

Insurance Agreement Through A Digital System In The Framework Of Consumer Protection Approach For Insured Participants

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ABSTRACT

The purpose of the study: This study focuses on legal developments regarding digital agreements that occur in insurance offerings to the public and are considered a legally valid written agreement. Law No. 40 of 2014 concerning Insurance establishes the basis of insurance as an agreement between two parties, namely the insurance company and the policyholder, which serves as the basis for the insurance company's premium receipt as compensation. With the development of technology, digital insurance offerings are often conducted on the basis of a valid insurance agreement. Electronic insurance policies can be used and are recognized as stipulated in Article 21 Paragraph (1) of OJK Regulation No. 23/POJK.05/2015 concerning Insurance Products and Marketing of Insurance Products. Consumer protection in insurance in the form of digital agreements is necessary.

Materials and Methods: This study focuses on qualitative methods with a legal approach, conducting an in-depth analysis of insurance agreements through digital systems within the framework of a consumer protection approach for insurance participants.

Results: The development of technology and information has driven behavioral changes in the business world, one of which is the insurance business. Therefore, aspects of Law No. Law No. 40 of 2014 concerning Insurance and Law No. 8 of 1999 concerning Consumer Protection must be aligned.

Conclusions: This research focuses on Law No. 40 of 2014 concerning Insurance and Law No. 8 of 1999 concerning Consumer Protection. Therefore, in insurance, the interests of insurers must be safeguarded and protected.

Keywords: *Insurance, Digital and Consumer Protection*

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INTRODUCTION

The paradigm shift in technology advancement toward digitalization. Digitalisation is altering the insurance industry. Mobile devices, the internet of things (IoT), Big Data, artificial intelligence (AI), chatbots, distributed ledger technology (DLT), and robot advisors all have an impact on the insurance value chain, from product design, underwriting, and pricing to marketing and distribution, claims processing, and customer management. (International Association of Insurance Supervisors (IAIS)). Insurance development is unavoidable as technology advances. The insurance sector has grown dramatically in recent years and continues to do so on a daily basis, in step with the times. A variety of insurance companies are competing to provide policies that cover businesses and individuals; these policies range from conventional insurance to Sharia insurance, and the most recent is Digital System Insurance. Although Article 255 of the Commercial Code requires that coverage be provided in writing, with the rapid advancement of technology, some insurance companies now offer policies in electronic form in an effort to attract customers. (Mulhadi and Echynia Sibrina Ivanna Yolanda) Electronic insurance policies can be used and have been recognized as stated in Article 21 Paragraph (1) of OJK Regulation No. 23 / POJK.05 / 2015 concerning Insurance Products and Marketing of Insurance

Products. (Mulhadi and Echynia Sibrina Ivanna Yolanda). Financial Services Authority regulations are needed to provide legal certainty and protection for the public as insurance consumers in the digital era.

In response to the growth of Indonesia's financial services sector, the government formed the Financial Services Authority (OJK). Globalization and increasingly open marketplaces have fueled this sector's rapid expansion. Advances in technology and banking communications also lend support to banking supervisory reforms. Today's financial mechanisms are becoming more dynamic, sophisticated, hybrid, and interconnected, necessitating the OJK's role as a supervisory agency with integrated functions and systems. The OJK is expected to be an independent entity with extensive and forceful power over the banking and insurance sectors. The OJK can exert the same oversight over internet insurance marketing as it does over traditional insurance, allowing the Ministry of Finance to focus on its fiscal tasks, such as managing state income, expenditures, and assets. The formation of the OJK intends to improve the effectiveness of its oversight and regulation. Against this context, this paper investigates the legal protections available to insured parties who engage into insurance contracts online, as well as the OJK's role in monitoring online insurance. (M.Bagas Hutama P and Arief Suryono). The authority of the Financial Services Authority as a form of protection for insurance participants.

Transactions on online marketplaces carry considerable dangers, such as the hacking of consumers' personal data, which includes sensitive information such as credit card numbers and email addresses. (Fiqqih Anugerah, et.al) All of this personal information is stored on marketplace platforms in accordance with the account registration criteria. Data breaches on platforms such as Yahoo, Lazada, and Tokopedia highlight the need for improved security in digital transactions. (Fiqqih Anugerah, et.al) Tokopedia has responded to this data breach, stating that despite attempts to steal user data, such as passwords, their systems are still able to protect it. They also encourage users to regularly change their account passwords to improve security and transaction convenience. Electronic transactions in cyber assurance can prevent businesses from damages. Article 1 point (7) of Law No. 40 of 2014 concerning Insurance specifies that "reinsurance business is a business providing reinsurance services against risks faced by insurance companies, guarantee companies, or other reinsurance companies." (Fiqqih Anugerah, et.al). Protection for insurance consumers is necessary. Therefore, this article focuses on discussing insurance agreements through digital systems within the framework of an approach to protecting insurance participant consumers.

METHOD

This research focuses on insurance contracts through digital systems within the framework of a consumer protection approach for insurance participants. Technological developments have influenced insurance offering systems and given rise to agreements between insurance companies and participants. Naturally, with the advancement of technology and digital systems, regulation and harmonization of norms are required. Therefore, this research uses a qualitative method with a legal approach, including the Insurance Law, the Consumer Protection Law, and Financial Services Authority Regulations.

FINDING AND DISCUSSION

Insurance from an Indonesian legal perspective is worth investigating, given that insurance companies play a role in market regulation of economic activity, whereas state regulations are critical to public life. Proper regulation is required to maintain economic market balance and protect Indonesian residents from government intervention in legitimate products. (Fiqqih Anugerah, et.al) Articles 246-308 of the Commercial Code define insurance as an agreement in which the insurer compensates the insured for loss or damage caused by an unpredictable event. Legal reforms governing insurance transactions in Indonesian online marketplaces face a chasm between existing legislation and digital realities. Law No. 2 of 1992, which governs the insurance industry, is out of date and does not include online transactions, whereas Law No. 40 of 2014, which is more modern, fails to appropriately address online markets. Articles 246-308 of the Commercial Code are more focused on conventional elements. The

Electronic Information and Transactions and Personal Data Protection Laws do not specifically regulate online insurance transactions. This gap requires legislative revision to create a more adaptive legal framework. (Fiqqih Anugerah, et.al) Therefore, certainty regarding the protection of insurance participants is necessary.

In essence, insurance is based on an agreement. Therefore, every agreement will essentially cover the following matters. (Sri Rejeki Hartono, 2003, on Purwanto):

1. An agreement always creates a legal relationship.
2. An agreement demonstrates legal capacity or authority.
3. An agreement has or contains a purpose, namely that one party will obtain from the other party a performance, which may be to provide something, do something, or not do something.
4. In every agreement, the creditor has the right to performance from the debtor, who will voluntarily fulfill it.
5. In every agreement, the debtor is obligated and responsible for performing its performance in accordance with the terms of the agreement.

Life insurance and investment insurance are fundamentally different versions of the protection services provided by life insurance firms. An agreement between two parties (the insurer, the insured, and a third party) is required to enter into a life insurance or investment contract. The life insurance business, as the insurer, offers to pay the risk assumed by the insured. The insured and third party shift the risk of death and property to the insurer by paying a premium. (Ratna Syamsiar, 2013). In actuality, life insurance not only protects you, but it can also be combined with educational scholarships, savings, or investments. As a country that supports legal principles, Indonesia has three key pillars: the rule of law, equality before the law, and due process of law. More specifically, every country founded on the rule of law contains features such as guaranteed human rights protection, an independent judicial system, and adherence to the law in all aspects of government and citizen behavior. (Rahmad Masturi, 2023 on Mohammad Hifni) In the insurance sector, the balance between insurance sellers and insurance buyers must be balanced, so that in legal problems in insurance as a country the rule of law plays a role in efforts to resolve them fairly.

An insurance agreement is one in which the insured and the insurer jointly agree on a reward in the form of a premium. The insurer agrees to compensate the insured in the form of efforts to mitigate risks as a result of a specific danger. According to Article 1313 of the Civil Code, an agreement is defined as an act in which one or more people bind themselves to one or more others. Insurance law is essentially a document that contains provisions governing the rights and obligations of related parties as a result of their agreement to transfer and accept risks. Insurance law is primarily a subject of civil law; unless specifically indicated in the Commercial Code as a special provision as an agreement, insurance arrangements are governed by the Civil Code. Article 1320 of the Civil Code defines the valid circumstances of an agreement as follows: (1) The consent of people who commit themselves; (2) the capacity of those who form the contract; (3) a specific thing; and (4) a valid purpose. (Novi Salsabila) This agreement is the basis for every agreement made, including insurance agreements, and is also the basis for insurance agreements in digital form.

An insurance contract is an agreement based on “*uberrimae fidei, utmost good faith*.” In the Common Law system, there is an obligation for the parties involved to be transparent (disclosure). An insurance contract can be defined as an agreement in which one party (the insurer) for a certain reward agrees to bear the risk of an event, which event has an unspecified time, with that, the other party (the insured) feels threatened (exposed) and has an interest, and agrees to the occurrence of the event that occurs. The insurer will pay the insured a sum of money or provide benefits in other forms that have a profit value according to the initial agreement of the insurance contract. (Sagita, 2022, on Novi Salsabila). Therefore, the insurance agreement must contain a clear agreement and not be detrimental to all parties when an insurance claim is submitted.

The application of the principle of propriety in handling insurance company default cases is a crucial step towards advancing the Indonesian economy. This step was taken in response to concerns over the numerous default cases in the Indonesian insurance sector. Insurance in Indonesia still needs to continuously improve the quality of service to the public, as the public is the most important component in the progress of insurance companies in Indonesia. Every individual has a soul that needs to be protected from various unpredictable dangers. Civil law principles such as "*pacta sunt servanda*" and "*bona fides*" have been widely used in Indonesia. Over time, in order to establish a legal umbrella to provide legal certainty, this was regulated in the Commercial Law Code, which regulates agreements to protect the parties involved. In contract law, there are five principles recognized in civil law, namely:

1. The principle of freedom of contract is regulated in Article 1338 of the Civil Code.
 2. The principle of consensualism is regulated in Article 1320 of the Civil Code.
 3. The principle of legal certainty (*Pacta Sunt Servanda*) is regulated in Article 1338 paragraph (1) of the Civil Code.
 4. The principle of good faith is stated in Article 1338 paragraph (3) of the Civil Code.
 5. The principle of personality is regulated in Article 1315 and Article 1340 of the Civil Code.
- (Dian Anriyani And Listyowati Sumanto)

Every human endeavor obviously entails various risks. Risk is a loss incurred as a result of a hazard that arises but cannot be forecast in advance in terms of timing. As a result, risk can be described as a loss that is not certain to occur or does occur (uncertainty of financial loss), involving both uncertainty and loss. As a result, insurance is essential for protecting against unexpected future catastrophes. Therefore, it can be characterized as a reasonable transfer of all risks that occur depending on the incidence of losses sustained by an individual. Insurance can be defined as a system designed to protect individuals, groups, and commercial activities against risks associated with the occurrence of financial losses by transferring or spreading the risk through the payment of a series of premiums. When a loss happens as a result of something agreed upon in the policy agreement, the insurance company instantly assumes the risk that was previously held by the owner. The owner's loss is realized through insurance claim payments from the insurance company. The transfer of risk must be balanced with the payment of a certain amount of premium to the insurance company as a form of the insured's obligation to the insurer, which will be realized later in the insurer's return of losses to the insured if the risks stated in an insurance agreement are met. (Arikha Saputra, et.al) Clarity and accuracy in participation as an insurance participant is necessary to avoid losses.

An event, sometimes known as an unpredictable event, is a word used in the insurance industry. An event is defined as anything that cannot be foreseen to happen using human reasoning. Although the catastrophe may occur, the time cannot be specified and is not anticipated by humans, particularly the insured. However, if the occurrence occurs under a legitimate insurance agreement, the insurer must fulfill its duties to compensate the insured's damages. However, if the contrary occurs, and the insured is aware of the impending incident, he cannot use his right to compensation from the insurer. (Arikha Saputra, et.al) Therefore, an event that has not yet occurred (*evenemen, onzeker voorval*) which is something contained in an insurance policy because the event is used as an element of closing an insurance agreement, as is in accordance with the nature of an insurance agreement which has the nature of an *aleatary agreement (aletary)* and also has the nature of a conditional agreement. An insurance agreement is said to be an *aleatary agreement* where the performance of the insurer must be suspended with a condition, namely an event that has not yet occurred while the performance that will be carried out by the insurer is certain, while a conditional agreement has the meaning of an agreement where the performance of the insurer can be carried out if the conditions in an agreement are met. (Arikha Saputra, et.al)

Biologically, humans are weak creatures. This causes every human movement and step to be basically covered by risks such as health problems, accidents, and death. To overcome these risks, a business known as insurance has emerged to provide protection if risks occur in the future. This insurance

business is usually organized by insurance companies. In Indonesia itself, regulations regarding insurance have been regulated in Law Number 40 of 2014 concerning Insurance. ("*Insurance Law*"). In Article 1 number (1) of the Insurance Law, it is explained that "insurance is an agreement between two parties, namely the insurance company and the policyholder, which is the basis for the insurance company's receipt of premiums in return for:

1. Provide compensation to the insured or policyholder for losses, damages, costs incurred, lost profits, or legal liability to third parties that the insured or policyholder may suffer due to an uncertain event; or
2. Provide payments based on the death of the insured or payments based on the life of the insured, with benefits of a predetermined amount and/or based on the results of fund management. (Gracia Putri and Gunardi Lie)
3. In terms of the possibility of ethical violations occurring in insurance, there are 4 (four) factors that underlie the insured committing a violation of the principle of good faith, namely: (Wiyono, 201, dalam Gracia Putri and Gunardi Lie):
 1. Non-disclosure. When explaining the policy contents to the policyholder, the insurance company does not disclose all information or facts to the policyholder, assuming that the facts are unimportant.
 2. Concealment. In this case, the insurance company intentionally does not disclose or inform the policyholder of a fact with the intention of concealing the information.
 3. Misrepresentation. Misrepresentation can be divided into two categories: innocent misrepresentation and fraudulent misrepresentation. Innocent misrepresentation is the misrepresentation of information due to incorrect information being provided or the content or material being incorrect. Fraudulent misrepresentation, on the other hand, is the provision of false information for the purpose of deception. This provision of information for the purpose of deception can occur at the time of insurance coverage and also when submitting an insurance claim.
 4. Moral Hazard. Fraud on the part of the policyholder, where the policyholder, as the insured, is dishonest in filling out the information in the insurance policy.

Humans, as creatures with superior characteristics compared to other creatures, seek ways to overcome the aforementioned insecurity. Humans, with their intellect, are empowered to overcome this insecurity, thus creating a sense of security. Through these efforts, humans strive to move from uncertainty to certainty, enabling them to avoid or overcome risks, both individually and collectively. Efforts to overcome this natural state of uncertainty include avoiding or transferring it to parties other than themselves. Human efforts to reduce or avoid these risks have been carried out for a long time. These efforts began at the beginning of human economic activity, namely since humans engaged in simple trade activities. Human efforts and endeavors to avoid and transfer risks to other parties, along with the process of transferring them as an activity, are the embryo or forerunner of insurance, which is carried out through an insurance agreement. (Gerald Wuhanbino) Therefore, clarity and accuracy in insurance participation are necessary, because it is related to risk transfer.

Telemarketing is a new method of marketing that various insurance companies are currently adopting to provide their service offerings. Is the insurance agreement made through telemarketing in accordance with general agreement principles, and does the recording of the telephone conversation have the same evidentiary status as a written agreement and can be used as evidence in a civil dispute arising from an insurance agreement made through telemarketing? There are still numerous variations in interpretation in many arguments about the control of electronic evidence in the ITE Law for criminal justice proceedings, particularly when it comes to reading Article 5. (Didik Wahyu Sugiyanto) This law aims to provide legal certainty, particularly to policyholders. Regulations that protect consumer interests are considered highly appropriate when viewed from their legal basis. Law Number 8 of 1999 concerning Consumer Protection regulates consumer certainty. Specifically, the Financial

Services Authority (OJK) has issued POJK No. 1/POJK.07/2013 concerning Consumer Certainty in the Financial Services Sector and POJK No. 18/POJK.07/2018 concerning Consumer Complaints Services in the Financial Services Sector, which addresses consumer protection in the financial services sector. (Wilbert Fernando Ansany and Christine S.T. Kansil) The main aspect of these regulations is an effort to provide protection for insurance participants.

According to Article 19 of Law Number 8 of 1999 concerning Consumer Protection, businesses must pay customers for losses, pollution, and/or damages resulting from the use of products and/or services produced or traded. Because consumers incur opportunity costs, insurance companies are legally obligated to repay customers who do not receive policy payments when due. Insurance industry lawsuits have, paradoxically, moved beyond the legal realm and are now political. With the existing state of the insurance industry, policyholders are not always guaranteed legal certainty. Because there are so many different types of insurance products available, consumers frequently have difficulty obtaining claim payouts after an accident. Policyholders feel disadvantaged since unit-linked insurance returns do not meet the stipulated percentage, which is one of the issues. In practice, insurance firms are unable to compensate policyholders for unit-linked product returns. (Wilbert Fernando Ansany and Christine S.T. Kansil). Incidents where insurance is unable to pay, of course this is related to the protection provided to consumers as insurance participants, because in essence they buy insurance, so that aspects of the Insurance Law and the Consumer Law are inseparable parts.

CONCLUSIONS

Consumer protection is one effort to provide protection to every citizen. Technological developments and digitalization in various aspects have changed people's behavior patterns regarding insurance business offerings. Insurance agreements are often born digitally through telephone calls by the insurance company, which are then considered valid if the insurance agreement is stated to agree to the insurance offer through a recorded system. This is certainly a form of technological development. However, on the other hand, consumer protection as insurance participants must be given attention, so that insurance participants are not disadvantaged by insurance companies. Law Number 8 of 1999 concerning Consumer Protection regulates consumer certainty. The Financial Services Authority (OJK) has issued POJK No. 1/POJK.07/2013 on Consumer Certainty in the Financial Services Sector and POJK No. 18/POJK.07/2018 on Consumer Complaints Services in the Financial Services Sector, both of which address consumer protection in the financial services sector. Furthermore, compliance with insurance rules should be prioritized. By complying, especially with insurance agreements, it will provide protection to insurance participants.

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