

Implementation of Insurance Policy Guarantee To Protect Insured

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Abstract

The purpose of writing to review and analyze the regulation of the implementation of policy guarantee program referred to Article 53 of Law No. 40 of 2014 on Insurance. This legal research tends to research on legal principles and positive law. Positive law used to analyze the protection to policyholders with the establishment of a policy guarantee program as mandated in the Law of the Republic of Indonesia Number 40 of 2014 About Insurance. This research uses qualitative analysis, which is studying, explaining deeply and comprehensively and interrelated with each other and evaluating the material of law, as the elaboration of the implementation of policy guarantee institutional arrangement to protect the insured. Establishment of an institution which poured in a legislation, beforehand should pay attention to the principle of formulation of regulation, because the law can function optimally as one of the instrument of state of law highly depend on the politics of legislation of a country. The criteria for the establishment of a policy guarantee program that will be set forth in a law temporarily compiled by lawmakers should continue to pay attention to the theories and principles of law applicable so that the implementation of the policy guarantee will not favor the parties who always benefit the company so that, The guarantee of legal certainty expected by the insured as the policyholder can be achieved.

Keywords: Guarantee, Insurance Policy, Insured.

I. Introduction

Insurance business is a business activity that is engaged in insurance business and insurance supporting business. Insurance business is a financial services business that collects public funds through the collection of insurance premiums, providing protection to members of the community of insurance service users against the possibility of loss due to an uncertain event or on the life or death of a person. Insurance as a diversion and risk sharing organization has a positive use for both the community, the company and for the development of the country. Insurance also provides the value of coverage or protection of an object from a dangerous threat that causes harm. A society which in this case is referred to as the insured party who closes the insurance agreement will feel safe because it gets protection from the possibility of striking an event. Insurance is a term used to refer to an action, system or business in which financial protection (or financial compensation) for the life, property, health and so on will be reimbursed from unforeseen events such as death, loss, Damage or illness, which involves regular premium payments within a certain period of time in exchange for a policy that guarantees such protection.

Problems occur when the community or the insured face various cases, namely the lack of sense of justice to the insured because of the lack of harmony and harmonization of justice values and legal certainty because the purpose of insurance to provide assurance of protection has not been achieved so that still harm the insured and also the existence of some Insurance companies that have not made a good contribution to the community whereas the people want the optimal protection from the insurance company, also concerning the implementation of insurance, regarding the honesty of the parties, the service of the company, the insured dissatisfaction of the company's service, the insured's distrust because what the company previously promised Carried out entirely by the company, even the attention and efforts of the government in formulating the regulation if the occurrence of insolvent insurance companies. In relation to the case of Asih Jaya Life Insurance

Company in the territory of Indonesia, the implementation did not go as expected by the community because it was closed for "bankrupt" reasons. From some cases of insurance companies fails to pay, it turns out to have a negative impact on the community because the community as the insured feel unprotected their funds are deposited as premium money to the company that resulted in the community become less trust and even do not want to follow the programs offered insurance By insurance companies. This resulted in a lack of public interest following.

Insurance, and result in reduced foreign exchange for the country, so in this study the authors feel the need to examine and analyze the importance of the establishment of an institution that can guarantee the Insurance Policy for the insured. Article 53 of Law no. 40 of 2014 on Insurance mentioning in paragraph (1) that Insurance Companies and Sharia Insurance Companies are obliged to become participants of the policy guarantee program. In paragraph (2) The implementation of the policy guarantee program as referred to in paragraph (1) shall be regulated by law.

The authors review this Article 53 because in this article there is a blurring of the norm because in the Elucidation of this Law does not explain in detail about the policy guarantee program what is meant, so that the sound of Article 52 will occur Multiple interpretations. This research raises the problem of the implementation of policy guarantee program what is meant by Article 53 paragraph (1) of Law No. 40 of 2014 about Insurance.

II. Material Law and Method

Based on the title and the formulation of the problem, the research conducted included in the category of legal research. This legal research includes:

- a. Research on legal principles
- b. Research on legal theory
- c. Research on the Law of the Republic of Indonesia Number 40 Year 2014 About Insurance.

In this legal research, to get clarity from the existing problem, 3 (three) types of research approach are applied: philosophical approach, conceptual approach, and statute approach. Sources of legal materials studied in this study include: Primary Legal Material, namely legislation regulating the Insurance regulated in Law No. 40 of 2014, and Secondary law material, consisting of books, related scientific journals With Insurance. The collection of primary legal materials and secondary legal materials, using documentary techniques by classifying the various legal materials available, and data in the form of legal materials that have been obtained later presented in the form of narrative texts, the descriptions arranged in a systematic, logical and rational. (Johnny Ibrahim, 2008)

Analysis The legal materials that have been collected and grouped are then examined with philosophical, conceptual, legislative approaches, to obtain a picture of the clear regulatory issues against the insured as the policyholder, to find out how to establish a guarantee institution, as well as the legal politics that occurred during the formation Article 53 of Law No. 40 of 2014 on Insurance, using grammatical, systematic and komperatif. Further analysis is done by using qualitative analysis, which is to examine, explain deeply and thoroughly and interrelated with each other and evaluate the material of law, as elaboration of implementation of institutional arrangement of guarantee of policy to protect from insured.

III. Results and Discussions

In the insurance industry, both nationally and internationally, there has been a rapid growth of business which is marked by the increasing volume of business as well as the increasing variety of needs of the insured community for various types of insurance services. These needs include the need for more suitable insurance products to cover the financial risks faced and the need for investment management as an integral part of financial risk management through insurance.

In addition to internal developments within the insurance industry itself, there are also developments within the industry as a whole. This is marked by the increasing depletion of the range of services provided by each sector within the industry of financial institutions. Such developments require a better and integrated system of guidance and supervision of financial institutions. Indonesian state legislation as a translation of the values of Pancasila and the Constitution of the Republic of Indonesia of 1945 is a tool in realizing the ideals and national goals of the Indonesian nation.

The result of political analysis of the law on the establishment of Law No. 40 of 2014 on Insurance is more focused on Article 53 paragraph (2) which reads: "The implementation of policy guarantee program as

referred to in paragraph (1) shall be regulated by law". According to the researcher, the sound of this Article should be reviewed with the Theory of legislation, because it is contradictory to Law No. 12 of 2011 on the Establishment of Legislation, because hierarchically, after the law must be issued a Government Regulation (PP). However, in Article 53 paragraph (2) of this Act precisely ordered in issuing the Act. The political problem of the law in Article 53 paragraph (2) can also be analyzed using the legal theory of law, because every material content of legislation should provide legal protection for the community as the holder of the insurance policy.

In establishing the Laws Regulations should be made on the basis of the formation of good laws, which include: Principle of Clarity of purpose, the Institutional Principle or the appropriate forming officer, Principle of Conformity between hierarchy and material content, Principle Can be implemented, Principle of Utility and Usability, Clarity of formulation, and principle of Openness. Article 7 of Law Number 12 of 2011 Concerning the Establishment of Laws and Regulations shall be mentioned the types and hierarchy of laws and regulations, namely: the 1945 Constitution of the State of the Republic of Indonesia, the Decree of the People's Consultative Assembly, the Laws / Government Regulations in Lieu of Law , Government Regulation, Presidential Regulation, Provincial Regulation, and Regency / City Regulation.

The legal power of the Laws and Regulations in accordance with the hierarchy as referred to in Article 7 of Law Number 12 of 2011 Concerning the Establishment of Laws and Regulations. This type of legislation covers the rules established by the People's Consultative Assembly, the People's Legislative Assembly, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Supreme Audit Board, the Judicial Commission, Bank Indonesia, the Minister, the same body, institution or commission Established by law or Government on the order of the Act, the People's Representative Council of the Provincial Region. Governor, Regency / Municipal House of Representatives, Regent / Mayor, Village Head or equivalent. A law allegedly contradictory to the 1945 Constitution of the Republic of Indonesia of its testing is conducted by the Constitutional Court, whereas a Legislation under the Act is allegedly contrary to its Test Act by the Supreme Court.

Purnadi Purbacaraka and Soerjono Soekanto, in his book *Hestu Cipto Handoyo*, introduced six principles of the Law, namely: (Hestu Cipto Handoyo, 2008)

- a. The law does not apply retroactively
- b. The law made by the higher ruler has a higher position (*lex superior derogate lex inferior*).
- c. Laws that specialize beside the general law (*lex specialis derogat lex generalis*).
- d. The existing law subsequently overturns the applicable law (*lex posteriore derogate lex priori*).
- e. The law is inviolable.
- f. Law as a means to the maximum extent possible to achieve spiritual and material welfare for society and individuals, through renewal or preservation (*welvaarstaat principle*)

The establishment of a law as mandated by Article 53 paragraph (2) of Law No. 40 of 2014 after reviewing with Law No. 12 of 2011 on the Establishment of Laws and Regulations, does not see the hierarchy of its composition but there is a clearance that is with the coming into effect of the Principle of Delegation Formulation of legislation. The principle of Delegation is the transfer of government authority from one government organ to another. This means that the delegation of authority to create a new rule, which is certainly not contrary to other rules of the same or the above rules that have set it first, both in harmony. As well as synchronizing the law. The existence of Delegation Principles in Law No. 12 of 2011, brought the effect that the formation of Laws related to the Policy Guarantee Program can be done because it is considered very important and very urgent concerning the interests of the people of Indonesia in terms of providing protection for the insured when a company Insurance will be defaulted or bankrupt. So with the study of this Delegation Principle, the formation of a new Law on the Policy Guarantee Program is deemed very necessary to be made by the legislator because in this day and age, the guarantee on the policy is needed by the community as the holder of the Insurance Policy, To give a good thing to the world of insurance in Indonesia, and also in order to enter the era of free trade in ASEAN Economic Community, so it is necessary to create regulations or legislation specifically about an agency that manages or guarantee an insurance policy, which aims to protect the funds of the insured insurance.

Another thing to consider in order to regulate and supervise the insurance industry is the availability of protection for policyholders / insured / participants proportionally and on target. In some recent cases, the policyholder / insured / participant has the potential to lose the right to its economic benefits materially and significantly when the process of liquidation, liquidation or insolvency of the Insurance Company takes place.

Dissolution, liquidation or bankruptcy are generally caused by mistakes and misconduct of the principles of good corporate governance that cause the company to experience an insolvent financial condition. To some extent, such conditions may result in public distrust in the use of an Insurance Company for the purpose of protecting the risks. Similar concerns in the banking sector can be reduced by the existence of the Deposit Insurance Corporation (here in after referred to as LPS) that serves to protect and guarantee the funds of banking customers. Therefore, in order to increase public confidence and provide equal playing field among financial institutions in Indonesia, it is deemed necessary for the insurance industry to be equipped with protection systems and mechanisms for policyholders / insured / Participants proportionally and on target, whether during Insurance Company still operating or when dissolved, liquidated or bankrupt. So that in 2011 the Government of Indonesia issued a regulation on a new institution established under Law No. 21 of 2011. This institution was established to supervise the financial services industry in an integrated manner. Juridically, under the provisions of Article 1 Sub-Article 1 of Law Number 21 of 2011 concerning the Financial Services Authority, it is stipulated that "The Financial Services Authority, here in after abbreviated as OJK, is an independent institution free from the interference of other parties who have functions, Tasks, and regulatory authority, Supervision, investigation and investigation as referred to in this law ".

The arrangement and supervision of the implementation of insurance business undertaken by the insurance company will be supervised directly by the Financial Services Authority. Supervision is also expected to issue a more stringent regulations that reduce other insurance companies arbitrary emerged. People can also check and check on insurance companies, especially if the insurance company does not have a promising reputation, thus, at least the loss can be avoided. With regard to the arrangements and safeguards covering the insurance company itself as well as the policyholder or the insured, the insurance law seeks to ensure that the insured should not be disadvantaged. Therefore, it is expected that the rights of the insured will be protected. Forms of protection afforded to the public from such matters as mentioned above, the government established a Financial Service Authority hereinafter abbreviated as OJK which has been granted the right to regulate all economic activities of the country relating to the Banking and Non-Bank Financial Institutions, Law no. 21 of 2001 on the Financial Services Authority, must regulate the capital of insurance companies so it is expected that the development of this economic sector will benefit the country in greater. Furthermore, the establishment of the Financial Services Authority (OJK) in Indonesia has clearly been mentioned in the Bank Indonesia Act which is an organic law as the implementation of Article 23D of the 1945 Constitution, so that there appears to be an insertion material for the establishment of Financial Services Supervisory Agency (now called Financial Services Authority). OJK has authority over several important sectors supporting the Indonesian economy, among others: banking institutions; Capital market; Insurance; Pension funds and financing institutions.

The Financial Services Authority was established with the aim that all activities within the financial services sector:

- a. Organized regularly, fairly, transparently and accountably;
- b. Able to realize a sustainable and stable financial system;
- c. Able to protect the interests of consumers and society.

The Financial Services Authority has broader authority, which is not solely the authority as mandated in Article 34 of the Bank Indonesia Law, but covers all the duties of Bank Indonesia regarding the regulation and supervision of banks as mandated in Article 8 letter (c) -While Bank Indonesia will switch to OJK, where the oversight function of financial institutions of both banks and non-banks will be taken over by OJK. Meanwhile, Bank Indonesia as the Central Bank Only acts as a monetary policy regulator to maintain monetary stability. OJK's duties in accordance with Article 6 of Law Number 21 of 2011 regarding OJK is to carry out regulatory and supervisory duties on:

- a. Financial services activities in the banking sector;
- b. Financial services activities in Capital Market sector;
- c. Financial services activities in the insurance sector, pension funds, financial institutions and other financial services institutions.

In connection with the above description, it is necessary to reorganize the organizing structures of the institutions that carry out regulatory and supervisory tasks in the financial services sector covering the banking sector, capital markets, insurance, pension funds, financial institutions and other financial services institutions. Such arrangements are made in order to achieve a more effective coordination mechanism in dealing with problems arising in the financial system so as to better ensure the achievement of financial system stability. The regulation and supervision of the entire financial services activities must be done in an integrated manner. In

addition to the considerations as described above, under Article 34 of Law Number 3 of 2004 concerning Amendment to Law Number 23 of 1999 concerning Bank Indonesia, the government is mandated to establish an independent financial services oversight body, under the name of the Financial Services Authority. It oversees the banking industry, insurance, pension funds, capital markets, venture capital, and finance companies, as well as other bodies that manage public funds. According to the explanation of Article 34 Paragraph (1) of Law Number 3 of 2004, the Financial Services Authority is independent in performing its duties and its position is outside the government and is obliged to submit reports to the Supreme Audit Agency (BPK) and the House of Representatives (DPR). (Adrian Sutedi, 2014)

The law on OJK basically contains provisions on the organization and governance of institutions that have regulatory and supervisory authority over the financial services sector. The provisions on the types of financial services products, the scope and limits of the activities of financial services institutions, the qualifications and criteria of financial services institutions, the level of health and prudential arrangements and provisions on services supporting the financial services sector and others related to financial service transactions are regulated in Separate sectoral laws, namely the Law on Banking, Capital Market, Insurance Business, Pension Fund, and other legislation related to other financial services sector. OJK is established with the aim that the overall financial services activities in the financial services sector are organized on a regular, fair, transparent and accountable basis, and are able to realize a sustainable and stable financial system that protects the interests of consumers and society. Thus, OJK is expected to support the interests of the national financial services sector so as to enhance national competitiveness. In addition, OJKs should be able to safeguard the national interest, including, among others, human resources, management, control and ownership in the financial services sector, while taking into account the positive aspects of globalization.

Moreover, OJK is established and based on good governance principles, which include independence, accountability, accountability, transparency and fairness, recalls the thinking on the principles of good corporate governance Of the 5 principles abbreviated as TARIF, namely: (Bisdan Sigalingging, 2013)

- a. Transparency (transparency of information), which Simply can be interpreted as openness to provide sufficient information, accurate, and timely;
- b. Accountability (accountability), namely the clarity of function, structure, system, clarity of rights and obligations and authority of the elements that exist;
- c. Responsibility, company compliance with applicable regulations, including tax payment, industrial relations, occupational health and safety, environmental protection, maintaining a conducive business environment with the community and others;
- d. Independency, which requires the company to be professionally managed without any conflict of interest and pressure or intervention from any party or not in accordance with applicable regulations;
- e. Fairness, this principle requires a fair treatment in fulfilling the rights of shareholders and stakeholders in accordance with applicable laws and regulations.

The presence of an insurance agency will provide benefits include: (Bisdan Sigalingging, 2013)

- a. Helping the community in order to overcome all the risk problems it faces. This will provide a higher peace and confidence to the person concerned.
- b. It is a huge fund-raising facility that can be utilized for the benefit of society and development.
- c. As a means to overcome the risks faced in carrying out development.

According to the researchers, there are some benefits that are expected with the insurance policy Insurance Program: (Man Suparman Sastrawidjaja dan Endang, 2004)

- a. People become more trust with insurance in Indonesia, because of protection against policy.
- b. Indirectly, the government can also increase supervision on the implementation of insurance companies.
- c. The government can also improve the stability of the financial system in Indonesia.

IV. Conclusions and Suggestions

A. Conclusions

Assurance policy for the insured insurance is extremely urgent and needed to be regulated by the Government. The existence of a rule or law that aim will provide legal protection for the insured that provide protection against an insurance policy, will make the level of trust the community in General will go up. Because of the presence and the presence of a guarantor policy will give better value for the community to follow any insurance program, the Foundation also gives protection to the insured insurance proportionately and appropriately targeted, in accordance with good corporate governance.

B. Suggestions

Establishment of a guarantor policy will be established in legislation, should pay attention to the principle of the formation of legislation, strengthening of good corporate governance, risk management and anticipate the impact and influence of the currents of globalization and trade liberalization. The guarantor institution policy is expected to be formed by the Government should also be able to strengthen surveillance against the insurance company effectively and efficiently.

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