

URGENCY OF INSURANCE AGENT'S LEGAL RELATIONSHIP WITH INSURANCE COMPANY

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Abstract

This research aims to discover about and comprehend the legal framework that underpins the partnership between insurance agents and insurance companies. The research method used is a type of normative legal research. The type of approach used is a statutory approach and a conceptual approach. The laws used are the Civil Code, the Commercial Code, the Insurance Law and POJK.05/2013 concerning Insurance Products and Insurance Marketing. The results of this study revealed that the legal basis for the relationship between insurance agents and insurance companies is not expressly regulated in the Civil Code, Commercial Code, Insurance Law and Financial Services Authority (OJK) Regulations. The Insurance Law only provides a definition of insurance agents and insurance companies. As such, the legal relationship between insurance agents and insurance companies is not regulated. As a legal basis, the relationship between the insurance agent and the insurance company lies in the agreement made by the agent with the company. Thus, the agreement becomes the legal basis for the relationship between the insurance agent and the insurance company. Meanwhile, the legal relationship between an insurance agent and an insurance company is a contractual relationship or a relationship that is bound in an agreement.

Keywords: Agent, Company, Insurance, Legal Relations

1. INTRODUCTION

Based on Article 1 number 28 of Law Number 40 of 2014 Concerning Insurance (hereinafter referred to as the Insurance Law) stipulates “Insurance Agent is a person who works alone or works for a business entity, acting for and on behalf of an Insurance Company or a Sharia Insurance Company and fulfilling requirements to represent an insurance company or a sharia insurance company to market insurance products or sharia insurance products”. These provisions imply that what the agent says is a person who works alone or works for a business entity. In this case, the agent has two positions, namely the first position as a self-employed person and the second position, namely a person working in a business entity.

Insurance is known as a product that can provide relief in people's lives. The relief is in the form of coverage provided through the products offered. The product offering is carried out intensively by insurance companies. The offer was made through an insurance agent employed by the insurance company. Hence, insurance agents can be said to be workers both by themselves and with business entities. The product offering is very influential on the work performance of the company's agents (Intan et al., 2017). If the person works for a business entity, then that person can act on behalf of the insurance company. In other words, the agent can act on behalf of the insurance company. The actions referred to in this provision are actions in marketing insurance products or sharia insurance products.

With regard to Insurance Agents, in Article 1 number 7 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 152/PMK.010/2012 concerning Good Corporate Governance for Insurance Companies (hereinafter referred to as the Minister of Insurance) stipulates that "Insurance Agent is an insurance agent as referred to in the law on insurance business". The definition given in this ministerial regulation is the meaning that refers to the Insurance Law or the meaning of an insurance agent in this ministerial regulation is the same as that contained in the Insurance Law. Although the meaning of insurance agents contained in this regulation is the same as the Insurance Law, the meaning of this regulation is related to good insurance company governance, so it is different from the arrangements for insurance agents listed in the Insurance Law.

Furthermore, in Article 1 number 8 of the Minister of Insurance Regulation, stipulates that "Good Corporate Governance is the structure and process used and implemented by insurance company organs to increase the achievement of business results targets and optimize corporate value for all stakeholders, especially policyholders, insured, participants, and/or parties entitled to benefit in an accountable manner and based on statutory regulations and ethical values". In this article, it only mentions that good governance is in the form of structure and process. The structure in question is the structure in the sense of the level of position in the insurance company, while the process is in the form of movement of the insurance company itself. Furthermore, the process aims to increase the achievement of business results and optimize the value of the company. This definition indicates a target to be achieved by the insurance company. In order to achieve this target, optimal steps can be taken in order to achieve corporate value (the target of an insurance company). Optimizing the value of the company can be done with various strategies made by insurance companies, while the implementation of these achievements is carried out by insurance agents. Insurance agents in optimizing the value of the company are agents who have a position as someone who works for an insurance company (not self-employed).

In this regard, insurance agents work for insurance companies by acting on behalf of the company by marketing insurance products offered to insurance users. The company motivates agents to fulfill the achievements determined by the company (Ikhsan et al., 2019). When offering these products, insurance agents provide explanations to prospective insurance users with the aim that the product is understood first. If the prospective user of the insurance already understands the product being offered, then the potential user is invited to take part in the product or purchase the product by paying. Payment can be made in various ways according to the product offered. Furthermore, if the solicitation from the insurance agent is approved by the prospective insurance user, then the prospective insurance agent's willingness to buy the product arises. The availability of the prospective insurance user determines the existence of an agreement between the prospective insurance user and the insurance agent.

The agreement gave birth to an agreement between the prospective insurer and the insurance agent. In addition, the agreement also creates a legal relationship because the existence of an agreement means the start of a legal relationship. The agreement is written in the form of an agreement. Agreements made by insurance agents with potential insurance users are usually made in private form. The agreement is signed by the insurance agent with the prospective insurance user on a stamp duty only. The action taken by the insurance agent is an action on behalf of the insurance company. Thus, a legal relationship is formed between the agent and the insurance user.

Juridically, if someone acts on behalf of the company it must be based on the power of attorney from the company itself. With the power of attorney from the company, it is very clear that there is a legal relationship that exists between the company as the power giver and the workers as the power recipient. The legal relationship must have a legal basis as the foundation for insurance agents in carrying out their duties and also for insurance companies in assigning tasks to insurance agents.

The insurance agent acts as a representative of the insurance company. Thus, it is very possible that the agent can carry out legal actions which then result in legal consequences for other people or legal entities that are represented (insurance companies). The insurance company does not need to take legal action against other parties because the company has been represented by its insurance agent and also does not need to be in that place. Agents can also be said to be an extension of the insurance company. Thus, the insurance agent has a very close relationship with the insurance company. This relationship becomes very important in the marketing of insurance products. In order for this relationship to have legal force, a legal basis is needed to guarantee legal certainty in the relationship.

The importance of legal relationship between an insurance agent and an insurance company is because the actions taken by the agent are related to representing the company for the benefit of the company, not for their own interests. Likewise, legal actions carried out by insurance agents are also legal actions of insurance companies. It is necessary to examine regulations related to the limits of action of the insurance agent in order to understand the legal relationship that exists between the agent and the insurance company. On that basis, researchers are interested in raising these legal issues in a scientific journal by highlighting the title “Urgency of Insurance Agent's Legal Relationship with Insurance Company”.

As a comparison with previous research, namely research by Hariyadi & Triyanto (2017), entitled “*Peran Agen Asuransi Syariah Dalam Meningkatkan Pemahaman Masyarakat Tentang Asuransi Syariah*”. Furthermore, research by Musyahidah et al. (2020), taking the title “*Etika Agen Asuransi Allianz Syariah Dalam Memasarkan Produk Asuransi Jiwa Pada PT. Asuransi Allianz Kota Palu*”. And research by Jordania (2020), entitled “*Analisis Resepsi Agen Asuransi Mengenai Gambaran Kerja Keras dalam Video Klip Ardhito Pramono '925'*”. When compared with the three studies, this study has similarities and differences. The similarity is only in insurance agents, while the difference lies in the object under study, which is related to the role of insurance agents in increasing understanding in Islamic insurance, the second object is the ethics of insurance agents and the third is in the analysis of receptions of video clips. In addition, the difference also lies in the location of the research, namely in the company. While this research does not determine the research location and the object of this research is the legal relationship between insurance agents and insurance companies based on statutory regulations.

Based on the description of the background above, the purpose of this research is to find out and understand the legal basis of the relationship between insurance agents and insurance companies and to know and understand the legal relationship between insurance agents and insurance companies.

2. RESEARCH METHODS

This was a type of normative legal research. Normative legal research refers to “library research or document study because this research is carried out or aimed only at written regulations or other legal materials” (Soekanto & Mamudji, 2004). The use of this type was chosen because there was a problem of the absence of legal norms relating to the legal basis of the relationship between insurance agents and insurance companies and the legal relationship between insurance agents and insurance companies. After knowing the legal basis of the relationship between an insurance agent and an insurance company, then the legal relationship between an insurance agent and an insurance company was discussed.

3. RESULTS AND DISCUSSION

3.1. Legal Basis for Insurance Agent Relations with Insurance Companies

The relationship between an insurance agent and an insurance company in the Civil Code can be traced from an understanding that insurance is based on an agreement. In this sense, insurance can be divided into the notion of insurance as an agreement and insurance as a risk transfer mechanism. Thus, it can be said that insurance is a form of agreement. On the basis of that understanding, an agreement must fulfill the legal requirements of the agreement. Article 1320 of the Civil Code stipulates that the terms for the validity of the agreement require four conditions, including:

- 1) Agree those who bind themselves;
- 2) The ability to make an agreement;
- 3) A certain thing; and
- 4) A lawful cause.

These four conditions are absolute conditions in an agreement made by the insured and the insurer so that the agreement is said to be valid based on law or the agreement has legal force. Each of the meanings of these conditions is the agreement of those who are bound. The existence of an agreement means that the parties entering into the agreement must agree, agree on the main points of the agreement entered into. What is desired by one party, also desired by the other party. Next, the ability to make an agreement. The second element is the ability to make an agreement. According to Article 1329 of the Civil Code, it states that every person has the authority to enter into an agreement, unless he or she is declared incapable of doing so. Article 1330 of the Civil Code explains that there are 3 (three) groups of people who are incapable of making agreements, namely:

- 1) Immature child;
- 2) People who are under guardianship; and
- 3) Married woman.

After the issuance of the Supreme Court Circular No. 3/1963 and after the enactment of the Marriage Law No. 1 of 1974, there were only 2 (two) groups who were unable to make agreements, namely children who were immature and people who were under guardianship (*curatele*). The third is a certain thing. A certain thing means that the object of the agreement must be certain, at least it must be determined (Article 1333 of the Civil Code). Items that will only be available in the future can also become the object of an agreement (Article 1334 of the Civil Code). While the last is a lawful cause. The definition of a lawful cause is not the thing that causes the agreement, but the contents of

the agreement itself. The contents of the agreement may not contradict the law, decency, or public order (Article 1337 of the Civil Code) (Meliala, 2015).

In particular, the characteristics of an agreement are explained in Article 1774 of the Civil Code which states that an agreement is a chancy agreement is an act whose outcome is profit and loss for both parties and for some parties, depending on an uncertain event. If this article is interpreted, it is very related to the meaning of insurance. This article is more likely to provide an approach to an engagement in an agreement between the parties that make it. If the insurance agreement is said to be a chancy agreement, then it can be justified because it involves something that was agreed upon that does not yet exist or will exist in the future. This luck is more towards a situation that is still in the possibility of happening in the future. If this situation occurs, then the agreement can be implemented or in accordance with what was agreed, whereas if this condition does not occur, then the agreement is considered not valid. In other words, the insurance agreement made is an agreement whose object will be born in the future. Thus, the insurance agreement is an act whose outcome is related to the profit and loss of the parties making the agreement, both for both parties and for one of the parties depending on a situation that is uncertain.

Coverage is a form of agreement; thus, the agreement has the risk of being canceled or can be canceled if it fulfills the legal requirements of the agreement which refers to Article 1320 of the Civil Code. If you look closely, this article provides validity to the agreement made by the insured party with the insurer. The insurance company as the insurer is given the authority to determine the substance of the agreement based on Article 18 of Law Number 8 of 1999 concerning Consumer Protection. This article relates to standard clauses in an agreement made by only one party, while the other party only agrees.

In the provisions of Article 18 UUPK (Consumer Protection Law) provides rules for making standard clauses including:

- 1) declare the transfer of responsibility of business actors;
- 2) states that business actors have the right to refuse the return of goods purchased by consumers;
- 3) states that business actors have the right to refuse to return the money paid for goods and/or services purchased by consumers;
- 4) declare the authorization of the consumer to the business actor either directly or indirectly to take all unilateral actions relating to goods purchased by the consumer in installments;
- 5) regulates the matter of proof of loss of use of goods or use of services purchased by consumers;
- 6) give rights to business actors to reduce the benefits of services or reduce the assets of consumers who are the object of buying and selling services;
- 7) declares consumer compliance with regulations in the form of new rules, additions, continuations and/or further changes made unilaterally by business actors while consumers are utilizing the services they have purchased; and
- 8) states that consumers authorize business actors to impose mortgage rights, lien rights, or guarantee rights on goods purchased by consumers in installments.

Furthermore, in paragraph (2) of Article 18 it stipulates that “Business actors are prohibited from including standard clauses whose location or shape are difficult to see or cannot be read clearly, or whose disclosure is difficult to understand”. Whereas in

paragraph (3) it is further stated that “Every standard clause that has been determined by business actors in documents or agreements that fulfill the provisions referred to in paragraphs (1) and paragraph (2) is declared null and void”. In its application, the provisions in paragraph (3) use standard clauses which are located as stipulated in paragraphs (1) and (2), there are still many to be found. It doesn't just stop there, in paragraph (3) that, “Business actors are obliged to adjust standard clauses that are contrary to this law” (Muaziz & Busro, 2015).

In connection with the standard agreement above, Article 1 point 10 stipulates that the standard clause is "every rule or terms and conditions that have been prepared and determined in advance unilaterally by the business actor as set forth in a document and/or agreement that is binding and must be fulfilled." by consumers”. In relation to insurance agreements, the UUPK stipulates that agreements related to consumers, including insurance agreements, may not be in the standard form, but in the insurance agreement it turns out that there are agreements that are in a standard form.

Standard clauses as rules or terms and conditions that are prepared and determined in advance unilaterally by business actors or product distributors set forth in a document and or agreement that are binding and must be fulfilled by consumers. In essence, the producer or service provider has prepared a standard agreement with general provisions and the consumer has only two choices, namely to approve or reject it. In addition to the unilateral manufacturing procedure, there are other problems. The contents of the standard agreement contain provisions for the transfer of obligations or responsibilities of the business actor. Usually this provision intends to limit, or even completely eliminate the responsibility that should be borne or borne by the producer or distributor (seller). Thus, it can be seen that there is an imbalance in the bargaining position between producers or sellers and consumers on the other hand.

Article 18 UUPK, in fact standard contracts are still justified. However, the UUPK strictly prohibits standard contracts whose contents transfer the responsibility of business actors, alias the producer or distributor or seller. If the business actor continues to do this, he may be subject to criminal sanctions or a fine of one billion rupiahs. Thus, it can be said that in the standard agreement made by the insurance company with the insured there is legal dualism because one side of the agreement refers to the Civil Code and the other side refers to the UUPK.

In connection with the above agreement on coverage, Article 225 of the Criminal Code stipulates that an insurance must be made in writing in a deed called a policy. This article requires that an insurance is made with a written deed called a policy. By accepting a premium, an agreement is made whereby an insurer binds himself to the insured. The understanding that can be captured is that there is coverage that is stated in writing in the form of a deed. Thus, the deed made is legalized by the authorized official so that the policy that is used as insurance has legal force.

The insurance policy is issued by the insurance company as the insurer (Sitepu, 2021). The policy deed contains everything related to coverage, namely the name and address of the insured, the details of the insured, the amount of the premium and others. Arrangements regarding what must be included in the policy are contained in Articles 256,287,299,304,592 and 686 of the Criminal Code. Article 247 of the Criminal Code regulates that coverage includes, among other things, the danger of fire, the danger that threatens agricultural products that have not yet been harvested. Furthermore, Article 299 of the Criminal Code regulates life insurance for one or more people. Article 302 of the Criminal Code regulates the dangers of the sea and the dangers of slavery. Article 592

regulates the dangers of transportation on land and in rivers and Article 686 of the Criminal Code regulates inland waters.

Based on the provisions of Article 271 of the Criminal Code, it stipulates that the insurer has the power to once again insure what has been borne by him. Furthermore, Article 276 of the Criminal Code stipulates that no loss or damage caused by the insured's own fault must be borne by the insurer. Even the insurer has the right to have a premium or demand it if he has started to bear a danger. Referring to these arrangements, the Criminal Code does not clearly regulate insurance agents and the legal relationship between insurance agents and insurance companies as the insurer.

3.2. Legal Relations of Insurance Agents with Insurance Companies

In accordance with the definition of an insurance agent stated in Article 1 point 28 of the Insurance Law that an insurance agent is a person who works alone or someone who works for a business entity acting for and on behalf of an insurance company or sharia insurance company and fulfills the requirements to represent an insurance company or company. Islamic insurance markets insurance products or Islamic insurance products. The definition given in that article, an insurance agent is a person who works to market insurance products for and on behalf of an insurance company. That is, the insurance company authorizes the agent to act and the agent may not exceed the power limit granted by the company.

The relationship between the insurance agent and the insurance company is bound by an agreement. The agreement is called an agency agreement. The agency agreement can take the form of a standard agreement. The agency agreement is issued by the Agency Department which is then made by the insurance company. The agency agreement contains the authority of the insurance agent which may not exceed the authority of the insurance company. In making this agency agreement, the agent only agrees and accepts everything that has been determined by the insurance company (Putra & Sukihana, 2020). The Agency Department is part of the insurance company's organizational structure.

Article 4 of the Insurance Law stipulates that insurance business can only be carried out by insurance companies with the scope of activities, namely general insurance companies can only conduct business in the field of general insurance, including reinsurance, life insurance companies can only conduct business in the field of life insurance and health insurance, insurance personal accident and annuity business as well as being the founder and administrator of a pension fund in accordance with applicable laws and regulations on pension funds and reinsurance companies can only carry out reinsurance businesses.

In relation to insurance business, based on Article 6 of the Insurance Law, it determines that the implementation of insurance business is:

- 1) The form of legal entity for conducting Insurance Business is:
 - a) limited company;
 - b) cooperative; or
 - c) joint ventures that existed at the time this Law was promulgated.
- 2) The joint venture as referred to in paragraph (1) letter c is declared as a legal entity based on this Law.
- 3) Further provisions regarding joint venture legal entities as referred to in paragraph (2) are regulated in a Government Regulation.

Looking at the three forms of legal entity as referred to in Article 6 paragraph (1) of the Insurance Law, the joint venture legal entity form does not yet have a legal basis that regulates, among other things, the implementation of good governance, risk management, and the institutional structure of the Joint Business. The absence of a legal basis ultimately impacts on the soundness of the Joint Venture. Furthermore, this condition raises doubts about the protection of the rights of stakeholders, especially policyholders who are members of the Joint Venture.

Based on Article 1 point 1 of Government Regulation Number 87 of 2019 concerning Insurance Companies in the Form of Joint Businesses, it stipulates that Insurance Companies in the form of Joint Businesses, hereinafter referred to as Joint Enterprises, are legal entities that carry out insurance business and are owned by members, which existed at the time of Law No. 40 of 2014 concerning Insurance was promulgated (Fauzan, 2021).

In an insurance company in the form of a legal entity such as a corporation led by the Board of Directors. Article 1 point 8 of this government regulation means that the Board of Directors is a Joint Business Organ that is authorized and fully responsible for the management of the joint business for the benefit of the joint business, in accordance with the aims and objectives of the joint business, and represents the joint business both inside and outside the court in accordance with This Government Regulation and Articles of Association. This article stipulates that the Board of Directors has full responsibility for the management of the company or the management of the joint business for the benefit of the joint business, in accordance with the aims and objectives of the joint business, and for representing the joint business both inside and outside the court. Thus, with respect to insurance companies, it can be said that the Board of Directors has the authority to represent the company. Representatives of the directors can be implemented in making agreements with the insured. Representatives of the Board of Directors in this government regulation are representatives directly outside the court. Thus, the insurance agreement should be drawn up by the Board of Directors as a representative of the insurance company with the insured.

In connection with the representatives of the Board of Directors, agreements with insurance agents can also be made by the Directors with insurance agents. The agreement made with this insurance agent is an employment agreement. The insurance agent works for an insurance company. As mentioned above, the agreement made between the insurance agent and the insurance company is in the form of a standard agreement made unilaterally by the insurance company represented by the Board of Directors in the agreement. The agreement made gave birth to a legal relationship between the insurance agent and the insurance company.

Based on the provisions of Article 1 point 28 of the Insurance Law above, it states that an insurance agent is a person who works alone or works for a business entity acting for and on behalf of an insurance company or sharia insurance company and fulfills the requirements to represent an insurance company or sharia insurance company marketing products. insurance or sharia insurance products. Based on the definition mentioned, it can be said that an insurance agent is a representative of an insurance company whose job is to market insurance products from the company. In practice, insurance agents have the task of finding, collecting and serving policyholders.

The insurance agent relationship is based on the existence of an agreement or known in the insurance business, namely an agency agreement or agency contract made and approved by both parties, namely the insurance company and the insurance agent.

Thus, the legal relationship between an insurance agent and an insurance company is a contractual relationship or a relationship bound in an agreement so that the relationship between the agent and the insurance company continues to run harmoniously. In this agreement, the agent only agrees and accepts what is stipulated by the insurance company, this agreement is called an agency agreement.

This Government Regulation emphasizes that Joint Ventures can only provide insurance services for their members and each member is required to become a policyholder who has rights and obligations, namely to obtain profit sharing and bear losses from joint business activities. In this Government Regulation, the choice of how to share profits and losses, one of which is by relating it to the characteristics of the insurance products being marketed. To ensure legal certainty and protection, this government regulation stipulates that insurance policies that have been owned by policyholders prior to the enactment of this government regulation are declared to remain valid in accordance with the provisions stated in the insurance policy.

4. CONCLUSION

The legal basis for the relationship between an insurance agent and an insurance company is not explicitly regulated in the Civil Code, the Commercial Code, the Insurance Law and Financial Services Authority (OJK) Regulations. The Insurance Law only provides definitions of insurance agents and insurance companies. Related to the legal relationship between insurance agents and insurance companies is not regulated. As a legal basis, the relationship between an insurance agent and an insurance company lies in the agreement made by the agent and the company. Thus, the agreement becomes the legal basis for the existence of a relationship between the insurance agent and the insurance company. Regarding the legal relationship, the legal relationship between an insurance agent and an insurance company is a contractual relationship or a relationship that is bound in an agreement so that the relationship between the agent and the insurance company continues to run harmoniously. In this agreement, the agent only agrees and accepts what is stipulated by the insurance company, this agreement is called an agency agreement. The agent works based on the power of attorney given by the insurance company. An agency agreement is basically a power of attorney agreement, in which a person has the power to bind another person with that action.

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