LEGAL PROTECTION FOR INSURANCE COMPANIES AGAINST ABUSE OF INSURANCE CLAIMS

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Abstract

Uncertainty in human life gives rise to the need for legal and economic protection instruments, one of which is through the insurance mechanism. As a form of risk transfer, insurance provides compensation guarantees for losses due to uncertain events, such as accidents, fires, or death. In the legal framework in Indonesia, the relationship between the insurer and the insured is formed through an agreement (policy) or normative provisions in laws and regulations. However, in practice, this relationship is inseparable from the problem of moral hazard, especially the misuse of claims by the insured who act dishonestly. This phenomenon not only causes economic losses for insurance companies, but also threatens the integrity of the insurance system itself. Therefore, an effective legal protection mechanism is needed for insurance companies to deal with these manipulative practices. This paper examines the forms of legal protection available, both through contractual instruments (internal) and external regulations such as Law Number 40 of 2014 concerning Insurance. With a normative legal approach, this paper aims to provide a deeper understanding of the importance of maintaining a balance of rights and obligations in insurance contracts and the need to strengthen legal aspects in anticipating misuse of claims.

Keywords: Legal Protection, Insurance, Claim Abuse

INTRODUCTION

Uncertainty is an inevitable aspect of human life, encompassing unforeseen events such as fires, accidents, or sudden deaths. These risks, which are beyond human control, often disrupt social and economic stability, particularly for families that lose their primary breadwinner. In the context of social protection law, the most severe impact is seen in the impaired economic functioning of the affected family (Adicahya, 2019). The loss of this figure not only causes an emotional burden but also directly impacts the continued fulfillment of the basic needs of the surviving family (Rashid et al., 2021). From the perspective of a welfare state, this should be a primary concern of public policy.

Uncertainty regarding various unpredictable adverse events often becomes one of the main sources of concern in human life (Badruzaman, 2019). Therefore, within the framework of legal and economic protection, a mechanism is needed to mitigate the risks arising from such uncontrollable events (Handayani, 2017). One rational approach that has developed in modern practice is the risk transfer mechanism, where the potential loss resulting from an event is transferred to another entity capable of bearing it. The entity that legally and conventionally assumes this risk-bearing role is the insurance company, which, through a specific agreement (policy), prospectively provides financial protection to the insured if the agreed-upon risk actually occurs (Solaiman, 2018). In this regard, insurance functions not only as an economic instrument but also as a form of legal protection that prioritizes the principles of justice and legal certainty for society (Prodjodikoro, 2012).

In the context of legal scholarship in Indonesia, the term “assurance” tends to be more dominantly used compared to the term Insurance, both in legal literature and in academic settings, particularly within law faculties (Rahmalia, 2023). Etymologically, the term assurance is derived from the Dutch word ‘assurantie’, whereas in Anglo-Saxon legal tradition, the terms assurance and insurance are used. Although these two English terms are often used interchangeably, they carry nuanced differences depending on their legal systems. However, fundamentally, both refer to the concept of risk protection through a contractual mechanism between the insured party and the insurer (Sugistiyoko, 2020).

In the realm of insurance law, the legal relationship between the insurer and the insured can be established based on two main foundations. First, the relationship arises from the agreement of the parties, formally embodied in the insurance policy, which essentially reflects the principle of consensualism in contract law—that is, a contract becomes valid and binding upon the parties’ mutual consent (Arifin, 2020). In this context, the policy serves as written evidence of the contractual bond arising from the free will of the parties, including the rights and obligations mutually agreed upon. Second, apart from being derived from the contract, the legal relationship may also originate from mandatory normative provisions contained in statutory regulations (dwingend recht), which explicitly regulate the rights and duties of each party in an insurance agreement. This means that not all aspects of the legal relationship in insurance are solely determined by the parties’ will, but are also restricted and guided by applicable positive law provisions aimed at protecting the public interest and preventing potential injustices (Purwanto, 2006).

Insurance is one of the institutional instruments that holds a strategic role in the legal and economic protection system, particularly in the context of managing risks inherent in every individual and corporate activity (Ng et al., 2020). As a risk transfer mechanism, insurance functions not only as a preventive solution against unpredictable potential losses but also serves as a crucial foundation in establishing social stability and legal certainty in community life and business operations. For individuals, the presence of insurance provides guaranteed protection against various adverse events, such as accidents, loss of assets, or death. Meanwhile, for business entities or companies, insurance acts as a risk mitigation instrument that enables business activities to continue sustainably despite facing detrimental incidents (Setiawati, 2018).

The fundamental distinction between *assurance* and *insurance* lies in the nature of the risks covered. The term *assurance* generally refers to life insurance products that guarantee coverage for events that are certain to occur—such as death—even though the timing of such events remains uncertain. In contrast, *insurance* is more commonly used to describe coverage for events that are uncertain in nature, such as losses resulting from accidents, natural disasters, or other contingent occurrences (Mulhadi, 2017). Under Indonesia’s positive legal system, this distinction is reflected in the provision of Article 1 point 5 of Law Number 40 of 2014 concerning Insurance (hereinafter referred to as the “Insurance Law”), which defines general insurance as a risk coverage service business that provides compensation to the insured for losses, damages, expenses incurred, loss of profits, or legal liabilities to third parties, which may be suffered by the insured as a result of uncertain events. This provision underscores the essential role of insurance as a legal protection instrument against unpredictable risks, while also illustrating how the law provides certainty and safeguards against the consequences of events beyond human control. Thus, insurance functions not merely as a financial

instrument, but also as a concrete manifestation of the principles of prudence and legal protection in addressing uncertainties across various aspects of life.

In practice, the insurance industry plays not only a vital role as a financial protection instrument against various uncertain risks, but also embodies legal complexities—particularly in relation to the dynamic legal relationship between insurance companies and the insured (Wulansari, 2017). As financial institutions, insurance companies offer a wide range of insurance products designed to provide protection against potential economic losses for both individuals and business entities, in exchange for periodic premium payments. However, behind this strategic function lies a legal challenge that cannot be overlooked: the emergence of abusive practices in the claims submission process. Such abuses often take the form of fictitious or manipulative claims submitted by the insured in bad faith, which directly harm both the legal position and financial stability of insurance companies. This phenomenon reveals a gap in the legal protection framework governing the relationship between the insurer and the insured, thereby demanding stricter law enforcement, as well as more accountable mechanisms for oversight and evidence evaluation, in order to uphold justice and integrity within the national insurance practice.

The phenomenon of insurance claim abuse has become a critical issue frequently occurring in Indonesia, causing economic losses to insurance companies and undermining the principles of fairness and good faith in insurance contracts (Santri, 2017; Saputra et al., 2021). Therefore, this research will explore the theme "*Legal Protection for Insurance Companies Against Abuse of Insurance Claims*" as an effort to comprehensively examine the legal protection mechanisms and dispute resolution methods available to insurers when facing dishonest insured parties. Reflecting on the discussion above, the author formulates the problem statement as follows: 1) How is the form of legal protection provided to insurance companies in dealing with claim abuse by the insured?; How is the dispute resolution between insurance companies and the insured conducted according to the laws and regulations in force in Indonesia?

RESEARCH METHOD

This research employs a normative juridical method as its primary approach, which relies on the analysis of applicable positive legal norms, both those codified in statutory regulations and those developed through legal doctrines (Matheus & Gunadi, 2024). The selection of this method is deemed appropriate, as it provides a strong theoretical and normative foundation for examining the core legal issue under investigation, namely the legal protection afforded to insurance companies in addressing the abuse of claims by the insured. Through this approach, the research aims to explore, understand, and evaluate the legal provisions governing the legal relationship between the insurer and the insured, including the dispute resolution mechanisms available in the event of any breach in the performance of the parties' rights and obligations. Accordingly, the normative juridical approach functions not only as a tool for analyzing written norms but also as a means to uncover relevant legal principles that ensure fair and proportional protection for insurance companies amidst the complexities of insurance practice (Marzuki, 2019).

RESULTS AND DISCUSSION

Legal Protection Provided to Insurance Companies in Addressing Claim Abuse by the Insured

Legal protection for insurance companies against potential claim abuse can be categorized into two main forms (Sugistiyoko, 2020). First, preventive protection, which aims to prevent claim abuse from the outset through strict regulations and transparency in the claims process. Second, repressive protection, which involves legal actions taken after claim abuse occurs to enforce justice and impose sanctions on the violating party. In this context, insurance fundamentally functions as a risk transfer mechanism, where the risk-bearing party (the insurer) commits to compensating losses suffered by the other party (the insured), provided that the submitted claims comply with applicable regulations and do not involve fraud or abuse (Afrita & Arifalina, 2021).

Legal protection for insurance companies is divided into two forms (Husain, 2016). First, external protection, which is provided by authorities through legislation, aims to protect the legally weaker party. Second, internal protection, which is implemented through clauses within the insurance contract, where both parties receive balanced legal protection based on the consent and agreement stipulated in the insurance policy (Prasetyo, 2019). Internal legal protection refers to the protection agreed upon by the parties through a contract, whereby each party arranges its interests to be accommodated within the agreement. This protection can only be effectively implemented if both parties are on an equal footing, meaning they possess equivalent bargaining power. With such equality, the principle of freedom of

contract can be applied, allowing the parties to freely express their intentions in accordance with the interests they seek to safeguard within the agreement (Prasetyo, 2019).

Legal protection for insurance companies against claim abuse can be categorized into two types: internal and external protection (Pratama et al., 2017). Internal legal protection includes measures taken by the insurance company itself, such as filing claims for compensation and issuing claim cancellation letters, as efforts to safeguard its interests against invalid claims. Meanwhile, external legal protection is regulated under the provisions of Article 77 of the Insurance Law, which provides a legal basis for insurance companies to take action against claims that do not comply with applicable legal requirements. Furthermore, protection for insurance companies from claim abuse can also be found in civil law principles concerning compensation for losses caused by unlawful acts, as governed by Articles 1365, 1366, and 1367 of the Indonesian Civil Code. These provisions affirm that every person is not only responsible for damages caused by their own actions but also for losses caused by individuals under their responsibility or for objects under their supervision. This provides a legal foundation for insurance companies to seek compensation if it can be proven that losses resulting from invalid claims were caused by related third parties (Rahmalia, 2023).

When a person commits an unlawful act that causes harm to another party, the perpetrator is obligated to compensate for the resulting loss (Budiman et al., 2022). This constitutes a form of legal protection for the aggrieved party. This principle is also relevant in the context of losses experienced by insurance companies due to claim abuse, which may be perpetrated by individuals within the company, such as executives or branch managers. According to the applicable legal provisions, an act can be categorized as unlawful if it meets three elements: first, it violates the law; second, it causes harm; and third, the harm is directly caused by the perpetrator's actions. The legal basis for compensation for losses resulting from unlawful acts is regulated in Articles 1365, 1366, and 1367 of the Indonesian Civil Code. These articles explicitly state that a person is responsible not only for losses caused by their own unlawful acts but also for losses caused by the actions of individuals under their responsibility or supervision (I. Sari, 2020).

In this context, an unlawful act serves as the basis for the injured party to file a claim for compensation, even in the absence of a contractual or other direct legal relationship between the party committing the act and the party suffering the loss. This indicates that the basis for a claim in civil law does not depend on the existence of a private legal relationship between the disputing parties, but rather on the consequences resulting from the act itself. Accordingly, in practice, a claim for damages arising from an unlawful act may be submitted as long as it can be proven that the act has caused actual harm to another party, even if no direct relationship exists between them. In other words, the law provides an opportunity for the injured party to seek justice by claiming compensation, provided there is evidence of a causal link between the unlawful act and the resulting loss. This underscores the importance of protecting individual rights within the civil law system and provides a strong foundation for applying the principle of liability regardless of any prior contractual relationship.

Forms of Dispute Resolution Between Insurance Companies and Policyholders According to the Applicable Laws and Regulations in Indonesia

In the context of civil law, a dispute can be understood as a form of conflict arising from a divergence of interests between two or more parties, rooted in differing interpretations of their respective legal rights or obligations. Such disputes may give rise to legal consequences that not only affect the legal relationship between the parties but also have the potential to cause both material and immaterial losses (Sigalingging et al., 2022). These misunderstandings often relate to differing perceptions of the contents of an agreement, including issues of ownership rights, payment obligations, or benefits that should be received. This is particularly relevant in the context of insurance agreements, which are contracts between the policyholder (the insured) and the insurance company (the insurer), in which each party has specific rights and obligations as set forth in the policy.

In practice, disputes between both parties particularly concerning the payment of insurance claims are not uncommon. Such disputes often stem from differing interpretations of clauses within the insurance policy, including coverage limitations, claim requirements, or exclusion provisions, all of which can complicate the process of realizing the insured's rights. In this context, policyholders are often in a weaker position, whether in terms of access to information, bargaining power, or understanding of the legal substance contained in the insurance contract (Wahjuni et al., 2023).

In general, disputes in insurance relationships do not arise suddenly but are rather the result of an accumulation of various factors involving multiple parties, including the policyholder, the insurance company, and the beneficiary (M. P. Sari et al., 2023). On the part of the insured, obstacles in filing claims often stem from non-compliance with administrative obligations, such as failure to provide

complete and honest information, irregular premium payments, and failure to submit the required supporting documents. Additionally, delays in filing claims particularly in cases involving the death of the insured often lead to the forfeiture of the right to claim. On the other hand, the insurance company as the insurer also contributes to the emergence of disputes, for example, through a lack of transparency in explaining policy contents to the insured, delays or outright denial of benefit payments despite the fulfillment of claim requirements, and failure to pay the cash value when a policy is terminated early by the policyholder (Setiawati, 2018).

On the other hand, heirs or insurance beneficiaries often encounter various obstacles in filing claims for benefits to which they are rightfully entitled, particularly when supporting administrative documents are incomplete or unavailable. For instance, the absence of an official death certificate of the insured, the lack of legally valid proof of heirship, or the loss of documentation evidencing the final premium payment frequently pose significant barriers to the disbursement of claims. Such circumstances often lead to dissatisfaction among insured parties or their heirs, who may feel that their rights have been disregarded or not duly respected. When this sense of discontent is not addressed by the insurance company in a proportional and transparent manner, the likelihood of formal complaints being lodged increases. In many instances, if such complaints are not handled fairly and in accordance with the principle of due diligence by the insurer, the dispute may escalate into an open conflict. What initially begins as an administrative or non-litigious dispute may ultimately develop into a legal dispute brought before judicial institutions for formal resolution. This phenomenon underscores the importance of an effective dispute resolution mechanism, as well as the necessity for a claims service system that prioritizes the protection of the rights of the insured and their beneficiaries (Hazhin & Diaz, 2022).

Dispute resolution in insurance claims in Indonesia is clearly governed under Law Number 8 of 1999 concerning Consumer Protection ("Consumer Protection Law") (Puspita & Novita, 2022). Pursuant to the provisions of Article 23 of the Consumer Protection Law, if an insurance business actor rejects, ignores, or fails to fulfill a consumer's demand for compensation, the consumer has the right to escalate the matter to a formal forum either through the Consumer Dispute Settlement Agency as an alternative dispute resolution mechanism outside the court system, or by filing a direct lawsuit with the district court. In addition, specifically within the insurance sector, there exists another non-litigation body, the Indonesian Insurance Mediation Board, which serves as a forum for resolving disputes through deliberation (Matheus, 2021). Decisions rendered by the Consumer Dispute Settlement Agency, as stipulated in Article 54 paragraph (3) of the Consumer Protection Law, are final and binding. Nevertheless, the legal mechanism still allows parties who feel aggrieved by the decision to file an objection with the district court. The legal relationship between the policyholder and the insurance company is essentially civil in nature, as it is based on a mutually agreed contract.

The Consumer Protection Law also regulates the possibility of criminal liability arising from violations of consumer rights (Fahrizal et al., 2022). This is affirmed in Article 45 paragraph (3), which states that even if a dispute is resolved amicably outside of court, it does not eliminate the possibility of pursuing criminal accountability. In this regard, Articles 62 and 63 of the Consumer Protection Law provide the basis for imposing criminal sanctions on business actors, including insurance companies, if found to have committed violations such as marketing products that do not meet standards (Article 8), providing misleading information (Articles 9 and 10), engaging in coercive sales tactics (Article 15), or including standard clauses that harm consumers (Article 18). These sanctions are not limited to imprisonment of up to five years or fines of up to two billion rupiah, but may also be extended to additional penalties such as the confiscation of goods, orders to cease operations, compensation payments, and even revocation of business licenses. Therefore, dispute resolution in the insurance sector is not limited to civil aspects but may also extend into the criminal realm in cases of serious violations of consumer rights.

CONCLUSION

Legal protection for insurance companies against fraudulent claims by policyholders is divided into two forms: preventive and repressive protection. Preventive protection is carried out through strict and transparent claims regulations, while repressive protection involves legal mechanisms to address violations and seek compensation. This protection is also categorized into two types: internal protection, which includes policy clauses and administrative actions by the company; and external protection, which is based on statutory regulations such as Insurance Law and Articles 1365–1367 of the Indonesian Civil Code. These provisions enable insurance companies to claim compensation for losses resulting from unlawful acts, even in the absence of a direct contractual relationship, as long as the losses can be proven to have resulted from the act of claim abuse.

Disputes between insurance companies and policyholders generally arise due to information asymmetry, differing interpretations of the policy, and administrative violations committed by either party. Although this relationship is civil in nature based on a contractual agreement, statutory regulations such as the Consumer Protection Law extend the avenues for dispute resolution to include both non-litigation forums (such as the Indonesian Insurance Mediation Board and the Consumer Dispute Settlement Agency) and litigation, and even criminal proceedings in cases involving serious violations of consumer rights. This underscores that the resolution of insurance disputes not only requires contractual justice but also emphasizes substantive consumer protection through the imposition of administrative, civil, and criminal sanctions, reflecting the law's alignment with the structurally weaker party.

Strengthening transparency and insurance policy education Insurance companies are required to enhance transparency and provide comprehensive education to policyholders concerning the contents of their insurance policies, including coverage limitations and the legal rights to which they are entitled. This measure is intended to prevent disputes arising from misunderstandings or informational asymmetry and to foster more equitable contractual relationships between the parties. The government and relevant authorities must reinforce the role of alternative dispute resolution institutions, such as the Indonesian Insurance Mediation Board and the Consumer Dispute Settlement Agency, in terms of authority, outreach, and accessibility. Strengthening these institutions is essential to ensure that dispute resolution does not overly depend on judicial proceedings, which are often costly and time-consuming, and to avoid escalation into criminal proceedings where disputes can be resolved through deliberative and amicable means.

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