The Legal Protection of Insurance Policyholders Against Default by Insurance Companies

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Abstract. This study is conducted to examine the legal protection and legal remedies available to insurance policyholders in the event of default by the insurance company. The research is conducted using a juridical-normative method with a juridical-empirical approach. Primary, secondary, and tertiary legal materials are used as data sources. The results of the study show that in an insurance contract, policyholders have the right to claim compensation and damages if the insurance company breaches its promises (Article 1267 of the Civil Code). The understanding of legal provisions, policyholders' rights, and the obligations of the insured are regulated by the Consumer Protection Law and the Commercial Code. In the case of default, policyholders have rights to claims, legal action, indemnity, claim review, and recovery of legal costs. This understanding is essential for dispute resolution, and policyholders can pursue their rights through mediation, arbitration, or judicial institutions according to applicable regulations, providing legal protection related to uncertain events in insurance policies.

Keywords: Legal Protection, Insurance Law, Default

Introduction

Legal protection is an effective method to safeguard legal subjects from arbitrary actions, both through preventive and punitive rules. This protection can be oral or written with the aim of establishing justice, order, certainty, benefits, and peace. In the context of individuals or clients, legal protection refers to mechanisms that uphold integrity and fundamental rights in accordance with applicable legal frameworks, with the goal of preventing injustice or violations of these rights. Thus, the legal system plays a role in preserving customer rights, preventing neglect due to factors that may hinder the fulfillment of these rights.

Humans are often faced with uncertainty in their lives, especially in economic matters, and will seek to prepare themselves through the use of insurance. Insurance is expected to address economic and financial uncertainty, generally referred to as risk. Risk refers to the uncertainty associated with the possibility of events that can cause losses, which are difficult to predict or determine the extent of future losses. In Indonesia, the legal basis for insurance is inspired by Dutch Colonial regulations such as the "ordonantie op het Levensverzekeringbedrijf" in 1941 (State Gazette number 101). Current insurance industry supervision heavily emphasizes the resolution of financial issues, particularly to ensure that customers are protected from the risk of bankruptcy or unfair treatment. Additionally, this supervision aims to promote the growth and development of the insurance sector. Customer insurance awareness is reflected in their understanding of risks and the need for insurance, influenced by insurance companies' efforts to build competitiveness, make insurance attractive, and the government's role in creating a favorable investment climate and regulating healthy insurance business practices.

The Financial Services Authority, hereinafter referred to as OJK (Otoritas Jasa Keuangan), is an independent institution with regulatory, supervisory, inspection, and investigative functions related to the financial sector in Indonesia. Previously, the supervision of financial institutions was divided between Bank Indonesia and Bapepam. In practice, this division was deemed suboptimal due to the extensive regulatory authority held by both institutions. Therefore, a separate institution was established with the basis of Law No. 21 of 2011, forming the OJK. This law regulates the structure, governance, financial products, and requirements of the financial sector. OJK, in accordance with the supervisory definition, also has the authority to assess and analyze the insurance sector.

Currently, the law governing the insurance sector in Indonesia is Law No. 40 of 2014 concerning Insurance, emphasizing agreements between insurance companies and policyholders. This agreement forms the basis for accepting premiums as compensation for providing coverage against losses, expenses, or legal liabilities. Although vital, the current legal protection for insurance policyholders becomes crucial because insurance policy agreements tend to favor insurance

companies. Inequality in agreements has raised doubts about the effectiveness of legal protection for policyholders. In agreeing to transfer risks, customers generally confront a pre-prepared agreement concept by the insurance company. Although insurance policies are known as standard agreement documents and are often used by insurance companies, they can pose legal issues related to the validity and fairness of rights and obligations. When insurance companies draft these agreements, they tend to focus on protecting business interests by limiting the rights of the other party and minimizing their obligations. In practice, customers often feel dissatisfied with the services provided, either due to defects in service provision that do not align with promises, leading to contract breaches or default by the insurance company.

In essence, insurance companies, in their activities, openly offer protection and future assurance to individuals, groups in society, or other institutions against potential further losses that may occur due to uncertain or unforeseen events. However, there are many cases where insurance companies abuse their position and default on their obligations to their policyholders. Therefore, this writing will attempt to provide an analysis of Legal Protection for Insurance Policyholders Against Breach of Contract by Insurance Companies.

Problem Statement

What legal efforts and legal protection are undertaken by insurance policyholders against breaches committed by insurance companies?

Research Methodology

The method used in this research is the juridical-normative method (legal research) with an approach known as the juridical-empirical method (field research). The juridical-empirical approach involves field research on the application of criminal sanctions against those responsible for contract violations. Through the empirical approach, legal actions, court decisions, their outcomes (whether successful or not), and their legal implications (case studies) are analyzed. At the same time, the juridical-normative approach is used to explore how legal procedures and provisions are applied in cases of contract breaches. The integration of both legal approaches, normative and empirical, aims to comprehensively and deeply understand the phenomena and subjects investigated in this research.

This research method utilizes various types and sources of data. Primary legal materials, represented by binding laws, are embodied in Decision Number 164/PDT/2022/PN SBY. Secondary legal materials are obtained through literature studies, including literature on legal protection for insurance policyholders, court decisions related to criminal breaches of contract, and regulations such as the Criminal Code, Criminal Procedure Code, Insurance Law Number 40 of 2014, as well as Decision No. 164/PDT/2022/PN SBY dated April 27, 2022, along with other related regulations. Tertiary legal materials are supporting materials that provide guidance and explanations for primary and secondary legal materials, including legal dictionaries, journals, and websites.

The data collection method in this research uses two main techniques: a) Primary Data, obtained through direct observation of the research subject, which represents the Mayangkara Group. b) Secondary Data, data originating from the Research Location, namely the Surabaya District Court. This research will use a qualitative data analysis method, where the collected data will be systematically organized and qualitatively analyzed to gain clarity in discussing the raised issues. The analysis process is conducted after the data is collected and complete, involving the selection, organization, and systematic arrangement of data to then draw conclusions from the issues discussed.

Discussion

Legal Remedies undertaken by Insurance Policyholders for Breach of Contract by Insurance Companies.

Insurance policyholders have the option to take legal steps to ensure their rights in case of disagreement with the insurance company. Legal efforts may include resolving disputes through non-litigation methods such as mediation or arbitration in the context of the financial services sector. If non-litigation resolution is unsuccessful, the alternative is to involve the judicial system in accordance with the provisions of Law No. 30/1999 regarding Arbitration and Alternative Dispute Resolution Institutions, as well as Law No. 8/1999 regarding Consumer Protection.

Non-Litigation Legal Efforts

Alternative Dispute Resolution (ADR) in Indonesia offers legal remedies through mediation and arbitration. Law Number 30 of 1999 has included mediation as a dispute resolution option, and the Indonesian Insurance Arbitration Board (LAPS SJK) further regulates the mediation procedure through LAPS-SJK Regulation Number PER-01/LAPSSJK/I/2021. The freedom of parties to determine the procedural process in arbitration supports quick, efficient, and cost-effective dispute resolution. Generally, parties involved in arbitration have a goodwill to expedite the process collaboratively. Litigating through arbitration, as opposed to the court, offers a fast and efficient resolution by cutting through bureaucratic hurdles. The uniqueness of final and binding arbitration decisions eliminates additional legal efforts, making the dispute resolution process simpler with just one stage.

Mediation Legal Efforts

Mediation is a dispute resolution method outside the court involving a neutral mediator to assist the parties in reaching an agreement through negotiation. While the mediator does not have the authority to make a final decision, their role is focused on helping the conflicting parties reach a voluntary agreement in dispute resolution. Etymologically Mediation, term Mediation comes from Latin "mediare" which means to be there middle. This meaning refers to roles performed by third parties as a mediator in carrying out mediating relationships and finalize the settlement between para party. “Being in the middle” too that means a mediator must be present in a neutral and impartial position in completing the solution. He must be able to safeguard interests the parties to the dispute fair and equal, so foster trust (trust) from the parties to the dispute.(Irawati, 2022)

Mediation procedures in Indonesia are regulated in Supreme Court Regulation Number 1 of 2016. According to Article 1 number (1) of this regulation, mediation is a dispute resolution method through negotiation with the assistance of a mediator to achieve an agreement. Mediation expert Christopher W. Moore states that mediation involves the intervention of a neutral third party, impartial and without decision-making authority, aiming to help conflicting parties reach a voluntary agreement in dispute resolution.

Customers can take several steps in legal mediation efforts to resolve insurance disputes, such as choosing a trusted mediation institution, namely the National Arbitration Body of Indonesia (BANI) or one designated by the OJK. The mediation application must include complete information and evidence, and afterward, the mediation institution will appoint a neutral mediator with expertise in insurance law. During the confidential mediation process, the mediator facilitates the parties in reaching an agreement, which can involve compensation settlement or policy adjustments. After reaching an agreement, monitoring and implementing the agreement must follow, and if there is non-compliance, customers can still pursue other legal remedies. Mediation offers an efficient and economical way to resolve insurance disputes.

The parties must agree to settle disputes through mediation without pressure or threat, and both must voluntarily agree in good faith. This mediation agreement must comply with the provisions of Article 6 paragraph (1) of LAPS-SJK Regulation Number PER01/LAPS-SJK/I/2021 and can be executed before or after a dispute occurs, using methods such as: a. Included in the dispute resolution clause in the main agreement; b. Conceived in a document signed by both parties; c. Created in the form of an agreement included in correspondence; and d. Drafted as an agreement through an electronic system..

The implementation of mediation between customers and Financial Services Institutions (FSI) in dispute can result in various legal consequences, depending on the mediation outcome. If mediation does not achieve a peaceful settlement, LAPS-SJK Regulation states that the situation can be recognized based on the mediator's statement, especially if it exceeds the time limit, involves third-party assets or interests, one party withdraws, or there is no goodwill to follow the mediation. If a peaceful agreement is reached, the agreement will be documented in writing and signed by the mediator and the disputing parties. Without a peaceful agreement, customers and Insurance FSI can proceed to arbitration, with statements and information from mediation considered invalid as evidence in arbitration according to LAPS-SJK Regulation provisions.

Arbitration Legal Efforts

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution states that arbitration is a method of civil dispute resolution outside the general court, depending on a written agreement between the conflicting parties, as explained in POJK Number 61/POJK.7/2020.

The arbitration agreement must be expressed in the form of a written clause in the agreement, either before (pactum de comprommitendo) or after a dispute occurs (acta compromise). The time for settling disputes through arbitration was initially set at 180 days but can be extended in several situations such as a request from one party, the result of interim examination and decision, the replacement of the arbitrator, peace efforts, or if deemed necessary by the Single Arbiter according to LAPS-SJK Regulation Number PER02/LAPS-SJK/I/2021.

Dispute resolution through arbitration follows the principle of consensualism, where the settlement time can vary according to the agreement between the conflicting parties. After the arbitration decision is issued, the decision is final and cannot be appealed through further legal efforts. If one party does not implement the arbitration decision, the other party can request the Chairman of the Court to issue an execution order for the existing arbitration decision.

Litigation Legal Efforts

Dispute resolution in cases of insurance company breaches in Indonesia can refer to Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (ADR) along with Law No. 8 of 1999 concerning Consumer Protection. If non-litigation efforts do not result in an agreement, dispute resolution can be pursued through the courts. Litigation, as a conflict resolution method, places authority in the hands of a judge, where all parties in dispute face off to defend their rights. Court decisions in litigation result in a solution that benefits one party and harms the other, known as a win-lose solution.

In resolving disputes over insurance company breaches through the court, steps that can be taken include:

a. Notification and Direct Settlement: Consumers can provide notice to the company and attempt to resolve the dispute through negotiation or mediation..
b. Court: If resolution through negotiation or mediation fails, consumers can file a lawsuit in court.
c. Evidence and Testimony: The disputing parties must provide relevant evidence and testimony during the court process.
d. Court Decision: After hearing arguments, the court makes a binding decision, including the obligations of the insurance company according to the law.
e. Appeal: If dissatisfied, parties can file an appeal to a higher instance.
f. Implementation of the Decision: If the court decision is final and binding, the insurance company is obligated to implement it according to the law

Dispute resolution through litigation is the last option after alternative resolution efforts prove unsuccessful. Disputes filed and adjudicated through litigation will be decided by a judge. Law Number 30 of 1999 concerning Arbitration Article 6 number 1 gives the option for parties involved in civil disputes to choose alternative dispute resolution in good faith without involving litigation in the District Court.

Legal protection for insurance policyholders against breach of contract by insurance companies, a study in Decision No. 164/PDT/2022/PN SBY

Legal protection is a crucial form of protection because the law is considered a tool capable of comprehensively considering the interests and rights of consumers. Additionally, the law possesses officially recognized enforcement power in a country, enabling its sustained implementation. This differs from protection efforts through other institutions such as economic or political protection, which are temporary or limited..

In the context of Decision No. 164/PDT/2022/PN SBY, the mentioned legal protection constitutes consumer protection, where, in this case, insurance policyholders are promised by the insurance company. Consumer protection is a legal system established with the aim of safeguarding and ensuring that consumer rights are protected and fulfilled. Legal protection for policyholders is regulated by insurance law, where if an uncertain event causing a loss occurs, the insurance policyholder has the right to receive compensation for the loss according to the standard provisions in the policy.

Violations committed by the insurance company are outlined in Decision No. 164/PDT/2022/PN SBY, as follows:

Regulation No. 422/KMK.06/2003 on the Implementation of Insurance and Reinsurance Business Articles 25 and 26:

Article 25

Actions categorized as delaying the settlement or payment of claims, as referred to in Article 23 paragraph (1) of Government Regulation No. 73 of 1992 on the Implementation of Insurance Business as amended by Government Regulation No. 63 of 1999, include actions by Insurance or Reinsurance Companies that:

a. Extend the claims settlement process by requesting the submission of certain documents, followed by requesting the submission of other documents essentially containing the same information;
b. Delay the settlement and payment of claims by linking it to the settlement and/or payment of reinsurance claims;
c. Fail to settle claims that are part of the insurance closure by linking them to the settlement of claims that are another part of the insurance closure in the same policy;
d. Delay the appointment of an Insurance Loss Appraiser if the services of an Insurance Loss Appraiser are needed in the claims settlement process; or
e. Apply claims settlement procedures that do not conform to generally accepted insurance business practices.

Article 26

1. Insurance companies may only request documents as a requirement for claim submission as stipulated in the Insurance Policy.
2. In the event that the Insurance Policy includes other conditions as requirements for claim submission, these other conditions must be:
    a. relevant to the coverage; and
    b. reasonable in the claims settlement process.
3. Provisions regarding other conditions as referred to in paragraph (2) must be included in the Insurance Policy.

Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector Article 27 (1,2,3,4,5,6,7 & 8)

1. Insurance Brokers, Reinsurance Brokers, and Insurance Agents must be registered with the Financial Services Authority.
2. Insurance Brokers, Reinsurance Brokers, and Insurance Agents must have sufficient knowledge and abilities and have a good reputation.
3. Actions and legal actions carried out by Insurance Brokers, Reinsurance Brokers, and Insurance Agents as referred to in paragraph (1) are the responsibility of Insurance Broker Companies, Reinsurance Broker Companies, Insurance Companies, and Sharia Insurance Companies.
4. Supervision and supervision of Insurance Brokers, Reinsurance Brokers, and Insurance Agents are carried out by Insurance Broker Companies, Reinsurance Broker Companies, Insurance Companies, and Sharia Insurance Companies.
5. Supervision and supervision carried out by Insurance Broker Companies, Reinsurance Broker Companies, Insurance Companies, and Sharia Insurance Companies as referred to in paragraph (4) do not diminish the authority of the Financial Services Authority to impose sanctions on Insurance Brokers, Reinsurance Brokers, and Insurance Agents in accordance with the provisions of the regulations.
6. Insurance Brokers, Reinsurance Brokers, and Insurance Agents must apply all their skills, attention, and diligence in serving or transacting with Policyholders, Insureds, or Participants.
7. Insurance Brokers, Reinsurance Brokers, and Insurance Agents must provide truthful, not false, and/or not misleading information to prospective Policyholders, prospective Insureds, prospective Participants, Policyholders, Insureds, or Participants regarding the risks, benefits, obligations, and costs related to insurance products or sharia insurance products offered.
8. Further provisions regarding Insurance Brokers, Reinsurance Brokers, and Insurance Agents as referred to in paragraph (1) to paragraph (8) are regulated in Financial Services Authority Regulations.

Article 31

1. Insurance Companies must apply all their skills, attention, and diligence in serving or transacting with Policyholders, Insureds, or Participants.
2. Insurance Companies must provide truthful, not false, and/or not misleading information to prospective Policyholders, prospective Insureds, prospective Participants, Policyholders, Insureds, or Participants regarding the risks, benefits, obligations, and costs related to insurance products or sharia insurance products offered.
3. Insurance Companies, Sharia Insurance Companies, reinsurance companies, sharia reinsurance companies, insurance brokerage companies, and reinsurance brokerage companies are required to handle claims and complaints through a fast, simple, easily accessible, and fair process.
4. Insurance Companies, Sharia Insurance Companies, reinsurance companies, and sharia reinsurance companies are prohibited from taking actions that can delay the settlement or payment of claims and perform actions that should not be performed, resulting in delays in the settlement or payment of claims.
5. Further provisions regarding the application of all skills, attention, and diligence as referred to in paragraph (1) and the handling of claims and complaints through a fast, simple, easily accessible, and fair process as referred to in paragraph (3) are regulated in Financial Services Authority Regulations.

Based on this description, the insurance party is considered to have committed an unlawful act (*onrechtmatige daad*) based on Article 1365 of the Civil Code (KUHPerdata). An unlawful act is an action that harms others and requires the perpetrator to be responsible for the resulting loss. In this case, the unlawful act committed by the insurance party involves creating policies without explanation, rejecting claims with unreasonable grounds, requesting documents not in accordance with regulations, and handling claims beyond a reasonable time.

Due to this unlawful act, the judge decides that:

Sentencing Defendants I and Defendants II to pay material compensation for direct damages, jointly and severally, to the Applicant for Cassation:

1. Principal loss of IDR 2,799,362,792 (two billion seven hundred ninety-nine million three hundred sixty-two thousand seven hundred ninety-two Indonesian Rupiah);
2. Principal loss due to delayed claims settlement of IDR 1,500,000,000 (one billion five hundred million Indonesian Rupiah) due to direct incidents;
3. Moratorium interest at a rate of 6% x IDR 4,299,362,792 or IDR 257,961,768 (two hundred fifty-seven million nine hundred sixty-one thousand seven hundred sixty-eight Indonesian Rupiah);

The total amount of material losses is IDR 4,557,324,560 (Four billion five hundred fifty-seven million three hundred twenty-four thousand five hundred sixty Indonesian Rupiah.

1. Sentencing DEFENDANT I and DEFENDANT II to pay non-material losses in the form of IDR 5,000,000,000 (Five billion Rupiah) jointly and severally.
2. Sentencing DEFENDANT I and DEFENDANT II to pay Material and Non-Material compensation through transfer or cash payment to the PLAINTIFF after this case's legal force (inkracht);
3. Stating that this decision can be executed first even if there are legal efforts for appeal, opposition, cassation, and/or other legal actions (witvoerbaar bij voorraad);
4. Sentencing DEFENDANT I, DEFENDANT II, and JOINDER DEFENDANT to submit and comply with the contents of this case's decision.
5. Sentencing DEFENDANT I and DEFENDANT II jointly and severally to pay all costs incurred in this case.

Conclusion

Policyholders have the option to pursue their rights through legal actions if the insurance company is involved in a dispute of non-performance. These efforts involve non-litigious dispute resolutions such as mediation and arbitration within the context of the financial services sector. If non-litigious resolutions prove unsuccessful, the next step is to involve the judicial institution in accordance with Law Number 30 of 1999 regarding the Financial Services Authority (Lembaga Jasa Keuangan - LAPS) in conjunction with Law Number 8 of 1999 regarding Consumer Protection.

Legal protection for insurance policyholders, from the perspective of insurance law, is associated with uncertain events that result in losses. In the context of an insurance policy, the policyholder has a standard right to obtain compensation for the incurred losses.

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