

The Present And Future Definition Of Health Insurance Based On Laws And Regulations In Indonesia

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Abstract

This study analyzes the legal principles that Indonesia insurance plays an important role in facing increasingly complex and uncertain life needs. In Indonesia, insurance is regulated through Law No. 40 of 2014, which provides a legal basis for the implementation and protection of the parties. This study uses a literature study method with a qualitative narrative synthesis approach to examine the definition of insurance based on laws and regulations in Indonesia. First, to analyse the legal basis of insurance and the legal aspects of the implementation of insurance agreements in Indonesia, examine the legal principles underlying the implementation of insurance practices in Indonesia, also evaluate the legal challenges in the implementation of insurance practices in Indonesia and provide recommendations and efforts for improvement in the insurance sector in Indonesia. Secondly, to analysis of the legal basis and implementation of insurance agreements shows that the legal framework for insurance in Indonesia is quite complex. Various challenges are still found in its implementation, such as complex regulatory changes, suboptimal consumer protection, and problems related to insurance claim disputes. We propose several recommendations and improvement efforts namely by improving regulations, and increasing supervision of law enforcement by the OJK, transparency and public education, and increasing cooperation between insurance companies, the OJK, and dispute resolution institutions. These efforts are important to realize an insurance system in Indonesia that is fair, inclusive, transparent, and sustainable from present to the future.

Keywords: Insurance; insurance law; insurance regulation and principle of insurance law.

I. INTRODUCTION

The development of the era and the rapid development of technology have brought changes to the pattern of human needs[1]. In the past, needs were limited to clothing, food, and shelter. Currently, needs are more diverse and long-term. People are starting to think about and plan to fulfil needs that may arise in the future, even though their nature is uncertain[2]. For example, to prepare for life in old age, individuals start allocating pension funds early on[3]. Likewise with children's educational needs which have been planned from an early age up to college level[4]. This condition shows that human needs are increasingly complex, where there is a tendency to ensure that all aspects of life can be optimally met[5]. Insurance is a consideration for someone to meet these complex needs. The role of insurance is needed in various aspects of life, especially in supporting economic and financial stability[6]. Insurance can help someone reduce financial impacts and provide protection against various unexpected risks, such as accidents, illnesses, or job loss[7]. In general, insurance is an agreement where the insurer makes a bond with the insured by receiving several premiums to provide compensation to the insured for a risk of loss, damage, or loss that may be experienced due to unexpected events[8]. Public awareness of the importance of insurance is increasing. This drives the growth of the insurance industry, which is growing rapidly from time to time.

Not only limited to Indonesia, foreign insurance companies with strong capital, advanced technology support, and competent human resources also develop the insurance and reinsurance business[9]. A study on the Prospects of the Insurance Industry in Indonesia shows data from the average growth for 10 (ten) years from 2013 to 2022, including insurance company growth of 0.83%, investment fund growth of 11.48%, gross premium revenue growth of 12.80%, and average economic growth in Indonesia of 4.87% and gross domestic product growth of 8.41%. This means that the Indonesian insurance industry has quite good prospective opportunities and is experiencing growth[10]. The development of the insurance business has a

significant impact on the country's economy, the progress of business actors, and the improvement of people's welfare[11]. In Indonesia, insurance business activities are carried out by various parties, both the private sector and the government[12]. The government itself plays a role through state-owned enterprises (BUMN) engaged in insurance, such as PT Jasa Raharja (Persero), PT Asuransi Kesehatan Indonesia (Persero), PT TASPEN, and PT Jamsostek. The legal aspect has its position in insurance business activities because it is directly related to the protection of the rights and obligations of all parties involved, both insurance companies and policyholders[13].

The legal basis for insurance in Indonesia is currently regulated in Law Number 40 of 2014, or the Insurance Law. There are 18 chapters with 92 articles that discuss several provisions regarding insurance. Based on Law Number 40 of 2014 [6] concerning Insurance, it is stated that insurance is an agreement between an insurance company and a policyholder, where the policyholder pays a premium in return for protection from the risk of loss or uncertain events. This protection can be in the form of compensation for losses, costs, or legal liability, as well as payment of benefits if the insured dies or is still alive according to the agreement[14]. The essence of insurance is a form of financial protection to manage unexpected risks[15]. Meanwhile, the definition of insurance business is all activities related to risk protection services, either through insurance, reinsurance, or sharia insurance. These activities include risk management, marketing and distribution of insurance products, consulting services, insurance intermediaries, and loss assessments related to insurance or sharia insurance. Law Number 40 of 2014 stipulates that insurance assets or objects in Indonesia may only be insured through insurance or sharia insurance companies registered in Indonesia.

In its implementation, domestic insurance and reinsurance companies must be prioritized so that their capacity can be maximized[9]. To support this policy, the government and the Financial Services Authority (OJK) will encourage an increase in the capacity of the national insurance and reinsurance industry[16]. This law also requires a mandatory insurance program, such as liability insurance for motor vehicle drivers, which is implemented competitively. In addition, the government can provide fiscal incentives to individuals, households, and micro, small, and medium enterprises (UMKM) to make greater use of insurance products in risk management[17]. Although insurance regulations have been regulated in valid laws, there are still many legal problems in the implementation of insurance agreements[18]. This shows that the understanding of the legal aspects of insurance in Indonesia is still not optimal, both among the community, business actors, and law enforcement officers[19].

The purpose of this literature review is to comprehensively examine the understanding and analyse the legal perspectives related to the implementation of insurance in Indonesia with the following specific objectives[13]:

1. To examine the understanding of insurance based on laws and regulations in Indonesia.
2. To analyse the legal basis of insurance and the legal aspects of the implementation of insurance agreements in Indonesia.
3. To analyse the legal principles underlying the implementation of insurance practices in Indonesia.
4. To evaluate the legal challenges in the implementation of insurance practices in Indonesia.
5. To provide recommendations and efforts for improvement in the insurance sector in Indonesia.

II. METHODS

This study uses a literature review method with a qualitative narrative synthesis approach to examine the concept of insurance and legal perspectives in Indonesia. Four major bibliographic databases: PubMed, Scopus, Web of Science, and Google Scholar, were systematically searched using a combination of keywords ("Indonesia" and "insurance") and ("Indonesian insurance law" or "insurance agreement"). The analysis was conducted through descriptive and critical content analysis to present a comprehensive understanding of the legal aspects of insurance practices in Indonesia[20]. Titles and abstracts were independently screened by two reviewers based on predetermined inclusion criteria of empirical studies examining the concept of insurance and legal perspectives in Indonesia, including subgroup analysis (e.g.,

regulations, legal basis, legal principles, institutions, and supervision) while excluding commentary, purely theoretical works without Indonesian data.

Full texts of potentially eligible articles were retrieved and reviewed, with any disagreements resolved through consensus or third-party decision[21]. Data from each included study were extracted into a standard format that included: author, year, study design, concept of insurance, role of law, legal principles, insurance agreement, and legal protection from regulatory challenges[22]. The extracted studies are then arranged thematically: definition of insurance, principles and legal basis, legal issues in insurance agreements, challenges and problems, and subjected to narrative synthesis to identify patterns of implementation, regulatory gaps, and differences between legal norms and practices in the field. Furthermore, legal implications and recommendations for improvement are formulated based on empirical findings and critical analysis of the existing legal framework, to contribute to strengthening regulation and legal protection in the Indonesian insurance sector[23].

III. RESULT AND DISCUSSION

The following is a synthesized literature review on insurance and legal perspectives in Indonesia that examines the definition of insurance based on laws and regulations in Indonesia, analyzes the role and principles of law, and evaluates challenges and problems to appropriate policy recommendations[24].

A. Definition of insurance based on Laws and Regulations in Indonesia

The term "Insurance" is taken from a foreign language, namely Dutch, "Assurantiie," which means coverage. The word consists of "Assurateur" for underwriting and "geassureerde" for the insured. In Italian, "Insurensi" means guarantee, in English "assurance," which means guarantee, and from Arabic "At-ta'min," which means protection, peace, security, and freedom from fear[25]. In the legal system in Indonesia, the definition of insurance can be seen in Article 246 of the Commercial Law Code (KUHD), namely a system where an insurance company provides compensation to the insured for losses, damages, or expected profits due to uncertainty by receiving premiums from the insured who promises to do something. Based on Insurance Law Number 40 of 2014, which is the legal basis for the organization of insurance companies and consumer protection, insurance is defined as an agreement between an insurance company and a policyholder, where the policyholder pays a premium, and in return, the insurance company provides protection[8].

This protection can be in the form of: (a) providing compensation to the insured or policyholder for losses, damages, costs incurred, loss of profits, or legal liability to third parties that may be suffered by the insured or policyholder due to the occurrence of an uncertain event; or (b). provide payments based on the death of the insured or payments based on the life of the insured, by the benefits of a predetermined amount, and/or based on the results of fund management[26]. Thus, the understanding of insurance that is used as a reference in studying the legal aspects of insurance is also influenced by the perspective or interpretation of each party. The following are definitions of insurance from experts, including: From Wetboek van Kophandel (WvK) which translates as follows: "Insurance or coverage is an agreement in which the insurer by enjoying a premium binds himself to the insured to free him from losses due to loss, loss or absence of expected profit, which will be suffered by him due to an uncertain event[27].

Insurance is an agreement in which the insurance company (insurer) agrees to provide compensation to the insured party (insured) if they experience loss, damage, or loss of profit due to an uncertain event. In return, the insured pays a premium to the insurance company. Insurance is an agreement in which the insurance company (insurer) binds itself to the insured by accepting a premium, to provide compensation to him for loss, damage, or loss of expected profit that he may suffer as a result of an event[28]. Based on the definitions above, it can be concluded that insurance is an agreement between the insurance company (insurer) and the insured party (insured) in which the insurance company is willing to provide compensation for loss, damage, or loss of profit that the insured may experience due to an uncertain event. In return for this protection, the insured pays a premium to the insurance company in accordance with the agreed provisions[29].

B. Legal Basis of Insurance and Legal Aspects of Implementation of Insurance Agreements in Indonesia

Law plays an important role in the implementation of insurance in Indonesia. The existence of insurance law is intended to ensure that the insurance process can run by applicable rules and regulations, and ensure the protection of the rights and obligations of all parties involved in it. Insurance law consists of a collection of regulations and legal principles that govern the relationship between insurance companies, insured parties, and related parties. The existence of insurance law in Indonesia is rooted in the codification of civil law (Code Civil) and commercial law (Code de Commerce) brought by the Dutch government during the colonial period[30]. At that time, Dutch commercial law only regulated marine insurance. In 1838, after the enactment of Wetboek van Koophandel, the rules on marine insurance, agricultural insurance, and life insurance began to be created. This system, which was adopted for the Dutch East Indies until now, still applies in Indonesia. Insurance officially entered Indonesia along with the enactment of the Commercial Law Code (KUHD), which was announced on April 30, 1847 in Staatblaad No. 23 and came into effect on May 1, 1848. The legal basis for insurance in Indonesia is generally regulated by Law Number 40 of 2014 concerning Insurance[27].

This law replaces Law Number 2 of 1992 concerning Insurance Business. Based on Law Number 2 of 1992 [12], it states that insurance is an agreement between the insurer and the insured, where the insurer receives a premium in return for providing compensation for losses, damage, or other risks experienced by the insured due to uncertain events, including the risk of death or life of a person. In addition to the Insurance Law, there are also other regulations, such as the Financial Services Authority Regulation (POJK), which regulates insurance activities in more detail. Several other regulations governing insurance with a more specific scope, namely[31]:

1. Law No. 2 of 1992 concerning Insurance Business
2. Law No. 3 of 1992 concerning Social Security for Workers (JAMSOSTEK)
3. PP No. 26 of 1981 concerning Civil Servant Pension Fund (TASPEN)
4. PP No. 68 of 1991 concerning Social Insurance of the Armed Forces of the Republic of Indonesia (ASABRI)
5. PP No. 69 of 1991 concerning Health Insurance (ASKES)
6. Law No. 33 of 1964 concerning Compulsory Passenger Accident Insurance Fund (DPWKP)/Jasa Raharja
7. Law No. 34 of 1964 concerning Road Traffic Accident Fund (DKLLJ)/Jasa Raharja
8. Law No. 40 of 2004 concerning the National Social Security System (SJSN)

An insurance agreement that is the basis in the insurer on one party to promise to do something of value for the insured as the other party upon the occurrence of a certain incident. An agreement that is the basis for one party to take over a risk faced by another party in return for payment of a certain premium. The existence of an insurance agreement does not mean that the insurer is automatically obliged to pay compensation loss to the insured party. This obligation will only be realized if a certain event that has been agreed upon occurs and the event causes a loss to the insured party. For an insurance claim to be processed, several conditions must be met, namely[32]:

- The occurrence of an uncertain event, in other words, this event is uncertain when or whether it will occur.
- There is a causal relationship between the event and the loss experienced.
- The loss is caused by a defect or decay of the insured object.
- The loss is not caused by the insured's fault.
- Following the principle of indemnity (balance), namely that compensation is given according to the loss experienced, no more and no less.
- The value of the insured object, some factors can aggravate the risk of loss.
- Subrogation, namely the insurer's right to replace the insured's position to sue a third party after paying compensation.

- Partnership of the insurer
- Restorno, namely the return of part of the premium if the risk is reduced.

C. Legal Principles Underlying the Implementation of Insurance Practices In Indonesia

An insurance agreement is a special agreement regulated in the Indonesian Commercial Code (KUHD). Due to its nature as a special agreement, in addition to following the general principles in contract law, an insurance agreement must also apply the special principles that apply in insurance. The principles are as follows[33]:

1. The principle of insurable interest

From a legal perspective, insurable interest means that a person who participates in an insurance contract where the participant or policyholder must have a special relationship to the subject matter of the insurance, whether it is related to life, wealth, or ability, where it will be designated. The principle of insurable interest is also explained in Article 250 of the KUHD, which states that if there is no interest, the insurer is not obliged to provide compensation. The interest in the insured object must already exist at the time the insurance agreement is made. If this requirement is not met, the insurer is not obliged to pay compensation.

2. The principle of good faith (Utmost Good Faith)

The principle of good faith means that both parties, both the policyholder and the insurance company, must act honestly and openly. This principle emphasizes that the insured is obliged to provide clear and complete information about all important facts relating to the insured object. Meanwhile, the insurer is also obliged to explain in detail the risks that are guaranteed and those that are excluded, as well as all the terms and conditions of the insurance. Clear and precise guarantee. The Utmost Good Faith principle applies at the time of the contract agreement, contract extension, and when there are changes in the contents or terms of insurance.

3. Principle of Indemnity Compensation

The principle of indemnity means that if someone experiences a loss and is insured, the insurance party will provide compensation so that their financial condition returns to the way it was before the loss occurred. This principle ensures that the person does not profit, but also does not lose, meaning that the insured's financial condition is the same as before the loss occurred.

4. Principle of subrogation

The principle of subrogation is the replacement of the insured's position with the insurer who has provided compensation to the insured. This principle is stated in Article 284 of the Commercial Code, which means that the principle of subrogation gives the insurer the right to replace the insured's position in suing a third party who caused the loss. After the insurer pays compensation to the insured, all the insured's rights against the third party are transferred to the insurer. This aims to prevent the insured from receiving compensation twice, either from the insurer or a third party, which is contrary to the principle of indemnity and is prohibited by law.

5. Contribution Principle

The contribution principle is the insurer's right to call or involve other insurers, who are not always the same, by the obligations or responsibilities of each party to the insured to share the cost of paying compensation. This means that this principle applies if double insurance occurs. In this situation, all insurers are only responsible for their respective portions of the actual loss value. The contribution principle ensures that the insured does not receive compensation exceeding the actual loss value, by the provisions of Article 278 of the Commercial Code.

6. Proximate Cause Principle

If the insured interest experiences a disaster or accident, the first step taken is to find the main cause that directly and continuously causes the event to occur. If the cause is clear and by the provisions, the claim will most likely be paid. However, if a claim is rejected, it is usually because there is a problem, such as the data in the policy not aligning with reality, or there is engineering by the marketing team for the sake of disbursing insurance funds.

D. Legal Challenges in the Implementation of Insurance Practices in Indonesia

The challenges of legal issues in the insurance sector in Indonesia is still facing several legal issues that require special attention. Although there are laws and regulations governing insurance, we still often encounter problems related to insurance. The following are legal challenges in the implementation of insurance practices in Indonesia:

1. Complex regulatory changes

Insurance regulations continue to develop, including changes to the Insurance Law (Law No. 40 of 2014) and other derivative regulations. Regulations of the Financial Services Authority (OJK) have also brought progress towards increasing the effectiveness of supervision and support for insurance companies[34]. Although regulations from OJK provide many benefits, the main challenge that is often found is that many industry players do not understand the applicable regulations. Many companies, especially small-scale companies, have difficulty following changes in regulations that often change and are quite complicated[35]. This can lead to unintentional non-compliance, which can ultimately harm consumers.

2. Suboptimal Consumer Protection

The principles of consumer protection in the financial services sector include transparency, fairness, reliability, confidentiality, security of consumer data and information, fast and simple complaint handling, and affordable dispute resolution costs. The common motive for committing insurance fraud is economic reasons, namely to gain financial gain. Of course, this often harms consumers. Consumer awareness of insurance regarding the activities of the financial services sector is urgently needed, so that the insurance financial services sector can be carried out in an organized, fair, transparent, and accountable manner.

3. Insurance Claim Disputes

Although insurance functions as an important financial protection, insurance companies cannot completely avoid problems or disputes. This problem usually arises when the insurance party does not pay claims (compensation) as they should. Disputes like this can happen to anyone and anywhere, either between individuals, individuals and groups, or even between groups.

E. Recommendations and Improvement Efforts in the Insurance Sector in Indonesia

Insurance in Indonesia still requires significant improvements and corrections in terms of legal regulations, public understanding, and the active role of the government. If this is not immediately fixed, the national insurance industry could be left behind, and its business opportunities will be exploited by foreign companies.

Therefore, comprehensive recommendations and improvement steps are needed so that insurance in Indonesia can develop better and be able to compete at the global level, including:

1. Improvement of regulations and increased supervision of law enforcement by the Indonesia OJK. OJK's supervision of the insurance industry is an important aspect in ensuring compliance and industry health. The OJK carries out various strict supervision activities, including routine audits and in-depth examinations of insurance companies. The results of this monitoring can be used as evaluation material in the reporting mechanism to ensure that all companies operate by applicable regulations.

2. Transparency and public education.

One of the important efforts made by insurance agencies in Indonesia is to increase transparency and education to the public regarding insurance. Good education will help the public understand the benefits of insurance and their rights as policyholders. In addition, increasing transparency in claims management and policy preparation can also increase public trust. Insurance companies also need to use digital technology so that the claims process and customer service are faster, more precise, and more efficient.

3. Increasing cooperation between insurance companies.

OJK, and dispute resolution institutions. In Indonesia, the Indonesian Insurance Mediation and Arbitration Agency (BMAI) plays an important role in resolving insurance disputes. BMAI aims to provide a fair, fast, and effective dispute resolution mechanism outside the courts. Currently, the public tends to use a dispute resolution system through dispute resolution methods outside the courts, because, in

principle, the dispute resolution method can provide freedom and benefits for both parties. One of the steps that can be taken is through mediation and arbitration. Overall, the research revealed that the implementation of insurance practices in Indonesia has a fairly strong legal basis, but is still faced with various challenges in its implementation, such as complex regulatory changes, suboptimal consumer protection, and problems.

IV. CONCLUSION

The implementation of insurance in Indonesia has a fairly comprehensive legal basis. These regulations are stated in various laws such as the Commercial Law Code (KUHD), Law Number 40 of 2014 concerning Insurance, and technical regulations from the Indonesia Financial Services Authority (OJK). Insurance is an agreement between an insurance company (insurer) and an insured party (insured) in which the insurance company is willing to provide compensation for losses, damages, or loss of profits due to unpredictable events, such as accidents, illnesses, or disasters. In return, the insured pays a premium to the insurance company according to the agreed provisions. Analysis of the legal basis and implementation of insurance agreements shows that, in general, the legal framework for insurance in Indonesia is quite complex.

Insurance agreements are recognized as valid contracts, with clear rights and obligations for the insurer (insurance company) and the insured (insurance participant). However, in reality, various challenges are still found in its implementation, such as complex regulatory changes, suboptimal consumer protection, and problems related to insurance claim disputes. Therefore, strategic steps are needed in the form of improving regulations and increasing supervision of law enforcement by OJK, transparency and public education, and increasing cooperation between insurance companies, OJK, and dispute resolution institutions. These efforts are important to realize an insurance system in Indonesia that is fair, inclusive, transparent, and sustainable. So that insurance can truly become an effective and trusted risk protection tool in Indonesia.

V. ACKNOWLEDGMENTS

We would like to express our deepest gratitude to our health insurance course supervisor for all the guidance, support, and valuable input during this research process. The guidance and suggestions provided were very helpful in clarifying the direction and content of our research. We would also like to express our gratitude to the Faculty of Public Health, Universitas Respati Indonesia, which has provided facilities, data, and a supportive atmosphere, so that we can complete this research well. This assistance greatly influenced the research results that we achieved. We would like to express our appreciation to our friends and colleagues who have shared ideas, enthusiasm, and discussions during this process. Their support and cooperation were very helpful in understanding and resolving the various challenges that arose during the research.

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