Application Of The Utmost Good Faith Principle In Life Insurance Business Management In Indonesia

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Abstract.

The study focused on the purpose of this writing is to find out the application of the principle of utmost good faith in life insurance. The research method used in this study is to use data collection methods in library research or library research. In this literature study the author obtains the materials and library materials needed by studying books, writings, journal citations and statutory and legal products that are related to the subject matter according to topics in Indonesia so that it can be concluded that: first, legal principles in insurance coverage include insurable interest, utmost good faith, indemnity principle, subrogation principle, causaliteit principle, contribution principle, cause principle, follow of fortune. Second, the types of risk in insurance are pure and speculative risk, diversifiable and non-diversifiable risk, company risk, systemic risk, financial and non-financial risk, individual and group risk, static and dynamic risk. Third, the application of the principle of utmost good faith in life insurance is very important, because if there is submission of information and information that is incorrect, it can result in the insurance agreement being cancelle.

Keywords*: Assurance, assurance risk, insurance principles and utmost good faith.*

I. INTRODUCTION

The insurance is defined as an agreement between two parties, namely the insurance company and the policyholder. The policy which is the basis for receiving premiums by insurance companies with various rewards to provide reimbursement to the insured or policyholder due to loss, damage, costs incurred, loss of profits, or legal liability to third parties that may be suffered by the insured or policyholder due to an event. which is uncertain. And or provide payments based on the death of the insured or payments based on the life of the insured with benefits whose amount has been determined and/or based on the results of fund management (Law of the Republic of Indonesia No. 40, 2014). The development of commercial health insurance in Indonesia was relatively slow until 1992 even though this insurance had existed since 1970, according to Thabrany in (Sari, 2016) this was due to the lack of a clear legal basis. Until the 20th century insurance companies experienced rapid development and growth. The more risks in various aspects of life that must be faced, the more insurance grows and the more it can develop properly (Fauzi, 2019).The choice of someone to use insurance services is usually based on the possibility that someone will experience a risk of loss in the future. So, it is requiring financial support to deal with it. For this reason, people finally choose to invest in insurance. The insurance that is generally chosen is general insurance such as home or property insurance, vehicle asset insurance, life insurance, death insurance, work accident insurance, and so on.

Aside from being a form of risk control (financially), insurance also has various benefits which are classified into: main functions, secondary functions, and additional functions. The main function of insurance is to transfer risk, collect funds and a balanced premium. The secondary function of insurance is to stimulate business growth, prevent losses, control losses, have social benefits and as savings. While the additional function of insurance is as investment fund and invisible earnings.According to (Sarwo, 2015) the growing development of the insurance business is followed by the emergence of fraud (insurance fraud). Fraud in the insurance business can be committed by all related parties, be it the insurance company, the insured, insurance support companies, brokers, and insurance agents. Based on research conducted by several doctors in germany on developed countries, there is a potential source of fraud in insurance companies, namely fraud in health care.This can be detrimental to insurance companies. Regarding health insurance, good faith in the form of providing accurate, honest, clear, and not misleading data or information (utmost good faith) must be given by consumers. Based on Article 3 of POJK Consumer Protection, PUJK has the right to ensure the correctness of consumer data and information. By providing correct and accurate data, consumers can avoid rejection of claims and disputes in the future (Goretti & Aditya Krisna, 2019). Therefore, it is necessary to have an in-depth understanding of the principle of utmost good faith.

II. METHODS

This study is a literature review that is part of a qualitative research, related to the research subject. Research is descriptive the social phenomena in detail. Based on this research, the research objective is to describe the development of health life insurance and health services in Indonesia.The data collection technique used by researchers in carrying out data and information collection is by taking secondary data where the information comes from the official Indonesian Ministry of Health (MOH) website, government regulation, internet, and scientific journals, also where the data obtained in in-depth interviews with the experts to confirmed the completeness of the policy or related data involved in this research. The method in this research is literature review. Literature review is writing on a particular topic or issue based on a literature search or research according to research topics originating from reading books, journals, and other published publications (Marzali, 2017). In this study using the keywords "utmost good faith", "principle of insurance", "insurance" and "insurance risk". The sources used are journals and books published at home and abroad and are original. Research sources are published on the internet through open access channels such as Google Scholar, Pubmed and ScienceDirect.

III. RESULT AND DISCUSSION

Theoretically, several important factors can be put forward as factors that influence the slow growth of health and life insurance in Indonesia. From a regulatory perspective, the Government of Indonesia has been relatively slow in disseminating the concept of insurance to the public through the ease of licensing and legal capacity in the insurance business or the development of social health insurance for the general public. In social insurance, the Indonesian government has been trying to introduce insurance principles since 1947, two years after Indonesia's independence. As developed in developed countries, health insurance evolved from social insurance in the field of accidents and occupational diseases. At that time, the Government required all companies to insure their employees against accidents and occupational diseases.

Legal Principles in Insurance Coverage

According to Goretti & Aditya Krisna (2019) there are six principles that must be considered by both parties in entering into an insurance agreement, namely:

1. The principle of good faith (the utmost good faith)

The principle of good faith is a principle that requires the parties to act honestly, and not to mislead or conceal any information that is important to the contract, with the application of good faith obliging all parties to disclose to the other party any information that might influence the other party's decision to enter a contract. (Mulhadi & Harianto, 2022)

2. The principle of insurable interest

Insurable interest is an important principle that determines the validity of an insurance policy. The insured party must always have a real interest in the subject matter he wishes to insure. To establish an insurable interest in respect of lawful non-ownership under English law, the insured must have some form of economic interest in the subject matter of the insurance contract. This requires that the party who is prone to suffer losses, the subject is covered by insurance, for example cargo is lost or damaged, the insured party is entitled to economic benefits since its arrival and/or is responsible for actions related to this matter. Conversely, if none of these three things apply, then the insured has no insurable interest, and the agreement becomes void (Alkhedhairy, 2022).

3. The principle of indemnity

Hlaing (2020) explains that the principle of indemnity is compensation for damage or loss. This is based on a contractual agreement made between two parties, in which one party agrees to pay for any potential loss or damage caused by the other party. According to the principle of indemnity, insurance contracts are entered into only to provide protection against unforeseen financial losses arising due to future uncertainties. Insurance contracts are not made to make a profit, and their main purpose is to provide compensation or indemnification in the event of damage or loss. Compensation paid is proportional to the losses incurred, compensation may not be less or more than the actual damage. Compensation is not paid if the specified loss does not occur for some reason during a certain period. So, insurance is only to provide protection against loss and not to make a profit. The principle of indemnity does not apply to life insurance because the value of human life cannot be measured in money.

4. The principle of subrogation

Subrogation means replacing his right to take legal action against another party. A person loses his right to benefit from legal actions and their consequences. The policyholder agrees to a clause that he will transfer his right to the insurance company to take legal action against those who cause damage to the property or interests of the insured (Nor et al., 2020)

5. The principle of contribution

The contribution principle stipulates that if the same property is insured by more than one policy, the insured can recover a proportion of the losses on each policy. If the subject matter has been insured by more than one guarantor, each insurer must bear the loss proportionally. If he has paid more than his share of the losses, he is entitled to recover the excess paid from his co-insurer. This principle applies in the case of fire insurance. However, even though this provision is not stated in the policy, the contribution will still apply because it is the legal right of the insurer to benefit from the contribution (Rene, 2020).

6. The principle of cause and effect (proximate cause)

Proximate cause is the main cause that can directly result in sequential events without the interference of other forces (Nurlaila, 2016). Meanwhile, according to (Johansson, 2013) there are 2 proximate cause provisions, namely the loss directly caused by the insured hazard and the hazard may not be excluded in the insurance policy.

Insurance Coverage Risk

According to (Redja et al., 2022) risk is uncertainty about the occurrence of a loss. For example, the risk of being killed in a car accident, the risk of lung cancer for smokers. Risks are divided into several types, namely:

1. Pure and speculative Risk

Pure risk is a situation where there is only the possibility of loss or no loss. The only possible outcomes are adverse (loss) and neutral (no loss). Examples of pure risk are death, work-related accidents and property damage from fire, lightning, flood, or earthquake. Speculative risk is a situation in which gains or losses may occur. An example is the purchase of shares (there are possible gains and losses).

2. Risks that can be diversified and risks that cannot be diversified

Diversifiable risk is risk that only affects an individual or a small group. This risk can be reduced or even eliminated by doing more than one business. For example, buying investment in stocks and bonds, when a stock suffers a loss, it can be offset by profits from bonds. Because this risk only affects certain individuals or small groups, it can be called non-systematic risk or special risk. Non-diversifiable risks are risks that affect the entire economy or many people or groups in the economy or can be called fundamental risks. This is a risk that cannot be eliminated or reduced by diversification. Examples of inflation, war, floods, and earthquakes.

3. Corporate Risk

Corporate risk is the risk faced by business companies, such as speculative risk, strategic risk, operational risk, and financial risk.

4. Systemic Risk

Systemic risk is the risk of collapse of the entire system or the entire market due to the failure of a single entity or group of entities which can result in damage to the entire financial system.

The economy experienced a massive financial crisis and stock market crash, the national unemployment rate soared to high levels. Meanwhile, according to (Gupta, 2016) the types of risk can be reviews as follows:

1. Financial and Non-financial Risks

Financial risk or called financial risk, because the risk can be measured in financial terms. Examples: property damage or property theft or business loss. Meanwhile, non-financial risks are more specific and difficult to measure when associated with insurance. For example: career choice risk, risk in choosing a study program, etc.

2. Individual and or Group Risks

A risk is said to be a group risk or fundamental risk if it affects the economy or the economy of the participants at a macro level and affects most of the social segments or the entire population. Examples: earthquakes, floods, and wars. Individual or special risks are limited to the identity of individuals or small groups. Examples are theft, robbery, and fire.

3. Pure and Speculative Risk

Pure risk is a situation where there is a possibility of loss or no loss. For example, a car may meet with an accident or may not meet with an accident. Speculative risk is a risk where there is a possibility of gain or loss. For example, if you invest in the stock market, you can profit or lose.

4. Static and Dynamic Risks

Dynamic risks stem from economic or environmental changes. These risks are difficult to anticipate or difficult to measure. For example, inflation, income levels, price levels, and technological changes. Static risk is the result of dishonesty or human failure, this risk is predictable and not affected by economic conditions. An example of a static risk of loss due to the actions of others. Risk can happen to everyone, whether it is an element of accident or comes from carelessness. One way to protect yourself from various types of risks that might occur is to have insurance. This is in accordance with the statement (Selvi H. Santri, 2018) that risks arising from events that are not expected to occur can be transferred to other people who take the risk to compensate for losses is the purpose of the insurance agreement.

Utmost Good Faith in Life Insurance

The definition of insurance is stated in the Law of the Republic of Indonesia Number 40 of 2014 article 1, namely insurance is an agreement between two parties, namely the insurance company and the policyholder. Which is the basis for receiving premiums by insurance companies in return for providing compensation to the insured or policyholders due to losses, damages, costs incurred, loss of profits, or legal liability to third parties that may be suffered by the insured or policyholders due to the occurrence of an event that uncertain, or provide payments based on the death of the insured or payments based on the life of the insured with benefits whose amount has been determined and/or based on the results of fund management.Meanwhile, the notion of life insurance is a promise from the insurer (insurance company) to the insured (customer) that if there is a risk of death to the customer, the insurance company will provide compensation to the heirs (Iriana et al., 2020). The Commercial Code itself does not discuss in detail the meaning of life insurance, but chapter 3 (Commercial Code) discusses life insurance, which, when detailed in Article 302, states that if a person's life can be insured for the needs of the person who interested, either for life or for a time determined by agreement. Furthermore, it is further explained in article 303 that the interested person can hold insurance, even without the knowledge or permission of the person whose life is insured.The principle of utmost good faith is a principle that obliges the parties to act honestly, and not to mislead or hide any information that is important to the contract, with the application of good faith obliges all parties to disclose to other parties any information that might influence the other party's decision to make contract (Mulhadi & Harianto, 2022).

Meanwhile (S. H. Santri, 2017) explains facts, main matters and matters related to the risk of coverage that must be informed to the insurer, because if there is submission of information and information that is incorrect, it can result in the insurance agreement being cancelled.For life insurance, the principle of utmost good faith can be seen in article 251 of the Indonesian Commercial Code, which reads: all notifications that are false or untrue, or all concealment of circumstances known to the insured, even if done in good faith, are of such a nature, that the agreement will not be held, or it will not be held with the same conditions, if the insurer knows the actual conditions of all these things, making the insurance void. Article 277 reads that various coverages are held in good faith for just one item, and with the first being covered in full value, only this is what applies and the following insurers are released. If the first insurer is not covered for the full amount, then the next insurer is responsible for the remaining value according to the order in which the insurance is held. In the principle of utmost good faith, honesty must be carried out by both parties, both the insured and the insurer, because an insurance contract is an agreement between the two parties. The insurer through the insurance agent/marketing provides an explanation of the clauses in the insurance policy without anything being covered such as guaranteed or excluded risks, so that the insured knows and does not feel cheated. The insured party must also be honest in disclosing important information that can affect the insurance contract, for example medical history.

The explanation regarding a valid agreement is contained in article 1320 of the Civil Code, for a valid agreement to occur, it is necessary to fulfill four conditions, namely, the agreement of those who are bound themselves, the ability to make an agreement, a certain subject matter and a cause that is not prohibited. Then it is further explained in article 1321 that no agreement has any power if it is given due to an oversight or is obtained by force or fraud.Article 1328 reads: fraud is a reason to cancel an agreement, if the fraud used by one of the parties is such that the other party will not enter into the agreement without deception. Fraud cannot only be guessed at; it must be proven. So, if it is proven that there is fraud or fraud in the insurance agreement, the agreement is cancelled. From the explanation above, the application of the principle of utmost good faith in life insurance is very important and is the foundation of the insurance contract, because if there is a violation of the principle of utmost good faith, the insurance policy will become invalid. The following are some applications of the principle of utmost good faith in insurance. Analysis of dispute cases between Endry Suryanti and PT. Asuransi Allianz Life Indonesia conducted by Widiarto (2020), which is the basis for refusing the insured's claim is a violation of the principle of utmost good faith. This is because the insured provided incorrect information when submitting the insurance policy, namely that he had never suffered from illness but based on a diagnosis from Yos Sudarso Padang Hospital stated that the insured was suffering from Acute Lung Oedem (kidney failure) which he had experienced for approximately two years. The impact of violating the principle of utmost good faith is that the insurer has the right to cancel the insurance policy and not pay the death benefit because the insured did not fill out the SPAJ and form with the actual conditions.

According to research conducted by Siti et al. (2021) in the field of insurance in Malaysia, takaful operators will submit certain requirements to individuals or institutions that will participate in the takaful insurance. These requirements must be disclosed based on the principle of utmost good faith. Based on this principle, takaful participants are required to disclose facts or other important matters to takaful operators. These important things are used to ensure the health and finances of takaful participants which will affect the sum insured. If there is an incident where the participant fails to adhere to the principle of good faith, this will lead to misrepresentation and non-disclosure events which may result in the termination of the takaful certificate and rejection of the claim. The insurance and takaful industry in Malaysia is currently regulated by IFSA 2013 which has replaced the Takaful Act 1984. The law addresses the obligation of full good faith or the application of the principle of utmost good faith which shows that the Act places great emphasis on full disclosure in contracts by each contracting party (Siti et al., 2021). Another study conducted by Olivia & Chinelo (2021) stated that the principle of utmost good faith is a minimum standard that legally requires all parties to a contract to act honestly and not mislead or hide important information from one another. Parties to an insurance contract include the insurer meaning the licensed insurance agent or broker and the applicant or the insured. Violation of the principle of utmost good faith can result in several things, namely contracts made with inaccurate information from intentional misinformation or fraudulent concealment can cause the contract to become irrevocable, in the case of providing goods or services before information is known or disclosed, parties who miss-information can lead to legal action. This legal action may take the form of reimbursing costs associated with fulfilling a contract that could be considered fraudulent.

IV. CONCLUSION

Based on the results and review of the literature, the following conclusions can be drawn: risk can happen to everyone, whether it is an element of accident or comes from carelessness. Risk consists of pure risk, namely situations where there is only the possibility of loss or no loss, speculative risk, namely situations where gains or losses may occur, diversifiable risk, namely risks that only affect individuals or small groups where the risk can be reduced or even eliminated by doing more than one business, risks that cannot be diversified are risks that affect the entire economy or many people or groups in the economy or can be called fundamental risks.Corporate risk, namely the risk faced by business companies, systemic risk, namely the risk of collapse of the entire system or the entire market due to the failure of a single entity or group of entities that can result in damage to the entire financial system, financial risk, namely risk that can be measured in financial terms, non-financial risk, namely risks that are more specific in nature and difficult to measure when associated with insurance, individual risks, namely risks on the identity of individuals or small groups, group risks, namely risks that affect most social segments or the entire population, static risks, namely risks originating from dishonesty or human failure and dynamic risk, namely the risk that comes from economic or environmental changesOne way to protect yourself from various types of risks that might occur is to have insurance. Insurance is an agreement between the insurance company (the insurer) and the policyholder (the insured) in which the insured pays a certain amount of contributions to the insured, to provide reimbursement to the insured due to various risks such as loss, damage, costs incurred, loss of profits or legal liability to third parties which may be suffered by the insured.

The legal principle in insurance coverage consists of the utmost good faith principle, namely the principle that requires the parties to act honestly, and not to mislead or hide any information that is important to the contract. The principle of insurable interest, namely that the insured party must have some form of economic interest in the subject of the insurance contract, the principle of indemnity, namely compensation for damage or loss in which one party agrees to pay for potential loss or damage caused by the other party.The principle of subrogation, namely transferring the right of the insured to the insurance company to take legal action that causes damage to the insured property or interest, the principle of contribution, namely the insured can recover a proportion of the losses on each policy if the same property is insured more than one policy and the principle of cause and effect (proximate cause) is the main cause that can directly cause sequential events to occur without the intervention of other forces. The principle of utmost good faith in life insurance is the foundation of the insurance contract, because if there is a violation of the principle of utmost good faith, the insurance policy becomes invalid. The application of the principle of utmost good faith has been regulated in the Indonesian Commercial Law Code, article 251 which reads: All notifications that are false or untrue, or all concealment of circumstances known to the insured, even if done in good faith, are of such a nature that the agreement will not be held. or not held with the same conditions. If the insurer knows the real condition of all these things, makes the insurance void and article 277 which reads various insurances are held in good faith for one item only, and with the first being covered in full value, only this applies and the following insurers are released.

If the first insurer is not covered for the full amount, then the next insurer is responsible for the remaining value according to the order in which the insurance is held (Book of Commercial Laws). Civil Article 1320 statements, that for a valid agreement to occur, it is necessary to fulfill four conditions, namely, the agreement of those who bind themselves, the ability to make an agreement, a certain subject matter and a cause that is not prohibited. Article 1321 namely that no agreement even has power if given due to an oversight or obtained by coercion or fraud and article 1328 namely Fraud is a reason to cancel an agreement, if the deception used by one of the parties is such that the other party will not enter into the said agreement without deception. Fraud cannot only be guessed at; it must be proven. So, if it is proven that there has been fraud or fraud in the insurance agreement, the agreement will be canceled in accordance with the Indonesian Civil Code that is currently in force.

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REFERENCES

[1] Alkhedhairy, M. (2022). *Fundamental Principles in Saudi Arabia's Marine Insurance Law with Reference To The Law And Practice In Egypt And The UK: A Comparative Study*.

[2] Fauzi, W. (2019). *Hukum Asuransi di Indonesia*. Andalas University Press.

[3] Goretti, M., & Aditya Krisna. (2019). *Asuransi Kesehatan* (Camelia & D. Hondri S, Eds.; 7th ed.). Otoritas Jasa Keuangan.

[4] Gupta, P. (2016). *Essentials of Insurance and Risk Management*.

[5] Hlaing, Z. C. (2020). Contract of Indemnity. *Contract Of Indemnity, XVI* (8), 219–237.

[6] Iriana, N., Purnamasari, I., & Nasution, Y. N. (2020). Penentuan Cadangan Premi Asuransi Jiwa Seumur Hidup Menggunakan Metode Zillmer. ***Jurnal Matematika Statistika Dan Komputasi***, *16*(2), 219–225.

[7] Johansson, H. (2013). *Causation in Hull Insurance A Comparison of English and Nordic Marine JASM01 Master Thesis Maritime Law.*

[8] Kitab Undang Undang Hukum Dagang. (n.d.). *Kitab Undang Undang Hukum Dagang (Wetboek van Koophandel voor Indonesie).*

[9] Kitab Undang Undang Hukum Perdata.

[10] Marzali, A.-. (2017). Menulis Kajian Literatur. ***ETNOSIA: Jurnal Etnografi Indonesia***, *1*(2), 27. https://doi.org/10.31947/etnosia.v1i2.1613

[11] Mulhadi, M., & Harianto, D. (2022). Utmost good faith principle in Indonesian insurance law as a legal reason to harm the insured party. *Insurance Markets and Companies*, *13*(1), 81–89. https://doi.org/10.21511/ins.13(1).2022.07

[12] Nor, M. Z. M., Mahdzir, N., & Mohamad, A. M. (2020). Acceptance of conventional insurance principles as takaful basic principles: Shariah and legal analysis. ***Journal of Critical Reviews***, *7*(8), 1550–1553. https://doi.org/10.31838/jcr.07.08.306

[13] Nurlaila. (2016). Analisis Pengakuan Pendapatan Premi Asuransi Jiwa Ditinjau dari Pernyataan Standar Akutansi Keuangan (PSAK) Nomor 36 Pada Ro D'citizen PT Asuransi Takaful Keluarga di Kota Makassar. ***Jurnal Riset Edisi 1***, *1*(36), 1–23.

[14] Olivia, O. E., & Chinelo, A. V. (2021). An Appraisal on The Effect Of The Principle Of Utmost Good Faith In Insurance Contracts: A Clear Contrast Between Non Disclosure And Misrepresentation. In ***NAU.JCPL*** (Vol. 8, Issue 5).

[15] Redja, G. E., McNamara, M. J., & Rabel, W. H. (2022). Principles of Risk Management and Insurance. In ***The Journal of Risk and Insurance*** (Vol. 62, Issue 4). https://doi.org/10.2307/253600

[16] Rene, N. N. (2020). *The Doctrine of Indemnity and Fire Insurance Policy in Cameroon A*. https://ssrn.com/abstract=3691141

[17] Santri, selvi H. (2018). Pelaksanaan prinsip subrogasi pada asuransi kendaraan bermotor menurut kitab undang-undang hukum dagang. *Uir Law Review*, *02*, 354–369.

[18] Santri, S. H. (2017). Prinsip Utmost Good Faith Dalam Perjanjian Asuransi Kerugian. ***Jurnal Universitas Islam Riau***, *01*(01), 77–82.

[19] Sari, K. (2016). Perkembangan Asuransi Kesehatan Swasta di Indonesia Tahun 2012- 2016. ***Jurnal Ekonomi Kesehatan Indonesia***, *2*(2), 48–58.

[20] Sarwo, Y. B. (2015). Tinjauan Yuridis Terhadap Kecurangan (Frauds) Dalam Industri Asuransi Kesehatan di Indonesia. ***Jurnal Kisi Hukum Unika***, *14*(1), 1–15.

[21] Siti, D. R., Razali, S., Fadhil, A., Mohd, H., & Ii, A. (2021). Remedies For Misrepresentations In Takaful Contract: Current Industry Practice In Malaysia. In *Hamdard Islamicus: Vol. XLIV* (Issue 3).

[22] Undang Undang Republik Indonesia No. 40, 2014. (2014). UU RI No.40 Tahun 2014 tentang Perasuransian. *Www.Ojk.Go.Id*, 1–46.

[23] *Undang Undang Republik Indonesia Nomor 40 Tahun 2014 Tentang Perasuransian*. (n.d.). Retrieved May 16, 2023, from Www.Ojk.Go.Id, 1–46.

[24] Widiarto, S. A. (2020). Pelanggaran Prinsip Utmost Good Faith Dan Waiting Period Pada Asuransi Jiwa (Studi Kasus Putusan No. 138/PDT.G/2012/PN.PDG). ***Jurnal Ilmu Sosial Dan Pendidikan***, *4*(4), 166–174.