THE PRINCIPLE OF HONESTY IN THE FIRE INSURANCE AGREEMENT IN INDONESIA IN REALIZING A LEGAL BALANCE FOR THE PARTIES

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Abstract

Insurance under the Law of the Republic of Indonesia Number 2 of 1992 concerning Insurance Business Chapter 1, Article 1: "Insurance or Coverage is an agreement between two or more parties, whereby the insurer binds itself to the insured by accepting the insurance premium, to provide reimbursement to the insured due to loss, damage or loss of expected profits, or legal liability to third parties who may be subject to the insured, arising from an uncertain event, or to provide a payment based on the death or life of an insured person. Indonesian Civil Code (Civil Code) Article 1338 paragraph (3), only mention that all contracts are carried out in good faith. No further explanation what is meant by the good faith. Even if there was a provision that tries to define goodwill, but the definition is also causing confusion, therefore, to be able to understand the meaning of good faith more clearly must be seen in the interpretation of good faith in judicial practice. The problem is how to apply the principle of honesty in the fire and reinsurance insurance agreement and its impact on the insurance company and the insured? How can the insured sue the reinsurance company in fire insurance for the loss suffered? and How are dispute settlements arising from honesty not exercised by the parties in fire insurance agreements? The research in this Dissertation is to illustrate Law Science and the normative aspect, is a practical science, focusing attention to assess the application of norms that exist in positive law about the principle of honesty which is one of the principles in the insurance law which is very important in the insurance agreement. The result of the research is the implementation of the principle of honesty in the fire insurance and reinsurance agreement is an absolute thing done. The Fire Insurance Agreement, as is the case with the treaty in general, is subject to 4 (four) important principles for the validity of an agreement under the Civil Code, the principle of freedom of contract, the principle of consesualism, the principle of pacta sunt servanda, the principle of good faith and the personality principle.

Keywords: ***Fire Insurance Agreement, Legal Balance, Parties***

INTRODUCTION

Good faith is the most important principle in contract law and is accepted in various legal systems, but until now the doctrine of good faith is still controversial. The main debate that arises here is related to the definition of good faith.[1] In other words, this debate relates to what exactly is meant by good faith. In reality, it is very difficult to find a clear understanding of good faith. Allan E. Farnsworth even stated, where the good faith doctrine is accepted, then there will definitely be differences in interpreting the good faith. As a result, there is no single meaning of good faith and many definitions of good faith develop.[2]

Indonesian Civil Code (KUHPerdata) Article 1338 paragraph (3), only states that all contracts are carried out in good faith. There is no further explanation of what is meant by good faith. Even if there are provisions that try to define good faith, but even that definition still causes confusion, therefore, to be able to understand the meaning of good faith more clearly must be seen in the interpretation of good faith in judicial practice.[3]

The National Civil Law Symposium organized by the National Legal Development Agency (BPHN) in 1981, defines good faith, namely:

1. Honesty when making contracts;
2. At the stage of making it is emphasized, if the contract is made in the presence of an official, the parties are considered in good faith (although there are also opinions expressing their objections);
3. As a fit in the implementation phase, which is related to a good assessment of the behavior of the parties in carrying out what has been agreed in the contract, solely aims to prevent inappropriate behavior in the implementation of the contract.[4]

Good intentions are referred to by R. Wirjono Prodjodikoro in honest or honest terms (Scientific speech delivered in Commemoration of XXXVIII Anniversary of Airlangga University, 11 November 1992). Furthermore according to Wirjono Projodikoro, dividing good faith into 2 (two) types, namely (1) good faith at the time when a legal relationship is effective. good faith here is usually in the form of an estimate or a person's assumption that the conditions needed for the commencement of legal relations have been fulfilled. In this context, the law provides protection for parties in good faith, whereas for those who do not in good faith must be responsible and bear the risk. This kind of good faith can be seen from the provisions of Article 1977 (1) BW and Article 1963 BW, which are related to one of the conditions for obtaining ownership rights to goods through expiration. These good ideas are subjective and static (2). good faith when exercising the rights and obligations contained in the legal relationship. Such an understanding of good faith as regulated in Article 1338 (3) BW is objective and dynamic in following the situation around its legal actions. The focus of good faith here lies in the actions to be taken by both parties, namely the act as the executor of something.[5]

This study examines court decisions related to implementing insurance agreements. Starting from the lawsuit to the court by the insured PT. Inti Cellulose Utama Indonesia against PT. Asuransi Hanjin Korindo and PT. Asuransi Samsung Tugu with a default suit and then proceed with the claim of the insured to the Reinsurance Company, namely: PT. LIG Insurance Indonesia, PT. Maskapai Reasuransi Indonesia, PT. Reasuransi Intemasional Indonesia and PT. Tugu Jasa Tama Reasuransi Indonesia with a lawsuit against the law, then followed by a series of other lawsuits in court relating to the initial case, namely the lawsuit PT. Asuransi Hanjin Korindo melawan PT. LIG Asuransi Indonesia, PT. LIG Insurance against PT. Maskai Reasuransi Indonesia and PT. Tugu Samsung against PT. Reasurancenya namely PT. Reasuransi Nasional Indonesia, PT. Reasuransi Internasional Indonesia and PT. Reasuransi Jasa Tama Indonesia. A lawsuit in another court which is related to the initial lawsuit case is a criminal suit by PT Asuransi Hanjin Korondo & PT Asuransi Samsung Tugu to President Director, Head of Transport & project and HRD & legal manager PT Inti Cellulose Utama Indonesia. A criminal suit against the President Director PT Asuransi Hanjin Korindo. Then a civil suit by PT Asuransi Hanjin Korindo & PT Asuransi Samsung Tugu to Advocate Warsito Sanyoto.

A series of court decisions at each level are analyzed to determine the implementation of the

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[1]Agus Yudha Hernoko, *Hukum Perjanjian, Asas Proporsionalitas dalam Hukum Kontrak,* Prenada Media Group, Jakarta, 2010, hal. 134.

[2]Ridwan Khairandy, *Itikad Baik Dalam Kebebasan Berkontrak*, Perpustakaan Nasional, Jakarta, 2004, hal 6-7

[3]Ibid.

[4]Muhammad Syaifuddin, *Hukum Kontrak, memahami Kontrak dalam Perspektif Filsafat, Teori, Dogmatika, dan Praktek Hukum (Seri Pengayaan Hukum Perikatan)*. Bandung, Mandar Maju, 2012, hal 94.

[5]Agus Yudho Hernoko, *Hukum Perjanjian….Op.Cit.,* hal. 138.

principle of honesty of the insured, the guarantor and the reinsurer. The court's decision should reflect justice for the parties in which honesty values are upheld through the panel of judges' consideration of the contents of the insurance agreement. Decisions that do not reflect justice when the insured is against reinsurance, have the potential to disrupt Indonesia's economic stability.

Research on the principle of honesty in fire insurance agreements in Indonesia in realizing a legal balance for the parties, will answer the research question is how to apply the principle of honesty in fire insurance and reinsurance agreements and their impact on insurance companies and the insured? How can the insured sue the reinsurance company in fire insurance for the loss he suffered? And what about dispute resolution arising from the honesty that is not carried out by the parties in the fire insurance agreement?

METHODS

This type of dissertation research is a descriptive-analytical study that is intended to provide as detailed data as possible about humans, conditions or other symptoms. Research that describes how the legal protection for the parties in the insurance agreement, then after describing the analysis.

This research is legal research with a normative juridical approach6 with deductive conclusion drawing technique, meaning that it is a method of drawing conclusions that are specific to statements of a general nature. This method is done by analyzing the understanding and legal concepts.

RESEARCH RESULTS AND DISCUSSION

Applying the Principle of Honesty in Fire and Reinsurance Insurance Agreements and the Impact on Insurance and Insured Companies

Insurance agreements and reinsurance agreements must be made not only based on the legal requirements of the agreement as contained in the provisions of Article 1320 of the Civil Code. Nor is it based solely on the good faith principles mentioned in the aforementioned case as a reason for refusing an appeal from Sufandi Tjuanta and PT Inti Celloluse Utama Indonesia because there were lies when making an insurance agreement with PT. LIG Insurance Indonesia but also violated the Honesty Principle which is the fundamental principle in the agreement.

This Honesty Principle includes the Alterum Non Laedare Principle (your actions or actions do not harm others), the Goodwill Principle, the Presumptio Iustae Causa Principle (an agreement must be declared valid and valuable until it is canceled or there is a party that declares it illegitimate), the Plain Meaning Principle Rules (every word in the agreement made with an honesty of the parties cannot be interpreted other than what is clearly written in the agreement) and the Non-fit Iniura Volentiary Principle; Nulla Iniura Est, Quae in Volemtem Fiat (for actions based on honesty, the illegal behavior contained in the act is removed).[7]

The author believes, the Principle of Honesty has a broader meaning than the principle of good faith, because good faith alone is not enough to prove that someone has been honest. The use of the word principle in interpreting honesty because the principle is a word that directly refers to the basic understanding of the law. Strictly speaking, the word "base" is legal terminology, different from the word principle. The word "principle" in Indonesian is adapted from the Dutch language, namely “principe” In the Nederlands-Engels dictionary, the word “principe” translated into English to be *essential* or essence in Indonesian. According to the Big Indonesian Dictionary, the word “essence” means the nature, essence or main thing. While the word "base" is a translation and the word "beginsel" in Dutch or the word “principle” in English which according to the Big Indonesian Dictionary means the legal basis. Based on these references it can be concluded that the word "principle" is broader than the word "principle" which directly refers to the basic understanding of the law, while the word "base" which means essence, is broader and deeper than the word "base" itself. Therefore, in this study, the word base is used because the base is the legal basis. the base of honesty can be the legal basis of the initial formation of an agreement. The base of honesty in the agreement must be carried out for all types of agreements not only in the fire insurance agreement.

In the Fire Insurance Agreement, the principle of honesty must be carried out from the beginning of the agreement, submit a claim and when the fire insurance agreement is closed. Why honesty is needed in the formation of a fire insurance agreement, because the fire insurance that is the object of

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[6]Menurut Philipus M. Hadjon, Ilmu hukum memiliki karakter yang khas. Ciri khas ilmu hukum adalah sifatnya yang normatif. Lihat Philipus M. Hadjon, *Pengkajian Ilmu Hukum*, Penataran dan Lokakarya Sehari “Menggagas Format Usulan dan Laporan Penelitian Hukum Normatif” Fakultas Hukum Universitas Brawijaya, Malang, 22 Februari 1997, hlm. 1.

[7]Amir Ilyas, *Kumpulan Asas-asas Hukum*, Rajagrafindo Persada, Jakarta, 2016, hal. 56

the claim must be clear, for example, whether the object is flammable or whether the material covered by the insurance matches its classification. If there is an error in the statement of the covered object, the insurance agreement is null and void due to the insured's dishonesty. Likewise, insurance companies must provide clear explanations to consumers regarding insurance. Do not start a conversation insurance companies offer all their services, but after implementation is not as promised.

Basically, honesty is the basis for all types of agreements. Therefore, the good faith of the parties is not enough to guarantee that an agreement has been formed in a balanced manner. A balanced, fair and legal certainty agreement is an agreement based on honesty. Because the advancement of a nation cannot be separated from the participation and honesty of its citizens. National law[8] cannot be taken from the bases of honesty where currently many laws place honesty as a base.

In relation to Legal Theory, the principle of honesty is based on the principles of natural law theory[9] which is sourced from the word of God. Natural law teaches the state and its citizens that good law is a law that is implemented or imbued with the word of God. Alquran, Al Injil, Tripitaka and so on certainly teaches every human being to be honest. Islam, as the religion of the majority of Indonesian citizens, has provided a way of life so that humans are always honest or fathonah so that they can be trusted by everyone.

Honesty does require a legal basis. The Civil Code does not include honesty as a principle of agreement, so with the Insurance Act where legal certainty is required. Article 1320 of the Civil Code only states a legal agreement if it is made with the agreement of the parties, capable of the party making it, there are certain objectives and with a halal cause. Terms of the legality of the agreement in the terms of the agreement require the principle of consensus/agreement for the parties, free in drafting the agreement and the principle of balance of the parties when drafting the agreement and the principle of good faith without mentioning the honest conditions. The legality of the agreement in almost every contract law literature does not mention the principle of honesty, but in essence, the principles of the agreement begin with honesty.[10]

According to the author, the principle of honesty needs to get its legitimacy as part of the legal provisions of the agreement because, in a fire insurance agreement, honesty is proven when an insured person or legal entity submits a claim. Fire claims against objects covered by insurance are not only accepted but the insurance company will assign investigators to investigate the cause of the fire, the object that was on fire or the condition of the item before and after it caught fire. This is necessary because insurance companies have to pay for fire claims. But the claim has a limit when the object being burned does not match what has been promised. For example, before the fire, the object of the insured is a residence but the insured does not provide the correct information when the object has become a workshop. as a result, insurance cannot be paid. this is proof that honesty is said when the contract is limited when it becomes a lie when the object does not match the facts

The right and good law is the law that is not only legal certainty and beneficial but also justice[11] based on honesty. Justice that is not just fairness but justice with dignity.

Dignified justice is the highest justice[12] In it contained the principle of honesty. The principle that requires every human being to be honest and truthful. Especially when someone wants to form an agreement both standard and conventional agreements.

The fire insurance agreement is formed based on the agreement as regulated in Article 1313 of the Civil Code which states that an agreement is an act by which one or more people commit themselves to one or more other people. Thus, an agreement is an event where a person promises to someone else or where two people promise to do something. Legal practitioners often define a contract as a promise or series of promises to be upheld or at least to be acknowledged.

The definition of the agreement listed in Article 1313 of the Civil Code is incomplete, and can also be too broad. Incomplete because only one-sided agreements were formulated. The definition is said to be too broad because it can include actions in the legal field such as marriage vows, which are agreements too, but their nature is different from the agreements stipulated in the Civil Code III whose criteria can be valued materially or in other words valued in money. The element of being a party to a

[8]Lihat pendapat Sunaryati Hartono dalam *Beberapa Pemikiran Tentang Pembangunan Hukum Nasional*, Citra Aditya Bakti, Bandung, 2011, hal. 25

[9]Marwan Effendy, *Teori Hukum*, Referensi Grup, Jakarta, 2014, hal. 19

[10]Sudikno Mertokusumo, *Mengenal Hukum, Suatu Pengantar*, Cahaya Atma Pustaka, Jakarta, 2010, hal. 7

[11]Munir Fuady, *Teori-teori Besar Dalam Hukum,* Prenada Media Grup, Jakarta, 2013, hal. 248.

[12]Teguh Prasetyo, *Keadilan Bermartabat, Perspektif Teori Hukum*, Nusa Media, Bandung, 2015, hal. 104.

treaty, the word "person" in Article 1313 of the Civil Code, does not only mean "individuals" as in Article 1792 of the Civil Code but also means "parties", people with people, bodies with people and bodies with bodies. The same understanding also applies to give power from one person to another as stated in Article 1792 of the Civil Code.

The insurance agreement is stated as an agreement whereby for the compensation of a number of premiums that have been agreed upon, one party undertakes to provide compensation to the other party for certain subjects as a result of certain hazards. Insurance law basically contains provisions relating to the rights and obligations of the parties as a result and the agreement for the transfer and acceptance of risk by the parties. Insurance law is essentially an object of civil law. Thus, it can be concluded unless it has been stated otherwise in the Commercial Law as a special provision, as an agreement, the insurance agreement is regulated under the Civil Code.

In the implementation of insurance agreements, since it is opened, implemented and closed there is an element of concern, namely the legal form which in the insurance law implies that the insurance agreement can be said to meet the elements of the legal form if the insurance policy is the same or has the same substance as the insurance policy that is considered valid and must follow the procedure for submission and approval from the authorities. Elements that have become a common practice in the insurance industry in various countries are not included in Article 1320 of the Civil Code. This custom, in the arrangement of insurance as a business, is reinforced by the obligation of the guarantor to first submit a sample of a standard policy that will be marketed to the finance minister. Submission of an example of a standard policy is a monitoring mechanism for the government, in this case, the minister of finance in the public interest. Therefore, unlike the legal form in an agreement in general which is sole as a form of business, in the insurance business, the element of the substance it contains is very important. The emptiness in the Civil Code shows that the engagement was not only born of agreement or law but also other sources such as jurisprudence and general habits.

However, the differences do not make the Civil Code provide a barrier to convenience for the parties to enter into an insurance agreement. The weakness of the Civil Code in the absence of the necessity of a standard form that first gained recognition from the government has been filled by the provisions of Article 18 PP No. 73 of 1992 which filled the void namely the existence of the legal form element which is an indication of the existence of an active role of the government in regulating insurance agreements.

Fire insurance agreement, as is the case in general, is subject to 4 (four) important principles for the validity of an agreement according to the Civil Code, namely the principle of freedom of contract, the principle of consensus, the principle of pacta sunt servanda, the principle of good faith and equipped with the principle of personality. These four principles have indeed been accommodated in the Civil Code.[13] However, the application of the four principles will not occur properly in a fire insurance agreement without being based on the principle of honesty.

The base of freedom of contract is contained in Article 1338 paragraph (1) of the Civil Code which states that "all treaties made legally apply as a law for those who make them" This base states that all treaties made legally, apply as laws for those who made it without exception by the fire agreement. However, this freedom is not unlimited freedom as stipulated in the limitations of freedom in making an agreement stated in Article 1337 of the Civil Code which reads: "A cause is prohibited if prohibited by law or contrary to good morals or public order".

The base of consensualism is regulated in Article 1320 of the Civil Code paragraph (1), which agrees that those who bind themselves. Agreeing that those who commit themselves are essential bases and the Agreement Law is included in the establishment of a fire insurance agreement. This base is also known as the principle of consensualism autonomy, which determines the "existence" of agreements such as agreements in business practice and is something that does not only belong to the Civil Code but is also universal. Agreement in principle can be made free not bound by form and reached not formally but sufficiently by mere consensus. The practice in the insurance industry that a fire insurance agreement was born based on the agreement of the parties is in compliance with the provisions of Article 1320 paragraph (1) of the Civil Code concerning the principle of consensualism.

The base of pacta sunt servenda is contained in the provisions of Article 1338 paragraph (1) of the Civil Code which states that all treaties made legally apply as a law for those who make them contain two legal principles for the validity of an agreement, namely the principle of freedom of contract and the principle of pacta servanda injections.

According to the base of pacta sunt servanda, an agreement results in a legal obligation and the parties are bound to carry out the contractual agreement, and that an agreement must be fulfilled, by the parties acting as law. In the implementation of fire insurance agreements, it is only possible to run well if

[13]Junaedy Ganie, *Hukum Asuransi Indonesia,* Sinar Grafika, Jakarta, 2013, hal. 57.

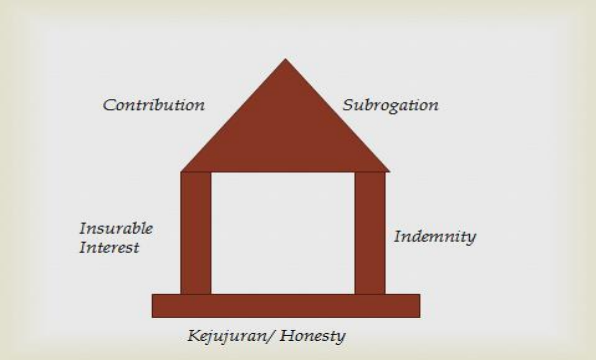
the guarantor can trust the insured's words. Science might not be able to provide more explanation and that, is it true what the guarantor says or is it true what is stated by the insured in fire insurance regarding the subject or object, except that the agreement is binding because it is a promise, similar to the law because the law is seen as a legislator's order.

Furthermore, the base of good faith as the fourth base in the implementation of an agreement. Article 1338 paragraph (3) of the Civil Code contains provisions that, an agreement must be carried out in good faith. If you see Article 1338 paragraph (3) of the Civil Code as a counterweight to the provisions of paragraph (1) to provide protection for weaker parties so that the position of the parties becomes balanced. This is the realization of the principle of balance. Fire insurance policies prepared by the insurer for the insured who generally have limited insurance knowledge can make the insured become a weak party.

The determining factor for the validity or fairness of the exchange in the fire insurance agreement is the equality of the parties. But the balance criterion is not sought in factual situations and conditions whether the goal (fire insurance agreement) is properly balanced or not, but rather is focused on the question of whether the agreement was formed in an unbalanced condition and or whether the agreement in terms of substance or intent and purpose and its implementation can give rise to conditions imbalance. Uncertainty about the situation and condition of the imbalance in the fire insurance agreement, with circumstances that burden one of the parties either the guarantor or the insured can be sought in the fire insurance agreement itself. The agreement has a number of aspects, namely the actions of the parties, the contents of the agreement and the implementation of what has been agreed. Parties' actions are legal actions aimed at a legal consequence that is related to statements of will and authority to act to create, change and end a certain legal relationship. These actions should not be sourced from the imperfections of one's mental state.

This means that in my opinion, the contents of a fire insurance agreement are what are explicitly agreed to or secretly agreed to in a fire insurance agreement that is not only reflected in the words or deeds seen but also departs from the heart of the guarantor. or the insured based on honesty. Good faith is not enough to mention that the guarantor or the insured has been honest. The relationship between the guarantor and the insured and honesty can be seen from the pyramid below:

If the left side is not honest then the pyramid will collapse, so if the right side is not right then the opposite will also collapse, if both sides are built, the guarantor and the insured, dishonest then the building of the pyramid will be destroyed as in the case of this dissertation. Honesty is a fundamental principle of the principle of freedom of contract, the principle of consensualism, the principle of pacta sunt servenda, and even becomes the basis of the principle of good faith.



The basis of good faith as culpa in contrahendo[14] which requires the guarantor and the insured when drawing up a contract/fire insurance agreement must be by negotiation with the intention of seriously entering into an agreement, not abusing the negotiation so that the fire insurance agreement becomes legally flawed, for example it is known the insured has lied about the object covered by the insurance, or the guarantor as a company insurance apparently did not really intend to carry out a fire insurance agreement and the insured was obliged to notify material facts so that it did not happen one of the parties became lucky because of the fact that was not true.

All intentions of good faith in pre-contract based on culpa in contrahendo will not work well without honest aspects. Honesty according to HAMKA:[15]

[14]Ridwan Khairandy, *Itikad Baik Dalam Kebebasan Berkontrak*, Pasca Sarjana, Jakarta, FH, UI, 2003, hal. 250.

[15]HAMKA, *Bohong di Dunia*, Gema Insani, Jakarta, 2017, hal. 3.

> "With that, we can be sure that in all forms of words, both news and demands, there must be lies or truth. Not only in the wording of the news and demands there is a false or true impression. Even in our own deeds, there are deeds that are lies and what are right. Because an action or work is a result of the spirit of the soul or a will. Only people who are sleeping are doing something in an unconscious state. Right action is called being honest."

Thus it can be concluded, honesty is the foundation of right actions. Righteous deeds can only be realized if the spirit of the soul is honest.

Furthermore Quraish Shihab argues:[16]

> "You should not lie. After all, a lie is a sin, therefore, if you are in a position of compulsion, then I suggest you answer using a sentence that is doubly meaningful. For example, you say, "Nothing in the place," in the sense of not being in the place you are calling, or "Being outside," with the intention of being outside the room. This you say while taking refuge. It is said that such a sentence was once used by the Prophet Ibrahim. when facing a ruler who asked about his wife and answered, "Brother, in the sense of siblings. However, once again, you do this in a "forced" state. Giving a fatwa is not just based on logic or driven by a passionate religious zeal. In addition to the questions being asked must be understood, the answers given must also refer to the sources of Islamic teachings, namely the Qur'an, the Prophet's hadith, and the legal norms of the two sources. The word "I am forced to lie." Actually, the existence of "coercion" that makes him no longer sinful when he lied. Because, like the sound of the rules agreed by the scholars "Emergency conditions allow what is unlawful, and a very urgent need to divert what is forbidden to be allowed." Nevertheless, for the sake of caution. the answer I gave was, "If you are in a position of compulsion, then I answer using sentences that are doubly meaningful." On the other hand, is it true to use double sentences identical to lies (kadzib), or are they similar to Shiite teachings? I hope you open the book Riyad ash-Shalihin, chapter "Patience". There, Imam an-Nawâwi, a famous Ahlus-Sunnah scholar, quoted the hadith narrated by Imam Bukhâri and Muslim — two of the hadith scholars who are most trusted by Muslims, especially Ahlus-Sunnah. You will find a description of the case of Abü Thalhah whose child was sick while he was traveling. When he returned, he asked his wife about the child. At that time, their child actually died. However, the wife was reluctant to surprise her husband. So, he also uses a double meaning sentence, "He (our child) in a state of calm." The point is calm in the realm of Barzakh. She intends that her husband understands this editorial in the sense of having recovered his health. After Abu Talha knew the true situation, he complained to the Prophet. about what his wife did. Rasulullah SAW. does not blame his wife. In fact, he prayed for the two of them. Of course, the wife who uses these double meaningful words is not a Shiite and her husband is also not an infidel. "

Provisions, to be honest, are the absolute price in the pre-fire insurance agreement, the making of the agreement and in its implementation until the end of the fire insurance agreement.

In addition, Rasul SAW gave many instructions to support the creation of business ethics, the first and foremost being honesty. In this context, he said, "It is not permissible for a Muslim to sell a sale that has disgrace unless he explains his disgrace" (HR Al-Quzwaini), and "Who deceived us, he is not our group" (Muslim HR, Al-Tirmidzi, and Abu Dawud).[17]

The Insured Can Sues Reinsurance Company In Fire Insurance For Losses

In the research conducted by the author, it can be seen that the Judex Factie of the DKI Jakarta High Court in passing the verdict violated the provisions of the legislation, according to Article 30 Paragraph (1) of Law Number 14 the Year 1985 Concerning the Supreme Court as amended several times most recently with Law Number 3 of 2009, the Judex Facti decision of the DKI Jakarta High Court must be canceled.

Based on the Cassation Memory of the Cassation Appellant IV / Defendant II, III and Defendant IV, then the default only occurs to the parties involved or contained in the agreement, thus the act against the law can only be submitted if there is a legal relationship between the Plaintiff and the Defendant where the legal relationship is must cause/result in a loss for one party.

[16]M. Quraish Shihab, *M. Quraish Shihab Menjawab 1001 Soal Keislaman yang Patut Anda Ketahui,* Lentera Hati, Tanggerang, 2014, hal. 656-657.

[17]M. Quraish Shihab, *Cahaya Ilahi*, Mizan, Bandung, 2013, hal. 328-329.

In addition to the fire insurance decision, there is also accident insurance involving PT. Asuransi Allianz Life Indonesia. In that case, it started when Ifranius was treated twice as hospitalized due to food poisoning. After that, the victim must pay a fee of around Rp 16 million. Then, he filed an insurance claim. However, Allianz Indonesia rejected the disbursement of insurance claims submitted by victims. The reason given was that the victim could not complete one of the requirements, namely submitting a medical record.

In fact, in the regulation of the minister of health (Permenkes), medical records are confidential. In the Permenkes mentioned, medical records may only be issued by the hospital if there are a decision and a court or police order. Nevertheless, Allianz Indonesia still refused the disbursement of claim funds even though all conditions had been met.

Regarding the case, the Police have filed a ban for former Allianz Life Indonesia PT President Director Joachim Wessling and PT Asuransi Allianz Life Indonesia's Claim Manager Yuliana Firmansyah so that they would not escape abroad. Because both of them have become suspects in the case of rejection of insurance claims.

In this case, Blocking is an effort so that they do not leave Indonesia in connection with the examination process. Regarding the follow-up to the ban, the police are still coordinating with the immigration authorities. The Head of Public Relations of the Directorate General of Immigration at the Ministry of Law and Human Rights Agung Sampurno said that the ban on the leadership of PT Asuransi Allianz Life Indonesia had been carried out. This was done by immigration based on the submission of the police investigator.

Settlement of Disputes Arising from Honesty Not Implemented by the Parties in the Fire Insurance Agreement

Penyelesaian Sengketa Asuransi Kebakaran Melalui Perdamaian Lebih dapat Menciptakan Keadilan dibandingkan dengan Penyelesaian melalui Pengadilan

	KETERANGAN	PUTUSAN PENGADILAN
A.	Perjanjian Asuransi antara PT Inti Cellulose Utama Indonesia dengan PT Asuransi Hanjin Korindo (AHK) dan PT Asuransi Samsung Tugu (AST) Tanggal 27 Oktober 2000	1. No. 490/Pdt.6/2002/PN.JKT.SEL, Tgl 4 Agustus 2003 2. No.91/Pdt.G/2004/PT.DKI, Tgl 21 Maret 2004 3. No. 1701/K/Pdt/2004, Tgl 24 Agustus 2004 4. No.352.PK/Pdt/2000, Tgl 18 Agustus 2007 Dibatalkan
B.	PT Asuransi Hanjin Korindo reasuransikan sebagian Risikonya kepada PT LIG Insurance sebesar 48%	1. No. 379/Pdt.G/2005/PN.Jak.Pusat, Tgl 9 November 2006 2. No. 504/Pdt/2007/PT.DKI, Tgl 28 Mei 2008 3. No. 2861.K/Pdt/2008, Tgl 3 Juni 2009
C.	PT LIG Insurance reasuransikan sebagian risikonya kepada PT Marein 10%, Reindo 15% dan Tugu Re 15%	
D.	PT. Marein - Reinsurance Facultative 10% dari PT LIG Insurance	1. No. 351/Pdt.G/2002/PN.Jak.Sel, Tgl 1 Mei 2003 2. No. 251/Pdt/2004/PT.DKI, Tgl 18 Agustus 2004 3. No. 374-K/Pdt/2005, Tgl 13 Maret 2007
E.	Sutandi Tjuanta QQ PT. Inti Cellulose Utama Indonesia Menggugat Para Reasuradur	1. No. 240/Pdt.G/2009/PN.JKT.PST, Tgl 31 Maret 2010 2. No. 247/Pdt/2011/PT.DKI, Tgl 5 September 2011 3. No. 2015.K/Pdt/2012, Tgl 18 April 2013 4. No. 189 PK/Pdt/2015, Tgl 24 Juni 2015
F.	Reasuradur Treaty menggugat Asuradur PT AST	1. Digugat di Pengadilan Negeri namun terjadi Perdamaian sehingga sengketa tidak berlanjut

An insurance dispute arises when the claim of the insured is denied compensation by the insurance company and the insured does not accept the rejection of the claim. The reasons for rejecting claims are caused by several things, including : 1. The insured is not honest when filling out the Insurance Closing Request (SPPA), 2. The insured at the time of the loss has no interest in the insured object, 3. The risk incurred for the object of coverage is not guaranteed by the policy, 4. The risk that occurs is excluded in the policy, 5. Consumers violate the terms of the policy, 6. The amount of compensation is not approved by the consumer because it does not match the calculation of the loss claimed. Every policy issued has a provision regarding disputes.

Legal protection for consumers is regulated in the Decree of the Minister of Finance of the Republic of Indonesia Number 422 / KMK. 06/2003 in article 15 which says that:

> "An Insurance Policy is prohibited from including a provision which can be interpreted that the insured cannot take legal remedies so that the insured must accept the rejection of claim payment" and Article 16 which reads "

An insurance policy is prohibited from including provisions that can be interpreted as limiting the remedy for parties in the event of a dispute regarding the provisions of the policy. Article disputes in general in the policy offer to consumers that is first resolved through efforts to peace or deliberation and when this agreement is not reached, the guarantor gives freedom to consumers to choose one of the clauses of dispute resolution namely Dispute Resolution through Arbitration or Settlement of Disputes through the Court.

In response to KEPMEN No. 422 / KMK. 06/2003 above the insurance industry and several Indonesian Insurance Company Associations which are under the Federation of the Indonesian Insurance Association (FAPI) now the Indonesian Insurance Board (DAI) namely the Indonesian General Insurance Association (AAUI), the Indonesian Life Insurance Association (AAJI) and the Insurance Guarantee Association Sosial Indonesia (AAJSI), established the Indonesian Insurance Mediation Board (BMAI) on May 12, 2006. This body was fully supported by the Government (at that time the Bureau of Insurance-Bapepam LK, Ministry of Finance of the Republic of Indonesia). BMAI was established with the aim of providing professional and transparent services based on satisfaction and protection as well as upholding the rights of the Insured or its members, namely the company or policy holders / heirs, and providing services for insurance claim disputes between its members, namely the insurance company and the insured or Policy Holder / Heir. With its regulations, BMAI seeks to resolve insurance claim disputes quickly, fairly, cheaply and informally.

CONCLUSION

Based on the results of this dissertation research that is disclosed in the discussion of the chapters can draw the following conclusions:

1. The application of the principle of honesty in fire insurance and reinsurance agreements is absolutely necessary. Fire Insurance Agreement, as is the case in general, is subject to 4 (four) important principles for the validity of an agreement according to the Civil Code, namely the principle of freedom of contract, the principle of consensus, the principle of pacta sunt servanda, the principle of good faith and equipped with the principle of personality. These four principles have indeed been accommodated in the Civil Code. However, the application of the four principles will not occur properly in a fire insurance agreement without being based on the principle of honesty. If the principle of honesty is not applied, the impact will cause a large loss to the insurance company and the insured itself. In the process of closing fire insurance PT. Indocera Utama Precisi, a survey was conducted by surveyors of Insurance Hanjin Korindo on 18-19 October 2000 at the location of the object to be insured and received information from field officers that the object of coverage had never experienced a fire/loss and the survey results stated in its report to the underwriter that the object the insurance is worth closing. Policy number 210B2000000004 with insurance period starting on October 27, 2000, until October 27, 2001 under the name PT. Indocera Utama Precisi, then the Policy was delivered and submitted on 31 October 2000. After the policy is received, the Insured will contact the Insurer by telephone, requesting that the name of the Insured be corrected to the Policy become Sufandi Tjuanta qq PT. Inti Celluloseutama Indonesia by occupying the insured object as a supporting tool for paint (Nitro Cellulose, Aluminum Sulfate, and Resin) and water treatment. On October 31, 2000 too PT.Asuransi Hanjin Korindo received a report that on October 28, 2000 a fire broke out at the location PT. Inti Celluloseutama Indonesai. PT. Asuransi Hanjin Korindo then on October 31, 2000 sent a new Reinsurance Cover Note with the same number, 210B00000000402 with the name of the Insured Sufandi Tjuanta qq PT.Inti Celluloseutama Indonesia without notifying that a fire had occurred on October 28, 2000. Engineering documentation was carried out by PT. Inti Celluloseutama Indonesia (PT.ICI) to claim claims, among other things asking for a statement from the Head of the Cikande Village and

a statement from the Fire Department of Serang Regency and then from the Cikande Police Station whose contents in the Certificate describe the fire in PT.ICI on October 28, 2000. The results of the investigation by Advocate Warsito Sanyoto who was appointed to the Insurer to investigate the truth of the fires on October 28, 2000 and the cause of the fire through the Advocate Warsito Sanyoto who was appointed turned out to be the object of cover PT. Inti Cellulose Utama there was a fire caused by damage to the blower on October 24, 2000. The Public Prosecutor has proven that the evidence is in accordance with the provisions of the evidence and eight witnesses, but the Serang District Court Judge and the Supreme Court stated that the Defendant Managing Director, Chief of the Transparency Section and Head of Personnel & Legal PT.ICI has been acquitted and has not been legally and convincingly proven to have violated article 266 paragraph 1 of the Criminal Code jp article 55 (1) 2 of the Criminal Code. The insured has committed dishonesty (Utmost Good Faith) in the process of insurance closure contract that initially submitted an insurance object that was not damaged 4 (four) days then asked for the insured's name and occupation of the insured object to the object of coverage that had suffered a fire in the fire October 24, 2000 then reported a fire on the new insured object. Submitting a claim violates the Indemnity Principle. Case of Sufandi Tjuanta Claims qq PT. Inti Cellulose utama Indonesia with PT. AHK and PT. AST raises 9 (Nine) other court cases related to this case and this is due to a violation of the principle of honesty (Utmost Good Faith). Starting from the violation of the principle of Utmost Good Faith, then violating the principle of Insurable Interest and then the principle of Indemnity. With the violation of the principle of indemnity resulted in the principle of Subrogation and the principle of Contribution become non-existent. It should be suspected by the author that there is an element of dishonesty from government officials starting from the Head of the Cikande Village, Cikande Police Station, Serang Police Station, Central Java Regional Police and the Panel of Judges who decided on Civil and Criminal cases. Starting with the violation of the principle of honesty, it causes other principles to become dysfunctional.

2. The insured can sue the Reinsurance Company in fire insurance for losses suffered due to the legal system in Indonesia and that is regulated in Law No. 14 of 1970 concerning the Basic Provisions of Judicial Power Article 14 paragraph (1) which then has made some time. and finally, Law No.48 of 2009 concerning Judicial Power and regulated in Article 10 paragraph (1). Although the Insured can file a lawsuit request to the Reinsurance Company this is a futile action because it wastes a lot of energy and finance both by the Insured and the Reinsurance Company because there is no legal relationship due to the contractual difference between the Insurance contract and the Reinsurance contract. The Honesty Principle is a very important principle in the Reinsurance agreement between the Insurance Company and the Reinsurance Company, especially in the delivery of material facts. If material facts are not properly conveyed by the insurance company, a dispute that can lead to legal turmoil can occur. The Insured Case Sufandi Tjuanta sued the Reinsurance Company with an action against the law by using a Court Decision based on the Policy and then using Regulation of the Minister of Finance No.422 / KMK 06/2003 article 25 is inappropriate because the Reinsurance Company does not commit acts that slow down the payment of claims to Insured and slowing down is PT. Asuransi Hanjin Korindo (Ceding Company). The Prophet Muhammad SAW gave many instructions to support the creation of business ethics, first and foremost is honesty. In this context he said, "It is not permissible for a Muslim to sell a sale that has disgrace unless he explains his disgrace" (HR Al-Quzwaini), and "Who deceived us, he is not our group" (Muslim HR, Al-Tirmidzi, and Abu Dawud).
3. Dispute resolution may arise as a result of the interpretation of the liability or the amount of compensation, the dispute can be resolved through a peace forum or deliberations conducted within 60 (sixty) calendar days of the dispute arising. If the aforementioned peace is not achieved, the Insurer gives the Insured the freedom to choose one of the dispute resolution options, namely the Indonesian Insurance Mediation Board, Arbitration or the Court. Settlement of disputes arising from honesty that is not carried out by the parties in fire insurance if through a court dispute resolution such as 10 (ten) cases which are the object of the author's research results take a long time starting from the District Court Decision, High Court Appellate Decision, Cassation Decision The Supreme Court and the Supreme Court's Judicial Review Verdict with a total period of 8 (eight) years and 3 (three) months for the Hanjin Korindo insurance case against LIG Insurance Indonesia. The costs incurred by the parties in resolving disputes at all levels of the Court were alleged by the Author to be very large because the amount of money disputed was a percentage (in accordance with the share) of USD.23,825,401. When the choice of dispute resolution through Arbitration, the case will stop in the case of Sufandi Tjuanta qq PT.Inti Celluloseutama Indonesia againts PT. Asuransi Hanjin Korindo & PT. Asuransi Tugu Samsung because it was settled by the Ad Hoc Arbitration

Tribunal consisting of 3 (three) Arbitrators appointed by the Insurer and the Insured. The two Arbitrators elected and appointed a third Arbitrator to become the Chair of the Ad Hoc Arbitration Council. The examination of the dispute must be resolved within 180 (one hundred eighty) days after the Ad Hoc Arbitration Council was formed. Arbitration Award is final and has permanent legal force and binds the Insurer and Insured at a lower cost. Based on the provisions of Law No.30 of 1999 Article 56 point (1), the Arbitrator or Arbitral Tribunal makes decisions based on the provisions of the Law or based on justice and propriety. For the Insured who is not in good faith and who wants to benefit from the insurance, he prefers to settle it through the court and this makes the position of the Insurance Company difficult because the choice of the Insured cannot be prevented or rejected by the Insurance Company in accordance with the provisions of Article 16 of the Decree of the Minister of Finance No..422 / KMK.06 / 2003.

SUGGESTION

From the conclusions above the authors propose a number of suggestions:

1. Propose to the Financial Services Authority to make a regulation regarding Reinsurance which stipulates that the Insured has no legal relationship with the Reinsurers and thus cannot be prosecuted for the losses incurred. The legal relationship only exists between the Insured and the Insurer in accordance with the insurance agreement.
2. Propose to the Financial Services Authority to form a Financial Services Arbitration Board that handles financial cases between Consumers and Financial Services Institutions or between Financial Services Institutions whose decisions are final unless document forgery is found and there is a fraud in the trial process.
3. To insurance companies in the closure of insurance objects that are of high value and risk such as the Petro Chemical plant so that the insurance coverage can only be done with the prospective Insured who uses the services of an insurance broker (Insurance Broker) then before the insurance closure is approved, the risk survey must be carried out by an independent surveyor experts for Petro Chemical's risk, or at least by a Senior Risk Surveyor from an insurance company. In settling claims made with the principle of "Speed and Fairness" means that a claim is processed quickly regarding policy liability (Policy Liability) and if there is no policy responsibility, to immediately notify the insured that the claim cannot be further processed because there is no policy guarantee, or the risk of causing loss is excluded, or a violation of policy conditions. If there is a policy responsibility, then immediately appoint an independent Loss Adjuster to calculate the amount of loss suffered by the Insured so that the amount of loss experienced can be resolved quickly. When the Loss Adjuster discovers something that is suspected there is an element of arson (arson) to immediately recommend the Insurance Company to appoint a Forensic. The Fairness Factor takes precedence in settling claims both by analyzing policy responsibilities and calculating claims to be paid.
4. It is recommended to the Government and the Parliament to form an insurance agreement Act to replace the provisions in the Law on Trade Law because it is not in accordance with the development of insurance in Indonesia, among others in legitimating the principle of honesty as a fundamental principle.

REFERENCES

Books:

Agus Yudha Hernoko, *Hukum Perjanjian, Asas Proporsionalitas dalam Hukum Kontrak,* Prenada Media Group, Jakarta, 2010.

Amir Ilyas, *Kumpulan Asas-asas Hukum*, Rajagrafindo Persada, Jakarta, 2016.

HAMKA, *Bohong di Dunia*, Gema Insani, Jakarta, 2017.

Junaedy Ganie, *Hukum Asuransi Indonesia,* Sinar Grafika, Jakarta, 2013.

M. Quraish Shihab, *M. Quraish Shihab Menjawab 1001 Soal Keislaman yang Patut Anda Ketahui,* Lentera Hati, Tanggerang, 2014.

_____, *Cahaya Ilahi*, Mizan, Bandung, 2013.

Marwan Effendy, *Teori Hukum*, Referensi Grup, Jakarta, 2014.

Muhammad Syaifuddin, *Hukum Kontrak, memahami Kontrak dalam Perspektif Filsafat, Teori, Dogmatika, dan Praktek Hukum (Seri Pengayaan Hukum Perikatan)*. Bandung, Mandar Maju, 2012.

Munir Fuady, *Teori-teori Besar Dalam Hukum,* Prenada Media Grup, Jakarta, 2013.

Ridwan Khairandy, *Itikad Baik Dalam Kebebasan Berkontrak*, Perpustakaan Nasional, Jakarta, 2004.

Sunaryati Hartono, *Beberapa Pemikiran Tentang Pembangunan Hukum Nasional*, Citra Aditya Bakti, Bandung, 2011.
Sudikno Mertokusumo, *Mengenal Hukum, Suatu Pengantar*, Cahaya Atma Pustaka, Jakarta, 2010.
Teguh Prasetyo, *Keadilan Bermartabat, Perspektif Teori Hukum*, Nusa Media, Bandung, 2015.

Constitution:
Undang-Undang KUHPerdata.
Undang-Undang KUHDagang.
Undang-Undang KUHPidana.
Undang-Undang Republik Indonesia Nomor 2 Tahun 1992 Tentang Usaha Perasuransian.

Peraturan Pemerintah Nomor 73 Tahun 1992 tentang Penyelenggaraan Usaha Perasuransian.
Undang-Undang Republik Indonesia Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen.
Undang-Undang Republik Indonesia Nomor 30 Tahun 1999 Tentang Arbitrase dan Alternatif Penyelesaian Sengketa.
Keputusan Menteri Keuangan Nomor 422/KMK.06/2003 Tentang Penyelenggaraan Usaha Perusahaan Asuransi dan Perusahaan Reasuransi.
Undang-Undang Nomor 21 Tahun 2011 Tentang Otoritas Jasa Keuangan. Undang-Undang Republik Indonesia Nomor Nomor 40 Tahun 2014 Tentang Perasuransian.
Peraturan Otoritas Jasa Keuangan Nomor 2/POJK.05/2014 Tentang Tata Kelola Perusahaan Yang Baik Bagi Perusahaan Perasuransian.
Peraturan Otoritas Jasa Keuangan Nomor 70/POJK.05/2016 tentang Penyelenggaraan Usaha Perusahaan Pialang Asuransi, Perusahaan Pialang Reasuransi, dan Perusahaan Penilai Kerugian Asuransi.
Peraturan Otoritas Jasa Keuangan Nomor 1/POJK.07/2013 Tentang Perlindungan Konsumen Sektor Jasa Keuangan.
Peraturan Otoritas Jasa Keuangan Nomor 1/POJK. 07/2014 Tentang Lembaga Alternatf Penyelesaian Sengketa Di Sektor Jasa Keuangan.