INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY RESEARCH AND ANALYSIS

ISSN(print): 2643-9840, ISSN(online): 2643-9875

Volume 07 Issue 05 May 2024

DOI: 10.47191/ijmra/v7-i05-10, Impact Factor: 8.22

Page No. 1904-1909

Changes in the Agreement Clause between the Parties in the Insurance Policy That Has an Impact on Losses Reviewed From the Perspective of Legal Sociology

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ABSTRACT: Insurance is an agreement that has been mutually agreed upon between the insurer (insurance company) and the insured (someone who buys insurance services), where in the agreement the insured must pay a certain amount of money within a certain period of time, which is called a premium. Life insurance premiums depend on life chances and interest rates that represent financial market dynamics. Insurance is a financial means in household life to face basic risks such as the risk of death or the risk of loss of property. One type of life insurance is dual-purpose life insurance, namely insurance that provides dual benefits in the form of life insurance protection and savings at the end of the policy year if the insured is still alive. Compensation for a risk that may be suffered due to certain events is obtained from the payment of a premium. There are two types of premiums, namely net premiums and gross premiums. The net premium plus certain costs charged to the insured is the gross premium.

KEYWORDS: Agreement Clause; Insurance Policy; Impact on Losses; Legal Sociology; Changes

I. INTRODUCTION

Insurance is an effort made by many parties to deal with uncertainty in the future and the possibility of risks that lead to losses in the form of loss of life and loss of goods owned by a person. Uncertainty in the future as a condition that will actually occur is almost entirely a risk to humans and the goods they own (Sastrawidjaja Suparman, 2019). Among the many risks that humans will face, the risks that lead to loss of life and loss of property are losses that no one expects to occur. Insurance is a form of risk management that has been around for a long time and is one of the businesses that has a fairly rapid development. The development of this insurance business is due to the increasing public awareness of the importance of protection against risks that can occur. Currently, there are many insurance products offered by insurance service providers, such as accident insurance, life insurance, vehicle insurance and other insurance products (Mokhamad Khoirul Huda, 2019).

Basically, insurance is a form of agreement based on trust between the insured and the insurer. The insurer believes that the insured will provide actual information about the object of insurance, while the insured believes that the insurer will provide appropriate compensation if the object of insurance suffers a loss. In other words, this insurance must be carried out on the basis of good faith between the two parties. However, in practice, there is always the potential for fraud committed by the parties involved in the insurance agreement. In this case, fraud is defined as a deliberate act with the intention of obtaining benefits from other parties. Fraud in insurance can be committed by the insurer, the insured, the insurance agent or even other parties who are also involved in the insurance agreement (Abdulkadir Muhammad, 2019).

The direct relationship between insurance and the risks and losses that must be accepted by many parties that may occur in the future can be observed from Article 1 (1), Law Number 40 of 2014 concerning Insurance which states that: "Insurance is an agreement between two parties, namely an insurance company and a policyholder, which is the basis for the receipt of premiums by the insurance company in return for: a. providing compensation to the insured or policyholder for loss, damage, costs incurred, loss of profit, or legal liability to third parties that may be suffered by the insured or policyholder due to the occurrence of an uncertain event; or b. providing payments based on the death of the insured or payments based on the life of the insured with benefits whose amount has been determined and / or based on the results of fund management ". Thus, insurance as an agreement has the substance of risk transfer for losses experienced by the insured, both loss of life and loss of property. Therefore,

there are various types of insurance that can generally be categorized into life insurance and property and casualty insurance. Specifically about property loss insurance can consist of various types of insurance including commercial property insurance, which offers a very broad indemnity guarantee designed for business needs and interests (Djoko Prakoso & Ketut Murtika, 2019).

In many cases of insurance fraud, fraud is often found that is actually committed by the insured by utilizing compensation for insurance claims provided by the insurance company as the insurer. In accordance with Law Number 40 of 2014 concerning Insurance, the insured has the right to receive payment or coverage for insurance claims submitted if the insurance object concerned suffers a loss. This is often utilized by the insured to benefit themselves through the submission of claims that are not true. It is unfortunate that Insurance Law Number 40 of 2014 has not provided special protection to insurance companies against the threat of fraud in this insurance claim. Goods transportation accidents as a risk of the transportation of goods by sea can be held liable to the party who caused and at the same time caused the goods transportation accident. If the goods affected by the accident in the transportation of goods have been protected by the insurance of the transportation of goods, then the accident of the transportation of goods can still be requested from the party that caused the accident of the transportation of goods. The request for indemnity from the party who suffered the loss to the party responsible for the transportation of goods accident is basically the right of subrogation. Subrogation is a right of one person, having indemnified another under a legal obligation to do so, to stand in the place of that other and avail himself of all rights and remedies of that other, whether already enforced or not. The principle of subrogation is emphasized in insurance, because the insurer or insurance company that has compensated the insured party is entitled to receive back from the insured something that the insured received from other sources in connection with the insured loss. The principle of subrogation is a supporter of the concept of indemnity because the concept of subrogation prevents the insured from recovering more than the loss he received (Ahmad Miru & Sutarman Yodo, 2020).

In the context of problem identification, there are two key questions that need to be answered. First, how is the legal regulation of the insurance industry in Indonesia, given the importance of the regulatory framework in ensuring sustainability and protection for industry players and consumers. Second, how changes in the agreement clause between the parties in the insurance policy that have an impact on losses, which is the focus in seeing how the dynamics of contractual relations in insurance can affect the parties involved, both legally and socially. Thus, the purpose of these two questions is to understand and analyze both from a legal and social perspective, on how legal arrangements and changes in the agreement clause in insurance in Indonesia affect the industry and the parties involved in it.

II. LITERATURE REVIEW

In the context of insurance policy agreements, changes in the clauses between the parties can significantly impact losses. From a legal sociology perspective, it is essential to consider the societal and legal implications of these changes. The sociology of insurance provides insights into how insurance agreements are constructed and how they impact various societal aspects. Additionally, understanding the impact of policy changes on losses requires a multidisciplinary approach, incorporating insights from economics, public policy, and risk analysis.

1. Tanninen (2020) discusses the sociology of insurance and its intersection with critical data studies, providing a foundation for understanding the societal perspectives of behavior-based insurance. This is relevant as it offers insights into how changes in insurance policy clauses can impact societal behavior and perceptions.
2. Johnson et al. (2005) evaluate the policy impact of significant flood disasters, providing a framework for understanding how policy changes are catalyzed by external events. This is pertinent as it offers a perspective on how changes in insurance policy clauses may be influenced by external factors, thereby impacting losses.
3. Hagendorff et al. (2014) highlight the role of insurance in sharing catastrophe losses, emphasizing the societal impact of insurance in mitigating financial consequences. This is relevant as it underscores the societal implications of changes in insurance policy clauses and their impact on losses.
4. Penning-Rowsell et al. (2014) provide insights into the incremental changes in UK flood insurance over six decades, shedding light on the relationship between stability and change in insurance agreements. This is pertinent as it offers a nuanced understanding of how changes in insurance policy clauses unfold over time and their societal implications.
5. Wijaya et al. (2021) discuss the balance of contracts in online insurance agreements, providing a legal perspective on the agreements between parties. This is relevant as it offers insights into the legal framework governing insurance agreements and their societal implications.

In conclusion, changes in the agreement clauses between parties in insurance policies have a profound impact on losses from the perspective of legal sociology. Understanding these changes requires a multidisciplinary approach, incorporating insights from the sociology of insurance, public policy, risk analysis, and legal frameworks.

III. METHOD

The type of research used by the author is legal sociology, namely legal research conducted by examining library materials called library legal research (Peter Mahmud Marzuki, 2014). The author's consideration in using this type of research is to find out, analyze, and explain the changes in the Agreement Clause between the Parties in the Insurance Policy which has an impact on Losses Viewed from the Perspective of Legal Sociology. In this normative juridical legal research, the author uses a legal sociology approach. This research uses the type of statutory approach because the main study material is the legislation on the Amendment to the Agreement Clause between the Parties in the Insurance Policy Which Impacts on Losses Viewed from the Perspective of Legal Sociology.

IV. RESULT AND DISCUSSION

Legal Arrangements Regarding the Insurance Industry In Indonesia

The Indonesian legal system has its roots in the civil law brought by the Dutch royal government to Indonesia during the colonial period. The Civil Law can trace its roots to Civil Law in France to Roman Law. The existence of insurance law in Indonesia stems from the Codification of Civil Law (Code Civil) and Commercial Law (Code de Commerce) in the early nineteenth century during the reign of Emperor Napoleon in France. At that time, the Dutch Commercial Code only contained articles on marine insurance until the promulgation of the draft Code of Commerce (Wet Boek van Koophandel) in 1838 which contained regulations on fire insurance, crop insurance and life insurance. This system was also adopted for the Dutch East Indies in the past which is still valid in Indonesia today (Muhammad Syaiffuddin, 2019). Insurance as a legal phenomenon in Indonesia, both in its understanding and in its current form, comes from Western Law. It was the Dutch Government that imported insurance as a legal form (rechtsfiguur) into Indonesia by promulgating the Burgerlijk Wetboek and Wetboek van Koophandel, with one announcement (publicatie) on April 30, 1847, and contained in Staatsblad 1847 Number 23 (Kanon Armiyanto, 2019). The two codes regulate insurance as an agreement. Subsequently, along with the dominance of the United Kingdom as the origin of modern insurance and countries that adhere to certain Anglo-Saxon systems in the development of the insurance industry internationally, especially in the provision of reinsurance capacity and as a source of insurance knowledge, the development of insurance internationally, including in Indonesia, is strongly influenced by the notions and legal practices and precedents originating from these Anglo-Saxon countries. In Indonesia, the first law regulating insurance as a business was born in 1992 with the enactment of Law Number 2 of 1992 concerning Insurance Business. Prior to the birth of Law Number 2 of 1992, insurance as a business was regulated through various Government Regulations (PP) and Presidential Decrees (Kepres) along with the regulations below them (Harjono, 2020). To distinguish the regulation of insurance as a business from the regulation of insurance as an agreement, hereinafter, Law Number 2 of 1992 concerning Insurance Business will be referred to as the Insurance Business Law. The Insurance Business Law regulates insurance as a business by making rules regarding licensing, management, and the role of the government in the guidance and supervision of insurance businesses. As stated in Article 27 of the Insurance Business Law, this law replaces the Ordonnantie op het Levensverzekering bedrijf (Staatsblad Year 1941 Number 101) which was declared invalid upon the enactment of the law (Ajeng Permata Putri & Henny Setyo Lestari, 2014). The implementation of the Insurance Business Law is regulated by Government Regulation Number 73 of 1992 (hereinafter referred to as PP Number 73 of 1992). As stated in Article 46 of Government Regulation Number 73 of 1992, with the enactment of this Government Regulation, Presidential Decree Number 40 of 1988 concerning Business in the Field of Loss Insurance is declared invalid. In 1999, the Government issued Government Regulation No. 63 of 1999 (hereinafter referred to as PP No. 63 of 1999) on the Amendment of Government Regulation No. 73 of 1992 which replaced some of the provisions in PP No. 73 of 1992. The second amendment was enacted through Government Regulation Number 39 of 2008 concerning the Second Amendment to Government Regulation Number 73 of 1992. Finally, the government issued Government Regulation Number 81 of 2009 concerning the Third Amendment to Government Regulation Number 73 of 1992. Each of the aforementioned Government Regulations was followed by various Decrees of the Minister of Finance (hereinafter referred to as Kepmen) and Minister of Finance (hereinafter referred to as PerMen) and various decisions under them, all of which became regulations for the implementation of the management, guidance and supervision of the Indonesian insurance business. Both life insurance companies that have health insurance products, to general insurance that offers various guarantees of compensation for collateralized assets such as property, must comply with the legal basis of insurance in Indonesia. The implementation is guided by five basic insurance laws, namely: Law Number 2 of 1992 concerning Insurance Business, the Criminal Code (KUHP) Article 1320 and Article 1774, the Code of Commerce (KUHD) Chapter 9 Article 246, Government Regulation (PP) Number 73 of 1992, and PP Number 63 of 1999. Insurance basically provides a guarantee of protection to a person from various bad events that can happen to him at a certain time beyond the person's predictions and expectations. Judging from the process of insurance activities, there must be a binding agreement, where someone who agrees

to the insurance must pay a certain amount of premium within a certain period of time, where the premium is a substitute for the protection guaranteed by the insurance company.

Changes in Agreement Clauses between Parties in Insurance Policies Affecting Losses Reviewed from the Perspective of Legal Sociology

The definition of insurance according to Article 1 of the Insurance Business Law is an agreement, which means that two parties are involved, namely between the insurance company as the insurer and the other party as the insured. The insurance company as the party that receives the transfer of risk from the insured, is responsible for compensating the losses suffered by the other party, namely the insured due to the destruction of goods or the death of a person who is the object of insurance, due to a cause or event that was not expected before (Marlina et al, 2013). Insurance as a risk transfer, which means that the nature of insurance is a company engaged in the transfer of risk from the insured to the insurer or insurance company for the occurrence of an unexpected loss and also befalls the insured object (Fitriani et al, 2009). Although it is clear about the rights and obligations in the insurance agreement, the reality is very different, because it turns out that the insurer does not fulfill its obligations at the time of an unexpected event such as the case below: Handoyo insured himself and his family at the Allianz Limited Liability Insurance Company (hereinafter abbreviated as PT Allianz) with a life insurance policy with benefits, among others: Normal death is paid Rp150,000,000.00 (one hundred and fifty million rupiah). Death due to accident amounting to Rp300,000,000.00 (three hundred million rupiah) plus or including investment fund. If Handoyo lives until the end of the contract, all investment funds will be paid as well. The insurance with a coverage period of 10 years began when the insurance agreement was closed, namely September 10, 2006 until September 10, 2016 with an insurance premium of Rp8,154,000.00 (eight million one hundred fifty four thousand) per year paid for 5 years (www.kompcyber, Insurance Claims) (Andhayani et al, 2012). All insurance closing requirements, such as Life Insurance Request Letter (hereinafter referred to as SPAJ), medical examination by a doctor/clinic/laboratory appointed by the insurer have been fulfilled by the insured. When the policy had only been running for 13 months and 9 days, the insured passed away at home without being taken to a doctor beforehand. The body was cremated at Nirwana Crematorium, Bekasi. The heirs demanded the insurer to pay the policy benefit of Rp150,000,000.00 (one hundred and fifty million rupiah) by previously fulfilling the conditions for submitting a claim that had been determined by the insurer as stipulated in the General Policy Provisions Article 7. However, the insurer refused to pay the claim on the grounds that, after research by the insurer, it was discovered that at the time of submission of the SPAJ there had been material misrepresentation. This is based on Article 251 of the KUHD and related articles in the policy (Derbali, 2014). The insurer stated that (Detiana, 2012): First, From the results of the research they conducted, it was found that the insured before entering the insurance had received treatment or consultation to: Siloam Hospital, Lippo Karawaci on December 10, 2004 with a diagnosis of acute hydrocephalus and CP-Shunt; Siloam Hospital, Lippo Karawaci on April 27, 2005 with a diagnosis of bronshiectasis; Medistra Hospital, Jakarta was treated on March 12-29, 2006 with a diagnosis of duplex bronchopnemonia with retentio sputum; All of these examinations and treatments were not disclosed in the SPAJ. Secondly, these diseases cannot be detected by the type of examination required by the insurer, but can only be detected by special examination if the insured has disclosed it. Third, that based on these matters the insurer concludes that the insured has been proven to have bad faith and committed misrepresentation or non-disclosure of facts. Fourth, with the proof of misrepresentation, the insurer has conducted reunderwriting or also re-selection of insurance acceptance to determine if the materiality of the misrepresentation. The result is that if the fact of treatment had been known to the insurer earlier, coverage would not have been issued on the same terms. Thus, it has been proven that the misrepresentation that has occurred is material. Fifth, based on these facts and Article 251 of the KUHD, General Policy Provisions Article 7 and Article 8 of the SPAJ, the insurer rejected the claim submitted by the Heirs. Taking into account the description above, it can be explained that PT Allianz rejected the claim submitted by Handoyo on the grounds that the insurer did not provide information regarding his actual medical history. Based on such a description, what is at issue in this paper is whether the rejection of the claim by PT Allianz submitted by Handoyo can be justified according to the law, and what legal remedies are taken by Handoyo to obtain a claim for the losses that have been suffered (Harjono, 2003). The practice of insurance in the culture of Indonesian society in a non-formal way has often been done. This can be seen, for example, when one member of the community dies, other members of the community will provide assistance in the form of death contributions. These death contributions are usually withdrawn regularly from all members of the community and coordinated by a designated person. Every time there is a death, the donation will be given in accordance with the agreement that has been made together. There are many other insurance practices that occur in the community, including celebration donations and other donations that are more social in nature. These non-formal insurance practices have long been practiced by the Indonesian people with full awareness and sincerity. The community realizes that death donations and other donations have great benefits to help ease the burden of someone who is in a disaster or has a celebration. Therefore, the practice

of non-formal insurance is easily accepted and implemented by the Indonesian people. The question is what is the attitude of the community towards formal or institutionalized insurance practices? Indonesian people apparently still do not utilize the existence of insurance companies as a means of protecting themselves and their families and property from unexpected events. The public is still very unfamiliar with insurance and not much familiar with the types of insurance products available. Not to mention, coupled with the understanding of most Indonesian Muslims who are half-hearted or irresponsible about the law of insurance in the view of Islamic teachings. It is more based on the general opinion of Indonesian Muslims and their ulemas that the law of insurance is absolutely haram. In today's economic world, insurance institutions are also able to act as non-bank financial institutions that can organize, collect and channel funds from the public for the purpose and interests of the community. Insurance can also function as savings. This is evident in the benefits offered by life insurance. Basically, the results received at the end of the maturity period are a collection of premium savings plus interest. In addition to providing benefits to customers, insurance indirectly benefits business people who definitely need credit from banks for their business capital, because the premiums paid by insurance customers will be deposited with national banks in the form of deposits or others. Then the money that has been collected, either from personal or corporate bank customers, is credited by the bank to entrepreneurs.

V. CONCLUSION

Based on the previous description and discussion, it can be concluded that the rejection of claims made by PT Allianz submitted by Handoyo is not justified by law, because PT Allianz Insurance does not recognize the insurance policy. In the policy it has been clearly mentioned including as a form of loss guaranteed by the insurance company. This means that the fact that is not disclosed includes a loss guaranteed by the insurance as stated in the insurance policy, therefore it cannot be used as a basis for rejecting the insured's claim by PT Asuransi Allianz. What legal efforts were taken by Handoyo to get a claim for the losses suffered to amicably resolve the problem of the rejection, because PT Allianz could not cancel the policy unilaterally. Because it has been bound by an insurance agreement with Handoyo and the agreement has actually fulfilled the elements of insurance and the terms of the insurance agreement in accordance with Article 1 number 1 of Law No. 2 of 1992. PT Allianz can be qualified as having made a default, namely not fulfilling the obligations arising in the insurance agreement. Charges PT Asuransi Allianz to pay insurance claims along with reimbursement of costs, losses and interest in accordance with the provisions of Article 1243 jo Article 1246 of the Civil Code.

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