LEGAL PROTECTION FOR CUSTOMERS OF CONVENTIONAL INSURANCE COMPANIES THAT CONVERT INTO SHARIA GENERAL INSURANCE

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Abstract

The problem of legal protection for customers who are members of insurance companies that carry out the conversion from conventional insurance to general Sharia Insurance has indications of the emergence of legal problems. This is because the customer must decide whether to renew the policy contract with Adira Insurance for conventional general insurance products or change the policy contract to a Sharia General Insurance Policy. The research method used is normative juridical. The purpose of this study is to answer about legal protection for customers who are members of insurance companies that carry out conventions from conventional insurance to general Sharia Insurance. The results showed the urgency of finding a format and solution from the company for all former clients of PT Zurich Insurance Indonesia so that clients who do not want to transfer their policies to Sharia General Insurance have clear certainty and legal protection.

Keywords: Insurance, Conversion, Company, Protection, Customer

INTRODUCTION

Economic development requires the role of law in implementing as well as maintaining and implementing the business competition climate and protecting consumers to support the dynamics of economic progress. This is in accordance with Article 33 (paragraph 4) of the Constitution of the Republic of Indonesia 1945 (UUD 1945) fourth amendment (Ratnaningsih, 2022).

After successfully acquiring PT Asuransi Adira Dinamika Tbk (Adira Insurance) by 80% in November 2019, Zurich Insurance Group (Zurich) transformed one of its business companies, PT Zurich Insurance Indonesia (ZII), into a general Sharia Insurance Company in the country. After this conversion, ZII clients will have the option to renew their policy contract with Adira Insurance for traditional general insurance products or convert it to a general Sharia Insurance policy (Vance, 1911).

Initially, in 1997, PT Zurich Asuransi Indonesia Tbk (ZAI) obtained a business license as PT Asuransi Loss Nexus in the general insurance industry. Before becoming ZAI, it first changed its name to PT Asuransi Adira Dinamika in 2002, then in 2019 went public. ZAI offers general insurance services and products, with auto insurance serving as the main offering. One of the largest joint venture general insurance companies in Indonesia, ZAI joined the Zurich Insurance Group (Zurich) Family in November 2019. With support from the Zurich Group and the largest underwriting, digital and risk management skills worldwide. ZAI's claims division is supported by professionals to provide the best claim service for customers. ZAI always maintains a pattern of open communication, quality information and access to data claims, and clear delivery of the claim process in accordance with a certain period of agreement. PT Zurich Asuransi Indonesia Tbk is a general insurance company registered and supervised by the Financial Services Authority (Priandani, 2022).

The conversion from conventional insurance to sharia general insurance was carried out by PT Zurich General Takaful Indonesia (Zurich Syariah), a member of Zurich Insurance Group, converting from conventional insurance to Sharia General Insurance. Using sharia management practices, Zurich Syariah provides general insurance products. Zurich Syariah implements Wakalah bil Ujrah and Tabarru contracts to control clients' risks and contributions with the intention of generosity and mutual assistance among consumers. The National Sharia Council and the Indonesian Ulema Council are regularly updated on the application of sharia principles in Zurich's sharia activities, which are always under the supervision of the Sharia Supervisory Board in accordance with the applicable rules of the Majelis Ulama Indonesia (MUI). Sharia-based General Insurance tailored to consumer needs is provided by Zurich Syariah for individuals, Small and Medium Enterprises (SMEs), and corporations. Zurich Syariah has been registered with the Financial Services Authority (Priandani, 2022).

Zurich's conversion from conventional insurance to sharia general insurance indicates the need for legal protection for customers. This is due to the fact that customers have to decide whether to renew their policy contract with Adira Insurance for conventional general insurance products or change their policy contract to the Sharia General Insurance Policy.

RESEARCH METHODS

The research method used is the normative juridical law research method. The approach used with the statutory approach, the search system used with the *library research* method (Marzuki & SH, 2021). With a statutory approach, it will find answers to the problems studied normatively, (Sihombing & Hadita, 2022). Namely legal protection for customers in conventional insurance companies that convert into sharia general insurance.

RESULTS AND DISCUSSION

Insurance Existence Philosophy

Insurance appeared at the beginning of the 13th century. Most insured the lives of ship captains and walking merchants. At that time life insurance was limited by the length of the voyage. This continued during the time of the Ancient Roman empire. At that time, Ancient Roman soldiers raised a sum of money at a collegium called collegium cultorum dianae et antinoi. In this association, members pay a base fee of 100 sesterti and a contribution of 5 asses a month. If a person dies, then his heirs are paid 300 sesterti for funeral expenses (Prodjodikoro, 1964).

Insurance is an activity related to payments based on the survival or death of the insured. Insurance companies, like other businesses, are closely linked to the fear of bankruptcy behind the shield of security provided by insurance services. The rights and obligations of management and control over assets listed as bankruptcy assets no longer belong to the insurance company in the event of bankruptcy (Dewi & Winarni, 2019). Insurance on the other hand can also cover (provide protection) to its customers, according to its purpose. Thus, insurance covers all dangers that a person may face in the future (Rambe & Sekarayu, 2022b).

This principle underlies the formulation of the appropriate choice provisions imposed on insurance companies in the most common applications of election doctrine, and in more cases is better explained under election theory than under waiver or estoppel theory expressed in opinions. Among the examples are cases where the insurance company, receiving the premium late, is prohibited from declaring a liability deviation even though the policyholder cannot prove the original waiver (i.e., that the insurance company voluntarily waived the known right) or the original estoppel (i.e., that the policyholder is adversely contingent on some representation for which the insurance company is responsible (Kuntoro et al., 2019).

Economic development requires many companies that disburse capital such as for office buildings, workers who need guaranteed protection from the risk of fire hazards, and work accidents are signs of economic development. This led to the creation of labor insurance, fire insurance, and credit insurance. Life Insurance as a type of insurance that serves the purpose of investment and protection (Sendra, 2004).

If insurance as a financial service is carried out in an orderly, fair, transparent, and responsible manner, the nation's economy will be able to develop sustainably and stably. The financial services industry is the only one that has the ability to create a financial system that protects the public interest and helps consumers grow sustainably. In theory, the relationship between an Insurance Agent and a corporation is one of partnership rather than employment. This suggests that this relationship is not top-down, as is the case with employers and employees, but rather one of equal high and low (Kuntoro et al., 2019).

Insurance agreements, like other agreements, apply general principles of agreement/contract law. But besides that, the principles of insurance agreements also apply as follows (Fuady, 2016):

a. According to this concept, the main purpose of an insurance contract is to provide compensation in the event that the insured object is in danger.
b. According to this concept, the insured object must have an insurable interest—that is, an interest that can be assessed with money—in order for an insurance agreement to take effect. Interests shall, in principle, to the extent permitted by Applicable Law.
c. On the principle of subrogation, the insured party must act honestly and transparently, which means they must disclose material information relating to the goods guaranteed. Even if the information is so important that if the insurer knows it in advance, he does not want to guarantee it, even if the insured acts in good faith, that any information is not provided or is false. As a result, the insurance contract is terminated.
d. The Principle of Conditional Agreement That insurance, as said earlier, is a conditional arrangement. The provision that a certain amount of compensation will be paid by the insurer in the event of a certain event must be included in the insurance agreement. Compensation is not paid if dangerous circumstances do not occur to the customer.
e. The principle of a hit-and-miss agreement as a general rule An insurance contract is a hit-and-miss arrangement. The Civil Code defines a profit agreement as a transaction whose outcome is profit or loss for all parties or certain parties, depending on unforeseen events.
f. The principle of the Conditional agreement, the provision that a certain amount of compensation will be paid by the insurer in the event of a certain event must be included in the insurance agreement. Compensation is not paid if dangerous circumstances do not occur for the customer.
g. The principle of a profit agreement, the Civil Code defines a profit agreement as a transaction whose results are profit or loss for all parties or certain parties, depending on unforeseen events.

The concept of the *welfare state* is reflected in the Preamble of the NRI Constitution of 1945, which states that "protecting the entire Indonesian nation and all Indonesian bloodshed and promoting general welfare, educating the lives of citizens, and participating in implementing world order based on independence, lasting peace, and social justice in order to realize the achievement of the goals of this state carried out through national development," the mandate of the state concept Welfare. According to Sjachran Basah, national development is complex, requiring extensive government involvement in the lives of citizens. This breadth of engagement in all areas is reflected in legislative provisions and implementing regulations. Insurance with the form of joint business was first regulated through the birth of Law of the Republic of Indonesia Number 40 of 2014 concerning Insurance (hereinafter abbreviated as the Insurance Law). The reason for consideration (ratio legis) aims to create a healthy, trustful, competitive, reliable insurance industry to increase protection for policyholders, participants, insured and increase the role to encourage national development as stated in the basis of consideration why this insurance law was made. There are 2 things that we should underline which are the purpose of this law, namely providing legal protection for policyholders as well so that insurance can play a role in encouraging national development (Basah, 1989).

Insurance in Positive Law in Indonesia

The legal position of the insured in the event of insolvency of the insurance company, insurance regulations, especially the UP Law, also provide legal protection to the insured, in accordance with applicable laws and regulations. In the event of insolvency, the rights of policyholders have a higher position than the rights of other parties, except obligations to the State. In the event of an insurance company's bankruptcy, the policyholder will always have a stronger position than other creditors, according to Article 20 Paragraph 2 of the UP Law. In general, a debt can be known its maturity by looking at the agreement that has been reached by the parties (Konsumen et al., 2019).

Law No. 40 of 2014 concerning Insurance (so far written briefly the Insurance Law) was passed by the President of the Republic of Indonesia on October 17, 2014, and stated in the State Gazette of the Republic of Indonesia No. 337 of the same year. This new law replaces the 1992 law establishing Insurance Business, promulgated by Chapter XVIII. Looking at the current state of affairs, in addition to strengthening each citizen's understanding of their religion, it must also be able to cope with the current state of globalization, and very seriously the law must be able to recognize change because the law can be used as a tool for change. To maintain the current economic conditions that are increasingly chaotic and fast, it is necessary to use more advanced and quality risk management or risk assessment services provided by ethical, competitive, and qualified insurance companies. For this reason, Insurance Companies must be established with quality and comprehensive input both from within and outside the country (Zanariyah, 2016).

In essence, Article 255 of the KUHD (KUHD) regulates the need for coverage to be done in writing with a deed which is often called a policy. In other words, the existence of a policy is a separate requirement for the emergence of an insurance agreement. However, as we can see from Article 257 of the Criminal Code, the problem is that the insurance agreement already exists if the agreement already exists. Even before the policy is made and the contract is signed, the rights and obligations of the insured and the insurer are already in place at that time (Ratnaningsih, 2022).

There is usually a disparity between the bargaining position of the insurer and the insured. The opportunity for insurance companies to draft the terms of the proposed agreement is also an opportunity for overreach. Naturally, there was enough misuse of that opportunity to result in remedial action. In part, the controls developed are statutory or administrative regulations of the policy form – sometimes with prescription forms but more often with less rigid regulations. The opportunity for overreach in the drafting of policy provisions was confirmed and enhanced by the strict and unyielding guarantee law originally created by Lord Mansfield for marine insurance and expanded with perhaps less justification for life and fire insurance .

The risk of loss is transferred from one party to another through insurance by dividing the cost of premium payments by a reasonable amount. Insurance is a contract whereby the insurer, on the one hand, promises to provide the insured with a reimbursement or benefit in exchange for payment of a certain premium by the insured or agent. a person or entity identified as another party. 4 Thus insurance is an agreement, the company acting as the insurer and the insured in this case the policyholder to provide reimbursement or benefits in exchange for premium payments (Junaedy, 2011).

The legitimacy of insurance arrangements needs to be compromised due to the absence of an insurable interest or a bearable interest, and void for legal reasons. If a person suffers monetary loss as a result of loss, loss, or damage to the insured object, that person is said to have an interest in the insured object. The concept of insurable interest establishes the requirement to have an interest in an insurance contract because the contract will be canceled if the prerequisites are not met (Sastrawidjaja, 2003).

A legally binding agreement between the parties and the insurance provider is required. The agreement of both parties, documented in a written agreement known as policy, results in a legal obligation. In the event of a claim or dispute between the parties (Mulhadi, 2017).

The principle of respecting reasonable expectations, even if only occasionally explicitly acknowledged, is a better explanation of outcomes in most cases than a tense excuse such as one that results in many cases than a tense reason such as resolving ambiguities against an insurance company. Also, as stated above, the principle shows. However, it must be recognized that precedent illustrates deviations from this principle in results as well as in reasoning. For example, authority can still be found among modern cases for the proposition that even if it is assumed that a conditional receipt is deliberately designed to confuse, still if there is no ambiguity in it, nothing can be interpreted by the court and there is no basis for finding coverage contrary to the terms of the receipt (Dani et al., 2021).

Customers will not be protected their rights when insurance funds or claims are not paid. Insurance providers may be held liable for financial losses and sued civilly on the basis of default based on losses suffered by clients. If one party violates the terms of the insurance policy and causes losses to the other party, that party may file a claim for financial reimbursement (Tjoanda, 2010).

The KUHD does not yet contain regulations on protection for customers of companies that convert, Explicitly, the Civil Code does not regulate insurance agreements. There are various clauses in the Code relating to the interests of policyholders. Although the KUHD regulates the regulation, the Civil Code does not directly regulate insurance agreements. However, according to Article 1 of the Civil Code, insurance contracts may be subject to the general clauses of contracts included in the Civil Code. The KUHD contains various clauses that concern the interests of policyholders, including (Sastrawidjaja, 2003):

a. Article 1320 of the Civil Code regulates the terms of validity of an agreement, including the parties' agreement to be bound by the terms of the agreement, their ability to enter into the agreement, certain topics, and valid causes. This clause has the effect of allowing policyholders to request cancellation of the insurance agreement from the court if they consider the insurance agreement to be the result of error, coercion, or fraud (dwaling, dwang, or bedrog) of the insurer. Policyholders are entitled to request a refund of premiums already paid if the insurance arrangement is found to be invalid in whole or in part and they are acting in good faith.
b. According to Article 1266 of the Civil Code, the condition of cancellation is always considered part of a reciprocal agreement if one of the parties does not carry out its responsibilities. This is important for policyholders to know because there is a possibility that the person concerned is late in paying the premium. However, this alone does not render the contract null and void; The judge should be asked to overturn it. In reality, a condition that dictates that an insurance arrangement will be ineffective if payments are not paid on time is usually specified in the policy. This will prevent delays in premium payments that require requests for the agreement to be canceled by the court due to practicality concerns.
c. In accordance with Article 1267 of the insurance contract, the policyholder can seek recovery of costs, compensation, and interest if the insurer who is supposed to pay the insured loss or a sum of money is found to have breached its obligations.
d. According to the insurance contract, the performance of the insurance company depends on unknown circumstances. Policyholders should be aware of the rules of Articles 1253 to 1262 of the Civil Code to prevent insurers from attaching additional restrictions to award compensation or dollar amounts.
e. The heirs of the policyholder can use Article 1318 of the Civil Code to require the insurer to pay compensation or a certain amount of money to the insurer. According to this article, unless it is specifically mentioned that this is not the case, when a person seeks consent to something, it is presumed that it is for him, his heirs, and others who claim it.
f. Article 1338 of the treaty contains various guiding concepts, starting with the idea of binding force. By applying this idea to the insurance contract, both the insurer and the insured/policyholder are obliged to comply with the terms of the written agreement.
g. The policyholder has the right to ask the insurer to fulfill his obligations. Second, the concept of trust states that an agreement fosters mutual trust between both parties that they will carry out the performance as promised. Third, the good faith rule states that all contracts, including insurance contracts, must be interpreted in their entirety and that the parties must consider propriety and reason when executing the terms of the agreement.
h. If the policyholder can prove that the insurer has done something detrimental to them, they can sue the insurer under Article 1365, which governs unlawful activities.

If the health insurance agreement is compared with the objective requirements in the legal provisions of the agreement, Article 1320 of the Civil Code, problems arise. If health insurance is not carried out without prior assessment before the parties agree, then the problem is the unclarity of the goods covered (for example: Andi insures his health, but the insurance does not verify his condition). When it starts to experience swelling, the customer finally submits a claim but to no avail because the insurance states that only illnesses suffered after the agreement can be claimed for insurance). Regarding the necessity to investigate before becoming an insured or policyholder, there is a legal vacuum. It is not clear under what circumstances the object of the health insurance policy can be used when unwell, which prevents it from meeting objective criteria and makes the agreement worthless. The agreement formed between the insured and the insurer in the insurance agreement emphasizes proof by using letters in the form of policies based on laws and regulations. However, if the insurance has not been issued, verification can still be done using notes, telegrams, account letters, and other documents. According to Article 258 Paragraph (1) of the Criminal Code, any evidence can be used if the first evidence in the form of a quo provision makes the position of the insurer as the weaker party to the insured more secure. The rules governing the ability of the insured to make a deed of agreement (policy) indirectly provide protection to the insured and provide an opportunity for the insurer to agree or disagree (Rambe & Sekarayu, 2022b, 2022a).

Insurance continues to develop in accordance with changing human demands in line with the level of development of civilization so as to achieve a certain level of economic progress. The idea of insurance has evolved over time, and is now recognized as a social and economic institution that contributes significantly to social relations in both corporate and non-business settings (Hartono, 2008).

Insurance companies as well as policyholders, whose undoubted goal is financial gain, can get involved in insurance lawsuits involving bad faith. There is no article that specifically defines what is meant by "bad faith", although it is generally understood as the opposite of the Good Faith Principle (Mdkh, n.d.).

An attachment (legally binding) occurs as a result of an engagement or free engagement when there is an insurance relationship between the insurer and the insured. This relationship is in the form of the commitment of the insured and the insurer freely to uphold each other's obligations and rights (reciprocally).

In other words, the insurer acknowledges the transfer of risk after the insurance agreement is signed and the insured is obliged to pay the insurance premium to the insurer. The insurer is obliged to make a replacement in accordance with the provisions of the insurance policy if circumstances arise that cause the loss of the guaranteed goods. However, if no incident occurs, the insured's premium payment remains with the insurer. 1338 Civil Code, which highlights the importance of the notion of good faith in all contracts. It often happens that the insured does not get payment for the claim he filed (Muhammad, 2006).

There are many risks in carrying out life activities, including the danger of illness or injury and the possibility of death because certain dangers, such as death, cannot be avoided. Man must make a detailed plan for the future to overcome this problem in life. Savings that can reduce risk—often called insurance savings—are needed if a person wants to have a better and materially prosperous future (Sula, 2004).

In the contemporary service industry, insurance must be able to serve a larger market with due regard to domestic and international risk management requirements. The history of 88 other laws in force in Indonesia and the existence of insurance laws are inseparable. Regarding the history of insurance law in Indonesia, it cannot be separated from the provisions of the Civil Code and the Indonesian Civil Code originating from the Netherlands with the enactment of the Civil Code. The Dutch civil law book Burgerlijke Wetboek, which appears to have originated in France, is based on the Transitional Rules of the 1945 Constitution. Until regulations change it, this codification takes effect. The existence of a new insurance law in Indonesia with the involvement of foreign parties in the ownership of insurance companies based on the caliber and quantity of the foreign company itself, of course, this is interesting to be studied more deeply, by looking at legal theories, opinions of previous legal experts, and by looking at the implementing regulations for insurance business.Ibid.

According to Emmy Panggaribu Simanjuk, in essence it says life insurance as a reciprocal agreement between the insurer and the insurer, with which the insurer binds himself throughout the coverage and pays premiums to the insurer. In fact, coverage really exists, and its existence is supported by legislation. When the insurer agrees to pay a certain amount of money to the person designated under the insurance policy as beneficiary in the event that the person whose life is covered or has had an agreed insurance term dies (Purwosutjipto & Indonesia, 1984).

Comparison with Singupara, judging from legal regulations related to insurance in Singapore, is already one step ahead of Indonesia. Singapore drafted the PPF scheme in the Deposit Insurance And Policy Owners' Protection Schemes Act (Chapter 77b) Revised Edition 2012. In its implementation, there is the Singapore of Deposit Insurance Company (SDIC) which is a guarantee company established by the Minister as a deposit guarantee institution and policyholder protection fund. As SDIC is a company limited by underwriting, it has no shareholders but members appointed by the Minister. While in Indonesia, until now the mandate of the Law on the establishment of a policy guarantee institution has not been realized .

The Indonesian context, based on Article 23 of the Consumer Protection Law, essentially stipulates that in terms of resolving insurance claim disputes, if business actors refuse to answer, do not respond, or do not fulfill consumer compensation claims, consumers have the option to sue. business actors and resolve any disputes arising through the Settlement Body. Customer Complaints or by filing a lawsuit with the court. As a result, there are two ways of resolving insurance claim disputes: in and out of court (litigation and non-litigation) (Setiawati, 2018).

The purpose of coverage or overall insurance is to pay a certain amount of money against an event, either the insured or the guaranteed party who suffered a loss. Both parties must agree on the amount of payment in accordance with the principle of indifference of the applicable agreement. Law No. 2 of 1992 is no longer sufficient to serve as a basis or basis for the regulation and supervision of the insurance business that is growing so rapidly. To be able to create a strong, reliable, reliable,

competitive, and broader insurance business environment in the development of national legislation, reform of insurance laws and regulations is very important (Dani et al., 2021).

PT Asuransi Adira Dinamika Tbk (Adira Insurance) converted one of its business entities, PT Zurich Insurance Indonesia (ZII) into a Sharia general insurance company, PT Zurich Asuransi Indonesia Tbk (ZAI). Zurich's conversion from conventional insurance to sharia general insurance indicates the need for legal protection for customers. This is because customers must choose to renew their policy contract for conventional general insurance products with Adira Insurance or change their policy contract to a Sharia general insurance policy. Thus, it is necessary to find formats and solutions from the Company to all ex-PT Zurich Insurance Indonesia customers so that customers who do not want to move their policies to sharia general insurance have legal certainty and clear protection. In addition, there is no regulation governing legal protection for customers who are members of insurance companies that convert from conventional insurance to general Sharia insurance.

CONCLUSION

One of its business units, PT Zurich Insurance Indonesia (ZII), was transformed by PT Asuransi Adira Dinamika Tbk (Adira Insurance) into a general Sharia Insurance Company, namely PT Zurich Asuransi Indonesia Tbk (ZAI). Zurich's transition from conventional insurance to general Sharia insurance has raised concerns about the need for legal protection for its customers. This is because the customer must decide whether to renew the policy contract with Adira Insurance for conventional general insurance products or change the policy contract to a Sharia General Insurance Policy. Therefore, it is important to find a format and solution from the company for all former clients of PT Zurich Insurance Indonesia so that clients who do not want to transition their policies to Sharia General Insurance have clear legal certainty and protection. The need for regulation regarding legal protection for customers who are members of insurance companies that convert from conventional insurance to general Sharia insurance.

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