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The Importance Of Insurance Contracts In Business Practices And Legal Protection For The Parties Involved

Eriska Febriani[1], Irva Nur Diana[2], Noviana Dwi Puspitarini[3], Mohammad Reza Adiyanto SP, MM[4]
Management Department, Universitas Trunojoyo Madura

INFO ARTIKEL

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Abstract

Insurance contracts are an important element of business practice that is often overlooked or taken for granted. This article discusses the significance of insurance contracts in a business context and how they provide legal protection for the companies and individuals involved. With risks present in every corner of business, insurance contracts are a tool that not only protects company assets, but also safeguards the well-being of the individuals who work within it. This article investigates the role of insurance contracts in business risk management, explaining the importance of compliance with relevant regulations.The research method used in this article is that the author uses data collection methods through library research or library research.With an emphasis on the importance of better understanding insurance contracts, this article helps readers to avoid common mistakes and omissions that can result in financial and legal losses.

✉ Authors
(*) Corresponden Author

Email:
eriskafebriani19@gmail.com[1], *irvadiana161@gmail.com*[2], *novianadwi7@gmail.com*[3], *reza.adiyanto@trunojoyo.ac.id*[4]

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Introduction

In a business world that continues to develop, every company operation contains risks. Businesses may face various risks, such as property damage, accidents, lawsuits, or economic uncertainty. These risks can have a serious impact on a company's business continuity, reputation and finances. One important tool in business practice is an insurance contract. In other words, an insurance contract is a safety net that provides legal and financial protection for the parties involved, including companies and individuals involved in the business. In his book entitled "Risk and Insurance", A. Allan Williams explains insurance as "an agreement entered into by an insurance company with an insured to provide financial protection

against certain risks in exchange for premium payments." However, an insurance contract, also known as an insurance policy, is a legal document that records an agreement between an insurance provider (usually an insurance company), and an insured, setting out the terms, coverage, and conditions of insurance.

Meanwhile, Article 246 of the Criminal Code states that insurance or coverage is an agreement in which an insurer binds himself to the insured, by receiving a premium, to provide compensation to the insured for loss, damage or loss of expected profits that he may suffer as a result of a unexpected event. Both companies and individuals can overlook the importance of insurance contracts if they do not understand them. Inadequate insurance policies or failure to understand contract terms and conditions can have a negative impact on companies and individuals.The purpose of this article is to learn more about the role of insurance contracts in business practices and how they legally protect all parties involved. By gaining a better understanding of the function of insurance contracts in a business context, companies and individuals can better manage risk, ensure regulatory compliance, and foster stronger customer trust. This article will explain the important aspects of insurance contracts in a business context and show how important insurance contracts are as an important tool in maintaining business continuity and providing legal protection to companies.

RESEARCH METHODS

The method used is qualitative or literature review. The author uses data collection methods by conducting library research or library institutional research. A literature review involves reviewing previous scientific literature on a particular topic. In addition, the author carries out analysis, evaluation and synthesis of research results, theory and practice. Using keywords such as insurance contracts, legal protection, business risks, and regulations, the sciences direct database was used to search for research articles. Inclusion criteria were articles written completely in English and published from 2019 to 2023.

RESULT

1. DEFINITION AND ELEMENTS OF INSURANCE

According to the provisions of Article 246 of the Criminal Code, insurance or coverage is an agreement by which the insurer binds itself to the insured by accepting a premium to provide compensation to him due to loss, damage or loss of expected profits that he may suffer as a result of an event (uncertain event).

Insurance or coverage is an agreement between two or more parties by which the insurer binds itself to the insured by accepting insurance premiums to provide compensation to the insured due to loss, damage or loss of expected profits, or legal liability to third parties that the insured may suffer from uncertain event or to provide compensation based on the death or demise of a person for whom there is responsibility. According to the provisions of Law No. 2 of 1992 concerning Insurance Business (also known as the Insurance Law), which was revoked by Law no. 40 of 2014, dated 17 October 2014 concerning insurance which includes an explanation that insurance is an agreement between two parties, namely the policy holder and the insurance company, which determines the receipt of premiums provided by the insurance company as compensation for:

a. protect the insured or policyholder from loss, damage, costs, profits, or legal liability to third parties that the policyholder or insured may suffer due to uncertain events, or

b. provides payments based on the death of the insured or the death of an insured with a defined significant benefit and/or based on the results of resource management.

Based on the definition above, insurance is a type of agreement that must meet the requirements according to Article 1320 of the Civil Code, but with features that indicate that insurance is a coincidental agreement according to Article 1774 of the Civil Code: Article 1774 of the Civil Code states that "A profit and loss agreement (kansovereenkomst) "is an action whose results, regarding the benefits and losses, both for all parties and for some parties, depend on an uncertain event."

A. Insurance Objectives

a. Risk Transfer, the Insured carries out insurance with the aim of transferring risks that threaten his assets or life. By paying a premium to the insurance company (insurer), from then on the risk shifts to the insurer.

b. Payment of Compensation: If an event actually occurs that causes a loss (the risk turns into a loss), then the insured will be paid compensation in the amount equivalent to the amount of insurance. In practice, the losses that arise can be partial, not all of them are total losses.

In the payment of compensation by insurance companies, the principle of subrogation applies (regulated in article 1400 of the Civil Code) where the rights of the claimant (insured) are replaced by a third party (insurer/insurer) – who pays the claimant (the value of the insurance claim).) – occurs either by agreement or by law.

B. Validity of Insurance

The rights and obligations of the insurer and insured arise when the insurance is closed even though the policy has not been issued. In practice, insurance coverage is proven by approving the application or signing a temporary contract (cover note) and paying the premium. Furthermore, in accordance with applicable statutory provisions, the insurer or insurance company is obliged to issue an insurance policy (Article 255 of the Commercial Code).

C. Insurance policy

Policy Functions

According to the provisions of article 225 of the Commercial Code (KUHD), insurance agreements must be made in writing in the form of a deed called a "policy" which contains agreements, special conditions and special promises which are the basis for fulfilling the rights and obligations of the parties (insurer and insured) in achieving insurance objectives. Thus, the policy is written evidence of the existence of an insurance agreement between the insured and the insurer. Considering its function as written evidence, the parties (especially the Insured) are obliged to pay attention to the clarity of the contents of the policy, which should not contain words or sentences that allow for different interpretations so that they can cause disputes.

Fill out the Policy

According to the provisions of article 256 of the Criminal Code, every policy except for life insurance must contain the following special conditions:

a. Day and date of making the insurance agreement;
b. Name of the insured, for yourself or a third party;
c. A clear description of the insured object;
d. Insured amount (insured value);
e. Dangers/events covered by the insurer;
f. When the danger begins and ends, it is the responsibility of the insurer;
g. Insurance premium;
h. Generally, all circumstances that need to be known by the insurer and all special promises made between the parties include, among other things, including a BANKER'S CLAUSE, if an event occurs that causes losses, the insurer can deal with who is the owner or holder of the rights.

Type of Insurance

Insurance is generally divided into two large parts, namely: Loss Insurance and Life Insurance.

1. Loss Insurance consists of:
   a. Fire insurance; Loss and Damage Insurance;
   b. Marine insurance;
   c. Freight Insurance;
   d. Credit Insurance.
2. Life Insurance consists of
   a. Accident insurance;
   b. Health Insurance;
   c. Credit Life Insurance.

Insurance Cancellation

Because coverage or insurance is essentially an agreement, it can also be threatened with the risk of being canceled or can be canceled if it does not meet the conditions for the validity of the agreement as stipulated in Article 1320 of the Civil Code. In addition, the KUHD regulates the threat of cancellation if the insurance agreement:

- Contains false or incorrect information or if the insured does not disclose things that he knows so that if they are conveyed to the insurer it will result in the insurance agreement not being closed (Article 251 of the Commercial Code);

- Contains a loss that existed before the insurance agreement was signed (Article 269 KUHD);

- Contains provisions that the insured, by notification through the court, releases the insurer from all future obligations (Article 272 of the Criminal Code);

- There is a clever trick, deception or fraud on the part of the insured (Article 282 of the Criminal Code);
- If the object of insurance according to statutory regulations cannot be traded and on a ship, whether an Indonesian ship or a foreign ship used to transport the object of insurance, according to statutory regulations it may not be traded (Article 599 of the Commercial Code).

D. Legal Aspects of Implementing Insurance Agreements

Having an insurance agreement in place does not mean that the insurer must carry out the agreed performance by paying compensation to the insured. The implementation of the insured's achievements will only be realized if certain events as promised occur and cause losses to the insured. The conditions that must be met for the insurer to carry out its performance are:

1. There are unspecified events
2. Causality
3. Defect or decay of an object
4. The insured's own fault
5. The principle of indemnity (balance)
6. The value of the insured object
7. Things that aggravate risk
8. Subrogation
9. Fellowship of underwriters
10. Restorno

In Indonesia currently, the meaning of insurance is contained in the Commercial Code (KUHD) and is specifically regulated in Law Number 2 of 1992 concerning Insurance Business. Article 246 of the Criminal Code provides the following meaning of insurance or coverage:

> "Insurance or coverage is an agreement, by which an insurer binds himself to an insured, by accepting a premium, to provide compensation to him for a loss, damage or loss of expected profits, which he may suffer due to an uncertain event."

In Law Number 2 of 1992 concerning Insurance Business, it is stated more clearly and more completely the meaning of insurance or coverage which states that:

> "Insurance or coverage is an agreement between two or more parties by which the insurer binds itself to the insured by accepting insurance premiums to provide compensation to the insured for loss, damage or loss of expected profits, or legal liability to third parties that the insured may suffer arising from an uncertain event, or to provide a payment based on the death or life of an insured person."

Basic Principles and Principles of Insurance

1. The legal principles that normally govern agreements generally apply to insurance agreements. An insurance or coverage agreement is an agreement that has unique and special characteristics, so it has clear characteristics compared to other types of agreements. In general, an insurance agreement must meet the general requirements of the agreement, and must also meet certain principles that reflect the special nature or characteristics of the

insurance agreement itself.

Based on the Article of the Criminal Code, the general provisions of agreements in the Civil Code can also apply to insurance agreements as special agreements. Thus, the parties are also subject to several provisions in the Civil Code. The principles contained in contract law as regulated by the Civil Code need to be taken into account. The principles born from the provisions of the Civil Code are as follows:

a. Consensual Principle.

It can be concluded in Article 1320 (1) of the Civil Code which states that the conditions for the validity of an agreement are:

1) Those who bind themselves agree;
2) Ability to create an engagement;
3) A certain thing;
4) A legitimate cause.

The consensual principle is taken from one of the terms of the agreement, namely the agreement of both parties. People cannot be forced to agree. An agreement given by force is Contradictio interminis. The existence of coercion indicates a lack of agreement that may be carried out by the other party. An agreement gives the parties a choice, to agree or not agree to bind themselves to the agreement with its legal consequences. Article 1320 paragraph (1) determines that an agreement or contract is invalid if it is made without an agreement (consensus) from the parties making it. Apart from coercion, defects in agreements can occur due to mistakes and mistakes.

b. Principle of Freedom of Contract

It can be concluded from the provisions of Article 1338 paragraph (1) of the Civil Code which states that, "all agreements made legally apply as law for those who make them." In Indonesian contract law the scope of the principle of freedom of contract includes:

1) Freedom to make or not make agreements;
2) Freedom to choose the party with whom he wishes to conclude an agreement;
3) Freedom to determine or choose the content (causa) of the agreement he or she makes;
4) Freedom to determine the object of the agreement;
5) Freedom to determine the form of an agreement;
6) Freedom to accept or deviate from the provisions of the Law which are optional (aanvullend, optional).

The source of freedom of contract is individual freedom, so the starting point is also individual interests. Thus it can be understood that individual freedom gives him the freedom to contract. The application of the principle of consensualism according to Indonesian contract law establishes the principle of freedom of contract. Without agreement from one of the parties making the agreement, the agreement made can be cancelled. Freedom of contract as known in the provisions of Article 1338 paragraph (1) of the Civil Code, states that, "all contracts (agreements) made legally (Article 1320 of the Civil Code) apply as law to those who make them." People cannot be forced to agree. An agreement given by force is a contradiction interminis. The

existence of coercion indicates a lack of agreement that may be carried out by the other party. An agreement gives the parties the choice to agree or not agree to be bound by the agreement with legal consequences.

c. Principle of Binding Provisions

The principle of binding provisions from Article 1338 (1) of the Civil Code, when connected to an insurance agreement, means that the insurer and insured or policy holder are bound to carry out the terms of the agreement they have agreed to. Because, the agreement that has been made by the parties has binding force like a law which has legal consequences, only it applies to those who make it.

d. Principle of Trust

The principle of trust implies that the parties involved in the agreement form a mutual belief that each will fulfill their commitment to carry out the promised achievements. This principle also applies in the context of insurance agreements, so that policyholders and insurers are obliged to fulfill the agreements they have made.

e. Principle of Legal Equality

The principle of legal equality is that individuals or legal entities involved in an agreement have equal positions, rights and obligations in law, without any discrimination between them.

f. Principle of Balance / Prorata

The principle of balance is a principle that emphasizes that both parties to an agreement must comply and implement it. In the context of an insurance agreement, the rights and obligations of the insured involve paying premiums and receiving compensation payments, while the rights and obligations of the insurer involve receiving premiums and providing compensation in accordance with the insured object. The principle of balance becomes very important when an event occurs that results in a loss, where the amount of loss that must be compensated must be in line with the risk borne by the insurer.

g. Principle of Legal Certainty

Agreements as legal figures must contain legal certainty. This certainty is expressed in the binding power of the agreement, namely as law for those who make it. Apart from that, Article 1338 paragraph (2) of the Civil Code states that, "the agreement cannot be withdrawn other than by agreement of both parties or for reasons that the law states are sufficient for that."

h. Principle of Good Faith

Article 1338 Paragraph (3) which states that, "agreements must be implemented in good faith." This principle of good faith applies to all agreements, including insurance agreements, which also means that, in implementing the agreement, the parties must pay attention to the knowledge and propriety of Article 1339 of the Civil Code. The good faith required by law is objective.

2. RISK MANAGEMENT

In principle, risk management is the application of management capabilities to deal with risks, especially those faced by companies, families and society. Thus, risk management includes a series of actions such as planning, organizing, controlling, coordinating and monitoring risk management programs. According to the definition from Ferry N Idroes (2018), risk management is a rational and structured approach to identifying, measuring, assessing risks, determining solutions, as well as monitoring and reporting risks that arise in the organization, each activity or process is improved. Risk is an inseparable part of a company's business activities, and these risks can be found in company operations, products produced or sold, buying and selling processes, conflicts of interest, and the risk of fraud.

Risks arise when losses occur, failure to achieve company goals, and other negative impacts. Risk is a major challenge for all companies around the world in their efforts to ensure proper risk management. Effective risk management allows companies to protect value and increase their corporate value. In this context, operational risk management is key to maintaining business continuity, which can be achieved through efficient use of resources, protection of assets, reduction of operational costs and other measures. On the other hand, increasing value means managing risks that can improve the company's reputation, improve customer satisfaction, and optimize returns from investments and other aspects.

After understanding the steps in risk management, insurance companies can determine the appropriate method. In Abbas Salim's view, risk management has broader implications. In other words, risk management covers all types of risks (such as financial risks, property risks, life risks, and others) that may occur in society that are related to corporate governance.

Risk management is the process of identifying, measuring, controlling and reporting social, physical and economic risks to identify various risks that can affect participants and the company.

3. COMPLIANCE AND REGULATION IN INSURANCE

Compliance with insurance-related regulations is very important for insurance companies and parties involved in the insurance industry. This compliance includes various laws and regulations governing the insurance business, consumer protection, and lawful practices in the industry. The following are some rules and regulations generally related to insurance:

a. Law no. 40 of 2014 concerning Insurance: This is the insurance law that applies in Indonesia. This law regulates various aspects of insurance, including business permits, procedures for establishing an insurance company, licensing procedures, minimum capital that an insurance company must have, and many other aspects.

b. Financial Services Authority (OJK): OJK is the regulatory body that regulates the financial services industry, including insurance, in Indonesia. OJK issues various rules and regulations to regulate insurance companies and ensure their compliance with applicable regulations.

c. Consumer Protection: There are various regulations that focus on consumer protection in the insurance industry, including the rights and obligations of the insured, procedures for resolving disputes, and legal action if there are violations.

d. Financial Regulations: Insurance companies must also comply with financial regulations which include the preparation of financial reports, risk management, and minimum capital requirements.

e. Marketing and Sales Regulations: These regulations regulate the procedures for marketing and selling insurance products to consumers, including procedures for explaining products to consumers and cancellation policies.

f. Regulations Related to Insurance Products: Certain insurance products, such as health or life insurance products, may be subject to special regulations governing the type of coverage, premiums, and other requirements.

DISCUSSION

- **Protection from Business Risks**

Insurance contracts provide financial protection from business risks such as property damage, accidents, and lawsuits. Insurance contracts serve as primary protection for companies and individuals facing these risks without having to cover the entire cost because relatively small insurance premiums offer great financial protection. Insurance contracts are essential in business where uncertainty is ever-present.

- **Risk management**

Insurance contracts are an important part of business risk management. Businesses that are wise in planning and managing risks through insurance contracts can minimize negative impacts on their operations, including protecting against risks that cannot be completely avoided. This helps the company survive and continue.

- **Compliance and Regulation**

Laws or regulations in various business sectors often require insurance contracts. In legitimate business practices, compliance with legal and regulatory requirements is essential. Insurance contracts ensure that companies meet these requirements and avoid legal issues that could cost them dearly.

CONCLUSION

Businesses that are wise in planning and managing risks through insurance contracts can minimize negative impacts on their operations, including protecting against risks that cannot be completely avoided.

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