



PERLINDUNGAN HUKUM TERHADAP KONSUMEN DALAM PERJANJIAN ASURANSI JIWA AKIBAT ITIKAD BURUK PERUSAHAAN ASURANSI DALAM MENJALANKAN USAHANYA

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Abstrak

Prinsip utmost good faith merupakan prinsip paling penting dalam perjanjian asuransi jiwa. Penerapan prinsip ini dalam praktek asuransi jiwa antara lain terjadi pada saat tertanggung melengkapi formulir permintaan asuransi. Penelitian ini menggunakan metode deskriptif melalui pendekatan normatif (legal research) yaitu pendekatan terhadap permasalahan, dilakukan dengan mengkaji berbagai aspek hukum dari segi peraturan-peraturan yang berlaku. Hasil penelitian menunjukkan Bentuk perlindungan hukum yang diberikan kepada konsumen pada usaha asuransi jiwa di Indonesia yaitu dengan prinsip utmost good faith dianut di dalam usaha asuransi jiwa, yaitu suatu tindakan untuk memberitahukan semua informasi secara akurat apa yang dimintakan ataupun yang tidak dimintakan perusahaan asuransi mengenai mengenai sesuatu yang akan diasuransikan atau objek/kepentingan yang dipertanggungjawabkan. Bentuk-bentuk itikad buruk dari perusahaan asuransi jiwa atas polis asuransi jiwa terkait dengan kewajibannya dalam menjalankan usaha asuransi jiwa adalah pihak penanggung seringkali tidak mau melakukan pembayaran terhadap klaim asuransi jiwa. Adapun bentuk upaya hukum yang dilakukan dalam penyelesaian sengketa konsumen atas polis asuransi jiwa di Indonesia melalui (tiga) tahapan penyelesaian sengketa dan pada kasus ini tidak mengenal upaya banding terhadap putusan pengadilan negeri yang memutuskan keberatan atas putusan Badan Penyelesaian Sengketa Konsumen.

Kata Kunci: *Perlindungan Hukum, Itikadi Buruk, Asuransi Jiwa*

LEGAL PROTECTION FOR CONSUMERS IN AGREEMENTS LIFE INSURANCE DUE TO BAD FAITH BY A COMPANY INSURANCE IN CONDUCTING ITS BUSINESS

Abstract

The principle of utmost good faith is the most important principle in a life insurance agreement. The application of this principle in the practice of life insurance, among others, occurs when the insured completes the insurance request form. This research uses a descriptive method through a normative approach (legal research), namely an approach to problems, carried out by examining various legal aspects in terms of applicable regulations. The results of the study show that the form of legal protection provided to consumers in the life insurance business in Indonesia is the principle of utmost good faith adhered to in the life insurance business, which is an act of accurately informing all information that is requested or not requested by the insurance company regarding something. to be insured or the insured object/interest. Forms of bad faith from life insurance companies on life insurance policies related to their obligations in running a life insurance business are that the insurer often does not want to make payments on life insurance claims. As for the form of legal action taken in resolving consumer disputes over life insurance policies in Indonesia through (three) stages of dispute resolution and in this case there is no appeal against the decision of the district court which decided objections to the decision of the Consumer Dispute Settlement Agency.





Keywords: *Legal Protection, Bad Faith, Life Insurance.*

INTRODUCTION

Businesses and consumers are two parties that depend on each other. Businesses (producers and/or sellers of goods and services), or entrepreneurs, need to sell their goods and services to consumers. Consumers need the goods and services produced and sold by businesses to meet their needs.

Both parties mutually benefit and gain advantages. However, in practice, consumers are often harmed by dishonest and unscrupulous business actors, which, from a legal perspective, constitutes a violation of the law. As a result, consumers receive goods and/or services of low standards at high prices, or the quality of the goods and/or services does not match the (high) price. Furthermore, due to consumers' ignorance and lack of awareness of their rights, consumers become victims of fraudulent business actors.

Consumer protection law is currently receiving quite a lot of attention because it concerns regulations for the welfare of society, not only the public as consumers who receive protection, but business actors also have the same rights to receive protection, each has rights and obligations.

Every person, at some point in time, whether individually or in a group with others, is inevitably a consumer of a particular product or service. This universal situation, in some respects, demonstrates various weaknesses in consumers, preventing them from enjoying a "safe" position. Therefore, consumers fundamentally require universal legal protection. Given the generally weak position of consumers compared to producers, who are relatively stronger in many respects, discussions about consumer protection will always feel relevant and important to review.

Agreements between parties do not always run smoothly, meaning that each party is satisfied, because sometimes the recipient does not receive the goods or services according to their expectations. If the buyer, in this case the consumer, does not receive the goods or services as promised, then the producer has committed a breach of contract, resulting in a loss for the consumer.

Default by one party in an agreement is the failure to fulfill the terms stated in the agreement. This usually occurs more often in the weaker party or the party with a high degree of dependence on the other party, because the requirements are one-sided or more burdensome for the weaker party. This is because these requirements have been outlined in a standard agreement. Such agreements are commonly used and play a crucial role in business law, which is generally based on efficiency-oriented values.

The government is fully responsible for ensuring consumer rights. Guaranteeing these rights will create a healthy business climate. To create a healthy business climate, coordination among relevant technical agencies is necessary to clarify and address issues related to consumer protection. In this case, the issue being examined concerns consumers in the life insurance business.

Insurance companies have made a choice to attract as many customers as possible without considering whether the disproportionately low premiums are justified from an underwriting perspective, namely the ability to pay the policy in the future. As a result,





consumers' insurance claims are rejected without justification. In such circumstances, consumers experience no risk protection. Instead, the insurance company has already received the premiums paid by consumers.

In reality, in the life insurance industry, disputes still frequently arise when filing life insurance claims. Beneficiaries often don't know how to proceed. This is because the insured (the deceased) is usually the one who has the most direct contact with the insurance company. On the other hand, beneficiaries don't receive any explanation from the insurer or life insurance company, and therefore don't know the specific insurance product (insurance policy) they are using. Because of this, insurers or life insurance companies often complicate the claim payment process or even find excuses for not paying out of malice for the sake of profit.

One form of bad faith by a life insurance company is failure to pay insurance claims, providing various excuses, particularly against the principle of utmost good faith, which is the principle of perfect honesty. According to this principle, a party to an agreement is not obligated to disclose anything they know about the subject matter of the agreement to the other party. The other party must be aware of the condition and quality of the subject matter of the agreement, but due to its unique nature, the insured must provide all information regarding the risks in the insurance agreement.

Based on the description of the background above, the problems to be researched are limited as follows:

1. What form of legal protection is provided to consumers in life insurance businesses in Indonesia?
2. What are the forms of bad faith from life insurance companies regarding life insurance policies related to their obligations in running a life insurance business?
3. What legal remedies are used to resolve consumer disputes over life insurance policies in Indonesia? (Study of Supreme Court Decision No. 560 K/Pdt.Sus/2012)?

IMPLEMENTATION METHOD

This research is descriptive analysis, that is, research that describes, examines, explains, and analyzes laws and regulations related to the objectives of this research. The purpose of descriptive research is to accurately describe the characteristics of individuals, conditions, symptoms, or certain groups, or to determine the frequency or distribution of a symptom or the frequency of certain relationships between symptoms and other symptoms in society. The main purpose of analyzing legal materials is to understand the meaning contained in the terms used in the statutory regulations conceptually, as well as to understand their application in practice and legal decisions.

The type of legal research used is normative juridical. Normative juridical research is research that places norms as the object of research, both legal norms in statutory regulations, legal norms originating from a law which are then stated in a court decision or BPSK decision.

The data collection technique used is by studying documents relevant to this research in the library and identifying the data. The data obtained through library research will then be sorted to obtain articles containing legal rules which are then connected to the





problems being faced and systematized so as to produce a classification that is in line with the problems of this research. Furthermore, the data obtained will be analyzed qualitatively inductively to arrive at conclusions, so that the main problems examined in this research can be answered.

RESULTS AND DISCUSSION

Insurance institutions, like banking institutions, will be trusted if they can provide a guarantee of trust to the public. Insurance companies must be able to truly guarantee that collected funds will be returned at a later date in accordance with customer rights. The public must be assured that the insurance company will fulfill its obligation to compensate for losses suffered by the insured. Insurance is a compensation agreement between the insured and the insurer, the document being called an insurance policy. Insurance contracts are very specific because they are signed only by the insurer (the insurance company), but they are binding on the insured.

Insurance companies generally draft the contents of an agreement into a standard or standard form. Besides containing legal language, insurance contracts are also highly technical and specific, making it generally difficult to understand the contents of an insurance policy. Not only the insured, but many actors within insurance companies also lack a thorough understanding of the contract. In the insurance business, several insurance principles must be applied by both the insurance company and the insured. These principles include the principle of insurable interest, the principle of utmost good faith, the principle of indemnity, the principle of proximate cause, and the principle of contribution and subrogation. The definition of the principle of utmost good faith states that the insured must truthfully, completely, and voluntarily disclose all material facts regarding the insured object, whether requested or not. Conversely, the insurance company is also required to demonstrate good faith towards the insured. Misunderstandings often arise regarding the application of this principle in the insurance business. It is assumed that utmost good faith is only the obligation of the insured, while the insurer is not required to demonstrate good faith towards the insurer.

Many insurers claim that the insured failed to act in good faith (a breach of utmost good faith) and, consequently, their insurance claims are rejected. In many cases, the insured's good intentions to act in relation to the insurance claim often backfire because the action turns out to violate the terms of the contract. On the other hand, the insured is unaware that those good intentions have turned out to be bad, which ultimately becomes an area of conflict in compensation claims.

The use of this standard agreement ensures that service transactions can be conducted efficiently and practically without any obstacles resulting from "bargaining" before closing an agreement. In a standard agreement, the clauses in the agreement are unilaterally determined by the insurer, so these clauses tend to prioritize the insurer's rights over the insured's rights and obligations.

The principle of good faith is the most important principle in contract law. The principle of good faith is one of the legal instruments to limit the freedom of contract and the binding force of agreements. The principle of good faith contained in Article 1338





paragraph (3) of the Civil Code should be applied not only when the contract is signed and implemented, but also before the contract is signed.

In general, good faith can be interpreted as each party in an agreement to be agreed upon, according to law has an obligation to provide the most complete information or information, which can influence the other party's decision to enter into the agreement or not, whether such information is requested or not. This principle and provisions also apply to every insurance contract. According to this principle, every insurance contract must be signed by both parties: the insurance company as the insurer and the policyholder as the insured. This principle reflects the rights and obligations of each party.

As a reflection of the principle of good faith regulated in Article 1338 paragraph (3) of the Criminal Code, all insurance contracts are specifically regulated in Article 251 of the Commercial Code as a specialist *lex*s of good faith based on civil law provisions. The purpose of Article 251 of the Commercial Code is to protect the insurer or free him from risks that are not fairly transferred to him, so that in this Article it is not a consideration whether the insured has bad faith or good faith. The provisions of Article 251 of the Commercial Code have an important meaning after an uncertain event occurs (event) that causes a loss, so that it becomes a reason for the insurer to avoid the obligation to pay compensation. However, for an honest insured it is a disappointment because he does not receive compensation on the grounds that the insurance is void, even though he has tried to take out insurance with the intention of avoiding the risk. Many insurers claim that the insured did not carry out good faith (breach of utmost good faith) so that the insurance claim submitted is rejected by the insurance company. In many cases, often the insured's good intentions to do something related to the insurance claim backfire because it turns out that the action violates the provisions of the contract. On the other hand, the insured does not know that his good intentions turned out to be bad, which ultimately became a grey area for the emergence of conflict from claims for compensation.

The good faith of the parties in entering into an agreement must be based on propriety. Every agreement must be based on *pretium iustum*, which refers to reason and equity, which requires a balance between the losses and benefits for both parties. This aligns with the objective of law, which is to achieve justice. Good faith serves as a guideline that the contents of an agreement must contain values of justice.

Insurance contracts or agreements are typically drawn up by the insurer for the insured, who generally have limited insurance knowledge, leaving the insured at a disadvantage. The determining factor for the validity or fairness of the exchange in an agreement is the equality of the parties. Balance in an insurance contract is not sought in the factual circumstances and conditions of whether the objectives of the agreement are truly balanced or not, but rather focuses on whether the agreement is formed under balanced conditions and/or whether the agreement, in terms of substance, intent, and implementation, can give rise to imbalances.

Good faith, or utmost good faith, is crucial in insurance contracts because it concerns the rights and obligations of both the insured and the insurer. Good faith is the most important principle in contract law. Therefore, insurance contracts are also referred to as contracts of utmost good faith. This good faith is usually paired with fair dealing. As





mentioned above, it is very difficult to find a clear definition of good faith in practice. This is understandable because the legal regulations for contracts are very limited, even in civil law countries that include good faith provisions in the Civil Code, only a few provisions are provided.

Good faith or utmost good faith is a basic principle and trust that is the foundation of every agreement, including insurance agreements, and basically the law does not protect parties who act in bad faith. As a reflection of the principle of good faith as regulated in Article 1338 paragraph (3) of the Criminal Code, all insurance agreements are specifically regulated in Article 251 of the Commercial Code.

Insurance cases involving bad faith can arise from both insurance companies and policyholders, whose goal is, of course, solely for personal gain. There are no specific articles specifying what constitutes bad faith; however, bad faith is the opposite of the principle of utmost good faith (Article 1338 of the Civil Code), which emphasizes the importance of good faith in every agreement.

It's not uncommon for an insured party to fail to receive compensation for a claim they filed. There are also cases where the insured party acts in bad faith in filing a claim, for example, intentionally setting fire to their property to obtain compensation. There are also cases where a party other than the insured party acts in bad faith, for example, by murdering the insured party to obtain a life insurance claim. Furthermore, there are cases where insurance companies refuse to pay claims filed by policyholders, citing falsification or misrepresentation of the policy. This often leads each party to accuse the other party of acting in bad faith by failing to fulfill its obligations.

An agreement is an event in which one person promises to another person or where two people promise each other to do something. In general, an agreement is also called an agreement, because both parties agree to do something. Agreements or agreements are generally regulated by Book III of the Civil Code, where the definition of an agreement is regulated in Article 1313 of the Civil Code which states that an agreement is an act by which one or more people bind themselves to one or more other people. In its form, the agreement is a series of words containing promises or abilities that are spoken or written. Therefore, an agreement will issue a bond between the two people who make it.

The principle of utmost good faith in insurance contracts is crucial because it concerns the rights and obligations of both the insured and the insurer. Under the principle of utmost good faith, the insured, when submitting an insurance application form, is obligated to clearly and thoroughly disclose all important facts relating to the insured object and not to intentionally attempt to take advantage of the insurer. In other words, the insured must not conceal anything that could be categorized as a hidden defect or cover up weaknesses and deficiencies in the insured object, as this is closely related to risk, premium payment determination, and the insurer's obligations in the event of a loss suffered by the insured.

The insured's right to make a claim against the insurer is one of the main rights, because this is the purpose of the insurance agreement, namely transferring the risk to the insurer and the compensation provided by the insurer to the insured is guaranteed by





the policy. However, before the insurer pays the claim submitted by the insured, the insured must first fulfill the provisions as stated in the general conditions of the policy which states that the company has the right to request other evidence deemed necessary to support the completion of the evidence as stated in the relevant policy. If then based on sufficient evidence received by the insurer, the decision on the claim can be accepted or not (rejected) regarding the payment of insurance money (claim).

Regarding claims that are rejected by the insurer because evidence is obtained in accordance with Article 251 of the Commercial Code which states: "All false or incorrect notifications, or all concealment of circumstances known to the insured, even if done in good faith, which are of such a nature that the agreement would not have been made, or would not have been made under the same conditions, if the insurer had known the true circumstances of all these things, makes the insurance void."

Before concluding an insurance contract, the insured is required to provide all information regarding the condition of the insured object to the insurer. In the context of life insurance, the object in question is the personal circumstances of the prospective insured. The prospective insured is deemed to be aware that the insurer's decision to accept or reject the insurance contract depends on the information provided. Failure by the insured to do so will raise issues related to the principle of utmost good faith.

Violations of the principle of utmost good faith occur if several criteria are met, namely:

1. A statement or information that is wrong from the insured but not due to intent.
2. False statements or information made by the insured intentionally to gain profit.
3. Not disclosing facts or not conveying things that are required by the guarantor, not intentionally, but perhaps due to ignorance or forgetfulness.
4. Intentionally concealing information or facts to gain benefits from the insurance company.

In relation to hidden (health) defects, there are several criteria to be said to be a violation of the principle of utmost good faith, namely:

1. If a disability (health), for example suffering from heart disease, lung disease, cancer, is known from the start by the insured or policy holder but is not honestly conveyed to the insurer, then this is a violation of the principle of utmost good faith.
2. If the insured or policyholder knows about the defect (health) from the start and then honestly informs the insurer about this fact, but the insurer still accepts the transfer of risk (with certain conditions), then this does not constitute a violation of the principle of utmost good faith.
3. If the insured or policy holder or insurer does not know that the insured has a disability (health), and then the insurer accepts the transfer of risk, then this does not constitute a violation of the principle of utmost good faith.

Based on Article 251 of the Commercial Code mentioned above, it can be seen that any false or incorrect notification, concealing a condition causes the insurance to be void. This illustrates the existence of bad faith from the insured. This principle, if examined closely, is also in accordance with the implementation of Articles 1320 and 1338 of the Civil Code, that agreements made must be based on a lawful cause and the agreement





must be carried out in good faith. Is this principle only an obligation of the insured (consumer) or is it also binding on business actors (insurers/insurance institutions).

Hiding information about his/her disability (health) by providing false information, resulting in this action is a violation of the principle of utmost good faith which can result in legal issues regarding the insurance agreement that has been made with the insurer. On the other hand, if the fact about the disability (health) is not known by the insured or policyholder or is known by the insured/policyholder and then conveyed honestly to the insurer, then this does not constitute a violation of the principle of utmost good faith. It can be said that hiding his/her disability (health) from the insured is a form of fraud (bedrog) if it is done intentionally to seek profit.

CONCLUSION

The legal protection provided to consumers in life insurance businesses in Indonesia is based on the principle of utmost good faith, which is adopted in the life insurance business. This principle is a measure to accurately provide all information, whether requested or not requested by the insurance company, regarding something to be insured or the object/interest being insured. In this case, it is important to note that this principle applies not only to the insured but also to the insurer. This means that the insurer must honestly and clearly explain everything related to the insurance product offered to the insured.

Forms of bad faith from life insurance companies regarding life insurance policies related to their obligations in carrying out life insurance business are: Insurers often refuse to pay life insurance claims by referring to Article 251 of the Commercial Code, which essentially states that insurance companies refuse to pay life insurance claims because the insured provides false or incorrect information or conceals circumstances known to the insured regarding the insured object/interest. This is done in bad faith or for profit. Meanwhile, Article 1338 of the Civil Code emphasizes the importance of the principle of good faith in every agreement.

The form of legal efforts undertaken in resolving consumer disputes over life insurance policies in Indonesia is through (three) stages of dispute resolution and in this case there is no appeal against the district court decision that decided on the objection to the decision of the Consumer Dispute Resolution Agency, but it is directly appealed to the Supreme Court. The absence of such appeal does not reduce the stages of consumer dispute resolution that were previously attempted to be resolved through the Consumer Dispute Resolution Agency. At the cassation stage, this case was won by the consumer in the life insurance business.

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