



Legal Responsibilities for The Insured Resulting From Delay In Insurance Broker Premium Deposit To The Insurer In The Insurance Agreement

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Abstract

The provisions for premium payments from insurance brokers to insurers are regulated in applicable laws and regulations. The provisions for insurance brokers to pay premiums to insurers are regulated by Financial Services Authority Regulation Number 70 of 2016 concerning the Implementation of Insurance Brokerage Companies, Reinsurance Brokerage Companies, and Insurance Loss Assessment Companies. The role of Insurance Brokers is quite important for the insured to be able to assist in paying premiums to insurers based on the regulated provisions. This is because insurance premiums in an insurance company are a company necessity in increasing company profits and can cover claims filed by the insured. However, there are problems in the field where late premium payments occur which are not the fault of the insured but rather the fault of the insurance broker who is late and will cause losses to the insured. In this case, the insured has legal remedies so that they can be given a good solution. This research is a legal research with a statute approach and an analytical approach. The results of this study explain that first, the legal efforts made by the insured regarding the dispute between the Insurance Broker and the Insurance Company (Insurer) are a result of the negligence of the insurance broker who did not pay the insured's policy premium. In fact, the insured considers that the Insurance Broker has carried out manipulative information actions as if there was no problem and finally the Policy was canceled unilaterally by the insurer. Second, the Insured did not clearly see the existing facts, especially the unilateral cancellation of the policy by the insurer that it is mandatory to be notified of the reasons for the cancellation. Thus, the insured's legal efforts through the criminal realm are only based on Article 31 paragraph (2) Jo. Article 75 of Law Number 40 of 2014 concerning Insurance. The recommendation is, it would be more appropriate for the appropriate legal efforts chosen by the Insured to be carried out through the Non-Litigation Path. Such as a special insurance dispute resolution forum through the Indonesian Insurance Arbitration Mediation Board (BMAI) which has been mandated through the Financial Services Authority Regulation Number. This aims to prove the alleged actions of the Insurance Broker who has been late in paying premiums due to his negligence to the Insurer. In this way, it will be more effective and independent in resolving civil disputes in the insurance industry.

Introduction

As per the provisions regarding Premium payments from Insurance Brokers to Insurers, it has been regulated through Financial Services Authority Regulation (POJK) Number 70 of 2016 concerning the Business Conduct of Insurance Brokerage Companies, Reinsurance Brokerage Companies, and Insurance Loss Assessment Companies. POJK Number 70 of 2016 states that Insurance Brokers are required to submit premiums or contributions received by policyholders within 30 (thirty) days at the latest. The consequence of late premium payments

by Insurance Brokers to Insurance Companies is that Insurance Brokers are required to be responsible for payment of claims or benefits arising from Policyholders.

Insurance brokers act as intermediaries between policyholders and insurance companies. They represent the interests of policyholders and facilitate payment of premiums to insurance companies. The broker's deadline for depositing premiums with insurance companies ensures that policyholders fulfill their obligations to receive protection as agreed. The role of premiums in any insurance company, whether general or sharia insurance, is crucial because premiums are essential for increasing company profits.¹

Late premium payments to insurance companies are often due to factors such as the insured being out of town, forgetting, or financial problems. Insurance brokers should minimize late premium payments to insurance companies. If a late premium payment to an insurance company is due to the broker's negligence, it will result in losses for the insured who has fulfilled their obligation to pay the premium. Insurance brokers face a very high risk of experiencing an action that is detrimental to the insured. In this regard, if an insurance broker makes a mistake in facilitating the insured's payment of the premium to the insurance company, the error can be held liable in civil or criminal law. This is a consequence of the role of insurance brokers as intermediaries, whose role is regulated through the Commercial Law Code (KUHD) which can protect the insured or policyholder from irresponsible parties for uncertain events that occur to them. Therefore, the author will analyze "Efforts for the Insured Due to Late Premium Payments by Insurance Brokers to the Insurer in the Insurance Agreement."

Research Methods

The research method used in this writing is normative juridical research (*doctrinal research*). Normative legal research is a process of discovering a legal rule at hand. This research uses several approaches, namely the statutory approach and the conceptual approach. According to Prof. Peter Mahmud Marzuki, legal research is a process of discovering a legal rule, legal principles, or legal doctrines to answer the legal issue at hand.

Discussion Results

Legal Consequences Arising from Delays in Premium Payments from Insurance Brokers to Insurers

The legal consequences of late premium payments from insurance brokers to insurers will disrupt the fulfillment of the insured's claim obligations. As stipulated in Article 9 of POJK Number 70 of 2016, "*Insurance Broker Holders are required to assist policy holders, insured persons or participants in fulfilling the requirements for submitting claims to Insurance Companies or Sharia Insurance Companies.*" Insurance brokers should be aware that the insured should be prioritized when submitting claims to insurance companies. If brokers fail to fulfill their responsibilities in handling insurance claims settlements and fail to optimize compensation, the insured will not receive the insurance claim they deserve.²

The legal relationship between an insurance broker and an insurance company is based on an agreement. In an agreement, each party must fulfill its obligations to obtain its rights. If one party violates the provisions of the clauses in the agreement, the other party will suffer losses. Fulfilling the rights and obligations agreed upon by the parties in the contract is a form

¹ Dwi Novita Anggaraini and Ova Novi Irama, "The Impact of Late Premium Payment Obligations on the Financial Performance of the Mutual Life Insurance Company (AJB) Bumiputera 1912 Kesawan Branch". Faculty of Economics, Al Washliyah Muslim Nusantara University. Pp. 31-40

² Ryan Nugraha Wira Wijaya, "Legal Review of the Role of Insurance Brokers in the Implementation of Insurance at PT. Estika Jasatama in Settling Claims of Loss Insurance Customers". JOM Faculty of Law, University of Riau Vol. VII. January 2020. pp. 1-15

of legal protection for the rights of the parties, as the agreement in the contract has binding force and must be complied with.³

Basically, the insurer is an insurance company that binds itself to cover the risks experienced by the insured, which is offset by premium payments made by the insured to the insurer.⁴ This means that since an agreement has been reached in the insurance agreement, the insured is bound and obliged to pay the insurance premium to the insurer, and since that time the insurer accepts the transfer of the risk experienced by the insured.⁵ The consequence of late payment of the policy to the insurance company will be the loss of benefits that should be received. Premium deposits are made to the insurance company to pay claims submitted by the insured. Claims paid by the company are part of the participant's reciprocal obligations stipulated in the insurance contract or agreement, namely the participant is obliged to pay a certain amount of premium as the insured and the company is obliged to pay claims as the insurer if the participant experiences a disaster or maturity. It will be very difficult for the insurance company to fulfill its obligations in paying the insured's claims if there are obstacles in the form of late premium payments. The action of not paying claims submitted by the insured can be said to be proportional. This is, if one party does not fulfill its obligations, the impact is that it does not receive the rights that should be received by the parties in the agreement.

The principle of proportionality is inherent in contracts, which aims to balance the rights and obligations of the parties. Proportionality (the principle of proportionality) is often understood only in the context of evidentiary law, although it should essentially be understood as the distribution of rights and obligations according to proportions that encompass all contractual aspects as a whole. Therefore, the legal consequences for a party who neglects or is late in paying premiums to an insurance company by an insurance broker are that the insured's rights cannot be properly fulfilled proportionally.

Legal Action Against Insurance Brokers' Delays to Insurers

a. Non-Litigation Settlement

Settlement through Non-Litigation in insurance disputes is part of the legal efforts to address the problems experienced by the parties. Based on the Financial Services Authority Regulation Number 61 of 2020 concerning Alternative Institutions for the Resolution of Financial Sector Disputes through Article 32 paragraph (1) handles cases resolved through non-litigation, namely;

- 1) LAPS Financial Services Sector can handle Disputes with the following criteria;
 - a. The complaint has been resolved by the PUJK but has been rejected by the Consumer or the Consumer has not received a response to the complaint as regulated in the Financial Services Authority Regulation regarding consumer complaint services in the financial services sector;
 - b. The dispute submitted is not a dispute that is currently in process or has been decided by a judicial institution, arbitration or other alternative dispute resolution institution; and
 - c. Civil disputes.

Insurance disputes are a type of civil case that arise from disagreements between parties or non-compliance with the agreement outlined in the agreement. Many businesses prefer non-litigation dispute resolution because it places more emphasis on fostering

³ Reinhard Politon, "Fulfillment of Rights and Obligations According to the Agreement of the Parties in the Contract Reviewed from the Civil Code" Lex Crimen Vol. VI. No. 3. 2017. hlm. 136-143

⁴ Kenneth, "Legal Consequences of Non-Payment of Life Insurance Premiums by Policyholders to Insurance Companies (The Case of Molly Situwanda and the Panin Dai-Ichi Life Insurance Company)". Adigama Law Journal. Vol. 3. No. 2. 2020. pp. 1044-1067

⁵ Ibid. Kenneth, "Legal Consequences Not.....pp. 1044-1067

business relationships. The most appropriate resolution methods are negotiation, mediation, or conciliation.⁶. In order to deal with cases of default or a bankruptcy petition against an insurance company, policyholders play a crucial role in providing assistance to the Financial Services Authority (OJK).⁷ In this case, the policyholder can file a complaint with the Financial Services Authority (OJK) regarding the insurance broker's negligence in paying premiums to the insurance company.

In cases of negligence by an insurance broker in paying premiums to an insurance company, mediation can also be carried out. The mediation process is an effort to find a way out or solution to restore the policyholder's rights that have been violated to their detriment by the insurance broker. In general, the goal of resolving disputes through mediation is to produce a plan for the future that can be accepted and implemented by the disputing parties, prepare the disputing parties to accept the consequences of the decisions made, and reduce anxiety and other negative impacts of a conflict by helping the disputing parties reach a consensus resolution.⁸

The benefits of non-litigation dispute resolution can help businesses explain their negligence. Businesses are obligated to provide consumers with the most complete explanations and information possible regarding all matters related to their services, as consumers (insured) have rights that must be respected by business actors (insurers).⁹. The position of the insurance broker can explain the actual consequences of not paying premiums to the insurance company so that it can prove whether the error was actually made by the insurance broker or vice versa.

The Indonesian Insurance Mediation and Arbitration Agency (BMAI) is an institution that provides professional and transparent services based on the satisfaction and protection and enforcement of the rights of the Insured or policy holder through the Mediation and Adjudication process.¹⁰ BMAI, as an insurance claim dispute resolution institution, needs to position itself to consider the interests of both the insured and the insurer. If the insurance company rejects the claim due to incomplete evidence submitted, BMAI needs to be present to mediate between the insurer and the insured. Essentially, an agreement of this nature *win-win solution*, the confidentiality of the parties is guaranteed, faster in settlement, avoidance of delays due to administrative and procedural matters, and creating good relations between the disputing parties, the non-publication of the decision results, is an advantage of resolving disputes through non-litigation (outside the court) channels. The author analyzes that non-litigation channels will find the real problem points that occur. Basically, in disputes in the business world, the settlement path by means of negotiation is the safest way to use, because the secret between the disputing parties will be safe, but unless one of the parties acts or has bad intentions and leaks the results of the settlement that has been decided by both negotiating parties¹¹.

Dispute resolution through mediation is regulated in the Regulation of the Alternative Dispute Resolution Institution for the Financial Services Sector No. Per-01 1/LAPS-

⁶ B. Rini Heryanti, et al., "Analysis of Insurance Contract Settlement Through the Financial Services Authority." *J. Socio-Cultural Dynamics*. Vol. 17. No. 2. 2015. pp. 210-217

⁷ Annisa Sativa, "Insurance Dispute Resolution Through Non-Litigation and a Sharia Law Perspective." *Rayah Al-Islam*. Vol. 6. No. 2. 2022. pp. 278-294

⁸ Joni Emirzon, 2001 "Alternative Dispute Resolution Outside the Court (Negotiation, Mediation, Conciliation, and Arbitration), Jakarta, PT. Gramedia. p. 72

⁹ Ibid. Joni Emirzon, 2001 "Alternative Dispute Resolution....p. 72

¹⁰ Wahyu Eko Nugroho, et al, "*The Role of the Indonesian Insurance Mediation and Arbitration Board in Resolving Life Insurance Claim Disputes Based on "As Is" Claim Evidence*". Diponegoro Law Journal. Vol. 5. No. 3. 2016. pp. 1-18

¹¹ I Putu Jayaninggrat Ariasa and Pande Yogantara, "*The Benefits of Negotiation as a Means of Non-Litigation Dispute Resolution*". *Kertha Desa Journal*, Vol. 11 No. 6, 2023, pp. 2670-2681

SJK/I/2021 concerning Mediation Regulations and Procedures. Insurance disputes arising from agreements or financial transactions between policyholders and insurance companies may be submitted for resolution through mediation at the LAPS SJK under the following provisions:¹²:

1. Efforts have been made to resolve the insurance dispute *internal dispute resolution* According to Ian Ramsay and Miranda Webster, internal dispute resolution is an important part and the first step in resolving financial system disputes. This refers to the way to resolve and handle consumer complaints.
2. There is a mediation agreement between the policyholder and the insurance company. This can be made before or after the dispute arises, provided that: a) Dispute resolution through mediation is included in the dispute resolution clause in the insurance policy signed by the parties; b) The agreement is made in the form of a correspondence agreement, or; c) It is made in the form of an agreement through an electronic system in accordance with applicable regulations.

Dispute resolution through non-litigation is quite effective in finding the root of the problems experienced by the Parties. Essentially, insurance disputes arise from violations of obligations under clauses contained in an agreement. The success of dispute resolution through non-litigation is determined by the cooperation and commitment of the parties. Therefore, the success of the dispute resolution process through non-litigation is influenced by several factors, including the disputing parties and the LAPS FSS itself. Therefore, a commitment from each party to follow and implement the results of dispute resolution through LAPS FSS is required.

b. Settlement Through Litigation

The parties prefer to settle insurance disputes through litigation because punishment is a solution or deterrent for actions taken by the perpetrator that have harmed the insured. The dispute resolution process carried out through the courts, or what is often referred to as "litigation," is a dispute resolution carried out through a court proceeding where the authority to regulate and decide is exercised by a judge.¹³ The characteristics of dispute resolution through litigation are more about maintaining legal arguments to convince the judge that the victim's rights have been violated by the perpetrator. In the litigation process, the parties are pitted against each other, and dispute resolution through litigation is the final means (*the last resort*) after other alternative dispute resolution efforts have not yielded results¹⁴ According to Sudikno Mertokusumo, court decisions have three types of power which are the special features of litigation dispute resolution, namely court decisions have binding power, evidentiary power, and executory power or the power to be implemented.¹⁵

The timeframe for resolving disputes through litigation is ineffective. This is due to the numerous legal remedies available to victims or defendants to prove that one of them is not guilty of a crime or unlawful act in the civil realm. As in the case study of the Insurance Crime Case through the Surabaya District Court Decision Number 2342/Pid.Sus/2022/PN Sby up to the appeal stage in the Surabaya High Court Decision No. 267/PID.SUS/2023/PT SBY and the ongoing cassation process, legal remedies can show the long time it takes to be executed.

¹² Ni'ma Ulinihayati and Yunus Husein, "Resolving Insurance Disputes Through the Alternative Dispute Resolution Institution for the Financial Services Sector (LAPS SJK)." *Journal of Legal Issues*. Vol. 51. No. 3. 2022. pp. 209-221

¹³ Syaiful Anam and Rahman Ali Fauzi, "Approaches to Insurance Company Dispute Resolution." *Ar-Ribhu: Sharia Economic and Financial Management*. Vol. 2. No. 01. 2021. pp. 47-64

¹⁴ Frans Hendra Winarta, *Dispute Resolution Law*, (Jakarta: Sinar Grafika, 2012), pp. 1-2

¹⁵ Sudikno Mertokusumo, *Indonesian Civil Procedure Law*, (Yogyakarta: Liberty, 1993), pp. 177-182

The parties to the dispute must consider whether to resolve the dispute through litigation or non-litigation. Procedurally, litigation is less effective when the case involves a contract or civil dispute. In practice, parties still prefer litigation and are still familiar with pursuing legal action. However, there are several advantages to resolving disputes through litigation, including:

1. The process is carried out formally by state-appointed institutions (from the Court to the Supreme Court)
2. The decision is made by a judge without any involvement from either party.
3. Legal facts become the orientation of the judge's decision making.
4. The trial process is carried out openly and the time required is also relatively short.
5. Decisions made by judges are final and binding on all parties involved. In the process of resolving disputes legally, professional assistance is essential.

Because the decision firmly establishes the rights and laws to be realized, the judge's decision has executive power, namely the power to enforce what is stipulated in the judge's decision by force by state apparatus.¹⁶

Application of Criminal Justice Process in Disputes between Insurance Brokers and Insurers

In the provisions of Law Number 40 of 2014 concerning Insurance through Article 31 paragraph (2) that "*Insurance Agents, Insurance Brokers, Reinsurance Brokers, and Insurance Companies are required to provide true, non-false, and/or non-misleading information to Policyholders, Insured, or Participants regarding the risks, benefits, obligations and costs associated with the insurance products or sharia insurance products offered.*" The insurance broker, according to the Public Prosecutor's indictment, misled the policyholder, preventing the insurance company from fulfilling their claim. In this case, the insurance broker was charged under Article 75, which carries a maximum prison sentence of 5 (five) years and a maximum fine of Rp. 5,000,000,000 (five billion rupiah).

The insured's legal action through litigation is intended to retaliate against the insurance broker for negligence in paying the insured's premium. Indeed, Law Number 40 of 2014 concerning Insurance stipulates criminal penalties for insurance brokers found to have misled the insured and provided false information to appear as if they have fulfilled their obligations for the benefit of the insured. On the other hand, the insured's losses are substantial, amounting to premiums paid to the insurance company. This constitutes a criminal offense by an insurance broker and requires corporal punishment.*last resort*).

On the other hand, Insurance Brokers in resolving disputes through the Criminal Court want to prove that they have not violated the provisions of Article 31 paragraph (2) of the Insurance Law. Insurance Brokers want to prove that the Insurer has made a unilateral cancellation and without confirming to the insured, even though it has done so.*backdate* against the cancellation of the policy. This action seeks to prove that the insurer has committed a crime in insurance, seeking only one-sided profit and not prioritizing the interests of the policyholder, resulting in immaterial losses to the insurance broker, who appears to have failed to fulfill his obligations.

The criminal justice system (CJS) is a form of formal reaction to crime.¹⁷ However, this does not mean that reckless reactions are without human rights protection. The alleged judicial mafia experienced by insurance brokers is clearly evident, with evidence blaming insurance brokers for their apparent negligence in paying premiums to insurance companies. Dispute

¹⁶ Rosita, "Alternatives in Dispute Resolution (Litigation and Non-Litigation)". Al-Bayyinah: Journal of Islamic Law. Vol.VI.No.2.pp.99-113

¹⁷ Henni Muchtar, "Evidence of the Shady Side of Indonesia's Criminal Justice Process in Wrongful Arrest Cases." Democracy Vol. VIII No. 1, 2009, pp. 17-34

resolution through criminal justice in insurance crimes has the potential to be misused by certain parties. The author argues that resolving cases of alleged negligence in premium payments by insurance brokers would be more appropriate through non-litigation channels. This is because the level of manipulation in dispute resolution through non-litigation channels can be more objective and highly independent. This can also avoid criminalization of insurance brokers who have not been factually proven to be negligent and providing false information to policyholders.

The legal concept in Indonesia prioritizes legal protection for consumers within the civil sphere. Moreover, the Insurance Law does not regulate legal protection for insurance brokers, preventing them from being criminalized while carrying out their roles. On the other hand, insurance brokers are positioned as insured or consumers within the insurance sector. The author analyzes the need for regulations for insurance brokers to regulate indicators of criminal acts through POJK regulations. Therefore, the vulnerable position of insurance brokers, who serve as the central point for delivering insured premiums to insurers, can be prevented and minimized appropriately based on applicable laws.

Conclusion and Recommendation

Conclusion

The legal action taken by the insured in connection with the dispute between the insurance broker and the insurance company (insurer) resulted from the broker's negligence in failing to pay the insured's policy premium. In fact, the insured alleged that the insurance broker had manipulated information, pretending that no problem had occurred, and ultimately, the insurer unilaterally canceled the policy.

The insured did not clearly see the existing facts, especially the unilateral cancellation of the policy by the insurer, which requires notification of the reasons for the cancellation. Therefore, the insured's legal efforts through the criminal realm are only based on Article 31 paragraph (2) in conjunction with Article 75 of Law Number 40 of 2014 concerning Insurance.

Recommendation

A more appropriate legal remedy for the insured is a non-litigation approach. For example, a special insurance dispute resolution forum, the Indonesian Insurance Arbitration Mediation Board (BMAI), is mandated by Financial Services Authority Regulation No. 10001. This aims to prove the insurance broker's alleged negligence in paying the insurer's premiums. This will allow for a more effective and independent resolution of civil insurance disputes.

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