite common applies in criminal and civil law. In the Civil Code, especially Article 1365, 1366, and 1367, this principle is firmly held. This principle states, a new person can be held liable if there is an element of wrongdoing. Article 1365 of the Civil Code, which is commonly known as an article on acts against the law, requires the fulfillment of four main elements, namely (1) the existence of acts,
- b. The element of error, (3) the loss suffered, (4) the causal relationship between error and loss. 2. The Presumption of Liability Principle, which states that the defendant is always held responsible until he can prove his innocence. The word “considered” in the principle of “Presumption of Liability” is important, because there is the possibility of the defendant freeing himself from responsibility, namely in terms of proving that he has “taken” all necessary actions to avoid the occurrence of losses. So the burden of proof lies with the defendant.
- c. Presumption of Non-Liability Principle, this principle is the opposite of the second principle, the principle of presumption of not always being responsible is only known in the very limited scope of consumer transactions. An example of the application of this principle is the transportation law. Loss or damage to cabin baggage or hand luggage, which is usually under and supervised by passengers is the responsibility of the passenger.
- d. The Principle of Absolute Liability (Strict Liability), the principle of absolute responsibility is often identified with the principle of absolute responsibility (Absolute Liability) where the principle of

responsibility is without error and there are no exceptions. Nevertheless, there are experts who distinguish the two terms above. There is an opinion that states, strict liability is a principle of responsibility that establishes error not as a determining factor. However, there are exceptions which allow to be released from responsibility, for example force majeure status. Instead absolute liability is the principle of responsibility without error and there are no exceptions.

- e. The Principle of Responsibility with Limitation (Limitation Of Liability Principle), this principle is very favored by business actors to be included as a clause in the standard agreement he made. Of the several principles of responsibility above, related to the responsibility of the guarantor for the insured in a life insurance agreement is the principle of liability with limitations (Limitation of Liability Principle), which is based on this principle that the guarantor is responsible for the insured to the extent of what was promised in the insurance policy, so that the insured, appointed or connoisseurs cannot claim responsibility to the guarantor in excess of the amount of coverage that is in the terms of the life insurance policy.<sup>2</sup>

Legal liability that can be imposed on business actors if in doing business they are still deviating or not in accordance with this provision:<sup>3</sup>

*a. Contractual Liability*

Contractual liability or contractual liability is a civil liability based on an agreement / contract from a business actor (both goods and services), for losses suffered by consumers from consuming or using the goods and / or services they provide.

*b. Product Liability*

Product liability is a direct civil liability (strict liability) of business actors (producers of goods) for losses suffered by consumers due to consuming the goods produced. The essence of strict liability is responsibility based on actions against the law. Product liability will be used by consumers to obtain compensation directly from producers (goods) even though consumers do not have a contractual relationship (privity of contract) with these producers.

*c. Criminal Liability*

Criminal liability, namely criminal liability of business actors (both goods or services) for the disruption of the safety and security of the public (consumers), in addition to criminal sanctions, against business actors may still be subject to additional criminal penalties, in the form of:

- a. Expropriation of certain items
- b. Announcement of judge's decision
- b. Compensation payment
- c. Orders to stop certain activities that cause consumer losses;

<sup>2</sup> Sekartati, Heni. (2014). *Aspek Hukum perlindungan Konsumen Dalam Transaks Multi Level Marketing*. Faculty of Law, University of North Sumatra, p. 55.

<sup>3</sup> Gunawan, Johannes. (2015). *Tanggung Jawab Pelaku Usaha Berdasarkan Undang-Undang Nomor 8 Tahun 1999*. Jurnal Hukum Bisnis. Volume 8, p. 90.

- d. Obligation to withdraw goods and / or services from circulation
- e. Revocation of business license

Based on some of the descriptions above, that the legal liability addressed to the guarantor in this case the life insurance company for the payment of claims to the insured is a contractual responsibility (Contractual Liability). Based on these responsibilities the insurance company as the guarantor is responsible for the payment of life insurance claims which become the rights of the insured based on the insurance agreement.

## **2. Settlement of Insurance Claim Cases**

### *a. Case and Position*

In 2017 Drs H. Badarudin committed himself to be a customer or Insured of the AIA Insurance Company of the Mataram Branch with a Platinum MAX Provis Insurance Policy with No.35324168 with Rp.600,000,000 (six hundred million rupiah). The inclusion of Drs.H Badarudin as a customer of PT. AAI Insurance in the Mataram Branch is inseparable from the role of a saless promotion or an employee of PT. AAI who is tasked with finding a customer named Mr. Sri Metty Wulandari.

The beneficiary of the insurance policy is Drs H Badarudin's wife, so that if Drs.H.Badarudin dies, his wife, Drs.H.Aida Musfiah, will receive compensation of Rp. 600,000,000 (six million rupiah).

Issuance of Insurance Policy with No. 35324168 is certainly an agreement and agreement between PT. AIA Cabanag Mataram and Drs H Badarudian that Drs H Badarudin fulfilled the health requirements, because at the time of signing the agreement to open the policy, Drs H Badarudin was in good health, and the PT. AIA Mataram Branch does not require every customer to conduct a general ceq up on prospective customers who will enter PT. AIA.

Then on July 6, 2018 Drs.H Badarudin died, so the wife of the late Drs H Badarudin (Dra Hj AIDA MUSFIAH). made a claim to PT AIA Mataram Branch to obtain compensation in accordance with the agreement in the amount of Rp. 600,000,000 (six hundred million rupiah). However, the compensation claim was rejected on the grounds that the late Drs H.Badarudin suffered from high blood pressure when signing the insurance policy so that customers who have high blood pressure if they enter insurance are not entitled to receive compensation, because the disease is an illness that is not permitted to be an insurance customer PT. AIA.

As a result of the rejection, there was a dispute in Pengadilan Negari Mataram with no. Case 60 / Pdt.G / 2019 / PN.Mtr.

### *b. Judicial Legal Considerations*

Whereas disputes over insurance claim settlement at the trial in the Mataram District Court in principle that PT. AIA Mataram has recognized the existence of an Insurance Policy No.35324168. Thus actually the insurance agreement has been valid and applies as a law for the parties and the parties must fulfill their rights and obligations.

Of course it is very regrettable if the customer or the party who will benefit does not obtain insurance compensation due to “not one of the parties’ fault”, namely the existence of an illness which is an obstacle not being paid. Indeed, from the beginning the AIA must oblige prospective customers to check all diseases with general care so that they do not become a problem in the future. Surely it would be unwise if a customer’s illness is only disputed when the customer has passed away. Therefore, if PT. AIA is not willing to pay compensation for beneficiaries, then it is included in the category of actions and achievements.

However, in the trial in the decision of the judge of the Mataram Court has not “checked” the substance of the case, because the problem and the spotlight of the judge is about the “parties” that must be named as Defendants.

The Judge is of the opinion that the Plaintiff (Dra H.AIDA MUSFIAH) is not enough to just sue PT. AIA before the law, but that the plaintiff must also be Ms. Metty Wulandari (correctional staff) or insurance agent (term of the District Court), so the Plaintiff’s claim is not accepted because lack of subjects.

The author is of the opinion that the consideration of the Mataram District Court that considers the marketing force of PT. AIA to be a company agent is something that is wrong according to the science of law, because according to Prof. Dr. H zainal Asikin, SH., SU the understanding of Company Agents is “people who serve several entrepreneurs as intermediaries This third party person has a permanent relationship with the entrepreneur and represents him to enter into and subsequently carry out agreements with third parties. The difference between a company agent and a traveling worker is the employment relationship and the place of residence, as described below:

- 1) Traveling workers have a legal relationship between labor and employers (employers), while company agents have a legal relationship providing power of attorney with the company they are dealing with.
- 2) Traveling workers are employees of the employer’s company (PT. AIA), and Metty Wuandari does not stand alone and is domiciled in the company’s domicile while company agents are not part of the company it operates, but other companies which are themselves owned.

That from the above description, the position of Mr. Sri Metty Wulandari is not in accordance with the true meaning (AGENT).

Thus it is clear that the Plaintiff’s demands (Drs.Hj AIDA MUSFIAH) must be accepted without having to sue other parties who are one entity with PT. AIA.

Moving on from that case, it is seen how difficult it is for insurance customers to fight for their rights to receive compensation or compensation when the Insured leaves the world.

### ***Conclusion***

Legal protection for insurance customers if an event occurs (death for the Insured) has not been able to run properly or in other words the beneficiary (expert heirs) often experience obstacles in filing claims for compensation from insurance companies.

The obstacle for the customer or beneficiary in making claims for compensation is due more to the behavior and nature of dishonesty (*te kwader trouw*) from the insurance company, by looking for reasons that the compensation cannot be paid. The reason most often used by insurance companies is the health factor / illness suffered by the Insured since signing the policy (such as high blood pressure and heart disease) so that the Company with certain modes refuses to pay the beneficiary's insurance claim. Efforts made by customers that are not paid compensation by the Insurance Company is by making a civil claim to the Court as happened in case No. 60 / Pdt.G / 2019 / PN.Mtr.

### ***Recommendations***

- a. The Government through the Financial Services Authority must be more assertive in grasping the practices of insurance companies that harm customers by imposing strict sanctions on insurance companies that practice fraudulent and dishonest practices.
- b. The public must be selective and careful in carrying out the insurance agreement, and must demand a general ceq up when making an agreement so that there is no reason for insurance companies to refuse to pay claims from their customers.

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