

RESPONSIBILITY OF THE MARINE HULL AND MACHINERY COMPANY OF INSURED CLAIMS

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ABSTRACT:

Risks at sea can occur in any form and anywhere, for example ships sinking due to collisions, bad weather at sea, cargo decaying, damaged, lost or stolen, or other events that cause trading activities carried by ships to run smoothly and result in losses / lost profits for all parties. To protect the parties in trading activities by sea from a variety of possible events that can be detrimental / result in loss of profits, there needs to be a mechanism or means to divert the risk of the parties' losses from damage / loss of goods or physical defects / loss of life resulting from operations merchant ships at sea. Means of transferring the risk through insurance. This research is a qualitative descriptive study. The research approach used in this paper is the statute approach. The statute approach is carried out by examining all laws and regulations relating to the legal issues being addressed. The research conducted is aimed more at the approach to laws and regulations associated with the problem of Responsibility of the Marine Hull and Machinery Company of Insured Claims. Data Analysis Techniques Data analysis techniques used for this study are deductive analysis methods, namely the method of data analysis that began from the general postulates of certain postulates and paradigms as a base for starting conclusions. Liability of the guarantor for claims in Marine Hull and Machinery insurance is to provide protection for the rights of the insured that has been promised at the time of insurance closure that has been made with a deed that is an insurance policy or in other words the guarantor is responsible for providing compensation to him due to an expected loss, damage or loss of profit, which may be he will suffer because of an unspecified event based on the policy agreed upon as long as the policy is made meeting the basic conditions of the agreement and fulfilling the principles of the insurance agreement.

Keywords: responsibility of insurance company, insurance claims, insurance

INTRODUCTION

Activities at sea can not be separated from the mode of transportation that can be used at sea itself, namely ships. Ships are the main means of supporting all activities that can be carried out at sea where a large number and types of ships are used for various purposes both private and commercial. Increased activity at sea itself also certainly increases the risks that can occur at sea activities, especially risks that can be experienced by ships as the main mode of transportation used to carry out activities at sea. Risk is an unexpected event that occurs suddenly that causes losses. Risks that arise can also arise at any time and have many triggering factors that are unexpected and can cause great losses so this risk must be a concern of business people or individuals engaged

in marine activities. This is the basis for business people or individuals thinking of overcoming these risks (Radiks, 1998).

Risks at sea can occur in any form and anywhere, for example ships sinking due to collisions, bad weather at sea, cargo decaying, damaged, lost or stolen, or other events that cause trading activities carried by ships to run smoothly and result in losses / lost profits for all parties. To protect the parties in trading activities by sea from a variety of possible events that can be detrimental / result in loss of profits, there needs to be a mechanism or means to divert the risk of the parties' losses from damage / loss of goods or physical defects / loss of life resulting from operations merchant ships at sea (Gentur Putro Jati.2012). Means of transferring the risk through insurance. Insurance is a non-bank financial institution that carries out activities in the field of financial services that directly or indirectly raise funds from the public by issuing securities. Insurance as one of the non-bank financial institutions, plays a very important role for the people who have an interest in protecting the assets that belong to them as well as their body and soul. Protection is in the form of transfer of loss if there is a risk or an uncertain event suffered by the owner of the property if it is loss insurance, and physical disability or loss of life if it is in the form of insurance.

The most basic thing of conducting an insurance business is the transfer of risk of loss due to danger / event that makes the insured suffer losses either loss of profits, disability or death. With this risk transfer, the losses arising from the danger / evenemenemen of the insured object, become the burden of the Insurer (insurance company). The burden of the Insurer is to pay compensation to the Insured (policyholder) the amount in accordance with the conditions agreed in the insurance agreement that has been made. Associated with insurance activities to divert all language risk / evenemen in trading shipping activities through the sea or known as sea insurance. Sea insurance is needed in order to maintain the safety of the parties involved in shipping activities.

This is the basis for business people or individuals thinking of overcoming these risks. Efforts that can be done by humans in overcoming a risk are (Sri Rejeki, 2001):

1. Avoidance, someone who is away or avoiding a job, an object that is full of risks, means he is trying to avoid the risk itself. Or do or not do something so as not to get a loss.
2. Prevention by preventing, a risk might be overcome so that some bad effects that are not desired will be avoided. Or take certain actions with the aim of at least reducing losses
3. Transfer with this model, namely how to transfer the risk contained understanding that someone at risk asks others to accept the risk. Risk transfer is done by an agreement. Included in this understanding is coverage (insurance). Or the bad possibility that happened to him can be transferred to another party.
4. Accept (assumption or retention), this model means that someone has just resigned to the risk that he will bear. This can happen, because if a risk that he will bear. This can happen, because if a risk faced by someone is not expected to be so great or if the efforts to avoid, prevent, divert greater profits are calculated then people will face these risks.

The most common method of handling risk is to transfer risk to another party because of the natural nature of humans to worry about everything that happens in their lives. Worry about an uncertain situation that can cause a loss makes someone look for a way to be able to handle the risk of that uncertainty so that the uncertainty does not have a significant impact and can pose a threat of harm to a person and his life. One way to manage risk that can be used is to transfer risk by binding insurance agreements with the insurance. The transfer of risk through insurance

agreements in Indonesia is regulated in Act Number 40 of 2014 concerning insurance and also in the Code of Trade Law. Where according to Article 246 KUHD said that:

“Insurance or coverage is an agreement, by which a guarantor binds himself to an insured, by receiving a premium, to provide compensation to him due to an expected loss, damage or loss of profit, which he may suffer from an unspecified event.”

Whereas in Law Number 40 of 2014 concerning Insurance provides insurance definitions as follows: "Insurance is an agreement between two parties, namely an insurance company and a policy holder, which is the basis for receiving premiums by insurance companies in return for:

- a. provide reimbursement to the insured or policy holder due to loss, damage, costs incurred, lost profits, or legal liability to third parties that may suffer the insured or policyholder due to an uncertain event; or
- b. provide payments based on the death of the insured or payments based on the life of the insured with benefits the amount of which has been determined and / or based on the results of fund management. "

In a voyage a ship cannot be guaranteed that the ship is free from a risk that can occur unexpectedly that can cause harm to the ship owner, therefore one of the ways used in dealing with these risks is to insure the ship, insurance that can used on ships is Marine Hull and Machinery insurance. This insurance is insurance that guarantees damage or loss to ships, machinery and equipment from sea hazards (perils of the sea) and cruise risk (navigational perils). This insurance is the main insurance in ship insurance because it deals directly with the physicality of a ship which is the most vital part, but there are some additional liabilities that can be covered based on the price of hull and machinery coverage including intangible loss or abstract losses that accommodate loss of income or loss of ability to earn income due to the inoperation of the ship. The transfer of risk carried out by the owner of the ship through an insurance agreement aims to guarantee its interests against losses that can arise from the uncertainty of circumstances which may befall the ship at any time, therefore the insurance company as a risk transfer agency or the party receiving the risk must be able to provide protection and a sense safe to ship owners who have tied themselves up with the insurance company.

Insurance companies must be able to provide protection for the interests of the insured who has entered into an agreement with the insurance company. The insurance agreement entered into by the guarantor and the insured gives rise to a legal relationship between the insured and the guarantor as stipulated in the policy governing matters agreed between the parties starting from the large sum insured to the problem of claims and claim settlement. In carrying out their duties as a risk transfer agency or those who accept risk transfer, they are not immune to facing the problem of many potential conflicts that can occur in this insurance because the process tends to be long and involves many parties. In addition, the policies and laws used in settling claims refer more to international law and customs. The claim process in Marine Hull and Machinery insurance is also not easy and simple.

Problem

What is the responsibility of the guarantor for claims in Marine Hull and Machinery insurance?

Research Methods

- a. Type of Research

This type of research uses the normative legal research method, which is a scientific research procedure to find the truth based on legal scientific logic from the normative side (Johnny Ibrahim, 2006). In this normative law research is more focused on examining the application of the rules or norms in positive law, especially those relating to the responsibility of the Marine Hull and Machinery Company of Insured Claims (Dewanta, Mukti Fajar dan Yulianto Achmad, 2013).

a. Type of Data

In normative legal research or library data collection techniques used are literature studies of legal materials, both primary legal materials, secondary legal materials and tertiary legal materials and or non-legal materials (Mukti Fajar, 2006).

1). Primary legal materials in the form of laws and regulations, such as:

- a. Civil Code
- b. Book of Commercial Law
- c. Law of the Republic of Indonesia Number 40 of 2014 concerning Insurance.
- d. Minister of Finance Decree No. 422 / KMK.06 / 2003 of 2003 concerning Business Conduct.

2). Secondary legal materials are legal books and legal journals. In addition, legal dictionaries, and comments on court decisions relating to the object of research, and relating to writing.

3). Tertiary legal materials are materials that provide information about primary legal materials and secondary legal materials, such as: legal dictionaries, and language dictionaries. Non-Legal Materials, even in legal research in academic purposes non-legal materials.

c. Nature of Research

The research conducted is descriptive in nature, which is describing the symptoms of the community environment in a case which is a method of research that results in descriptive data. The author hopes to be able to further examine and provide researched data about the object under study as for the writer wants to give a description of the safety standards set out in the Act.

d. Research Approach

The research approach used in this paper is the statute approach. The statute approach is carried out by examining all laws and regulations relating to the legal issues being addressed. The research conducted is aimed more at the approach to laws and regulations associated with the issue of responsibility of the Marine Hull and Machinery Company of Insured Claims.

e. Data Analysis

Data Analysis Techniques used for this study are deductive analysis methods, namely data analysis methods starting with general postulates and certain paradigms as a base for starting conclusions..

Discussion

Indonesia as the largest maritime country in the world, which is 2/3 of its territory is a maritime territory in addition to being a maritime country Indonesia is also known as the largest archipelago country in the world, between one island and another island separated by the sea. Since ancient times, inter-island shipping and trade has evolved using various types of traditional boats. Sea used as a means to meet the needs of life and sources of livelihood, the sea in this case has become a very important since ancient times. The consequences of the maritime nature that is owned by Indonesia itself is more directed to the realization of shipping activities in the territory of Indonesia. In this sentence that Indonesia as an archipelago in developing the economy will

always be based on shipping activities aimed at the growth and development of the Indonesian economy or trade in particular.

Marine Hull And Machinery Insurance is one of the types of loss insurance, which is a coverage agreement that covers the hull and also the engine of the ship. Seeing the existence of a cooperation agreement regarding the insurance closure, the agreement should have met the provisions of Article 1320 of the Civil Code regarding the legal conditions of an agreement, namely:

1. Agree those who commit themselves. The insurance agreement is carried out with the will of both parties without coercion and both parties have the will to co-exist or in other words both parties want what they agree on. This can be proven by signing the policy as a deed of agreement made because both parties have agreed on what was promised and did not feel disadvantaged by what was agreed.
2. The ability to make an agreement or an agreement Both parties must be proficient in making this agreement regulated in Article 1329 of the Civil Code and a person is said to be competent if he is not included in the category of incompetence provided for in Article 1330 of the Civil Code which is said to be incompetent is:
 - a. Minors
 - b. People who are under ability. Both parties are legal subjects in the form of legal entities namely PT.P (Persero) as the insured and PT. Asuransi Pratama Indonesia as a guarantor who therefore acts by being represented by someone acting on behalf of the legal entity or appointed by the legal entity so that in the agreement both parties are represented by the authorized and competent person in entering into the agreement and acting as a representative of the parties.
3. An object specified in the insurance agreement between the insured namely PT. P (Persero) with PT. Tugu Pratama Indonesia in the form of a tanker, namely MT. K, is an item that has economic value, where the amount of coverage is USD. 8,850,000.00 is the value that is covered with one consideration, namely the price of the ship and the damages that can be suffered by the object of coverage can be valued at a certain price or value.
4. Legal reasons The purpose of the insurance agreement made by the insured is PT. P (Persero) with PT. Tugu Pratama Indonesia is to provide reimbursement to him due to an expected loss, damage or loss of profit, which he may suffer from an uncertain event.

The purpose of this agreement does not conflict with applicable law and does not conflict with decency and public order. In addition to the elements of the agreement there are principles that make the insurance agreement more special compared to the agreement in general is the existence of special principles applied to an insurance agreement, where these principles must be absolutely fulfilled by the parties that bind themselves in a insurance agreement that is contained in Book I Chapter IX KUHD:

1. The principle of indemnity is a major principle in an insurance agreement, because it is the principle that underlies the mechanism of work and provides the direction of the purpose of the insurance agreement itself (specifically for insurance loss). The insurance agreement has the main and specific goal is to provide compensation to the insured party by the insurer. Understanding the loss may not cause the insured's financial position to be more profitable than the position before suffering losses. Insurance agreement between the insured namely PT. P (Persero) with PT. Tugu Pratama Indonesia is carried out on the basis of providing

- compensation to the insured party where the compensation is to restore the insured's position as before the loss occurred and not in a more favorable position than before the loss occurred.
2. Principle of insurable interest The insurable interest is the second main principle in an insurance or insurance agreement. Every party who intends to enter into an insurance agreement, must have an insurable interest, the intention being that the insured party has such an involvement with the consequences of an uncertain event and the person concerned suffers from the loss suffered must be assessed at an economic value where where the sum assured is USD. 8,850,000.00 is the value that is covered by one consideration, namely the price of the ship and the damages that can be suffered by the object of coverage can be assessed at a certain price or value. Where the insured party is PT. P (Persero) must have an interest in the goods to be insured to the guarantor, in this case PT. P (Persero) is domiciled as the owner of the insurance object, namely MT. K.
 3. The principle of perfect honesty / Utmost good faith This principle of honesty is actually the principle of every agreement, so it must be fulfilled by the parties who entered into the agreement. Failure to fulfill this principle at the time of closing the agreement will result in a defect, as is the meaning of all the basic provisions stipulated by Article 1320 - Article 1329 of the Civil Code. However good faith is a major basis and trust that underlies every agreement and the law basically does not protect the parties in bad faith. This principle can cover other principles where if this principle is violated then the insurance agreement will be deemed to be defective and is a reason to cancel the insurance agreement. If the agreement is canceled then the insured can no longer submit a claim or the insurance agreement is said to be canceled. If this principle is violated by the insured, this is one of the reasons that the insurer can reject the claim submitted by the insured. The principle of honesty is actually the principle of every agreement, so it must be fulfilled by the parties who entered into the agreement. Insurance agreement between the insured namely PT. P (Persero) with PT. Tugu Pratama Indonesia must also be done by providing the necessary data in closing this insurance. Because the guarantor will only close the insurance agreement after the insured meets the conditions given by the guarantor.
 4. The principle of subrogation This principle of subrogation is the principle applied to the guarantor. This principle is regulated in the KUHD, this principle is expressly regulated in Article 248: "An insurer who has paid for the loss of an item insured, replaces the insured in all rights he has obtained against third parties in relation to issuing the loss; and the insured is responsible for any actions that can harm the insurer's rights to these third people. " This subrogation principle is a principle that is related to the first principle where this principle is a logical consequence of the principle of indemnity and to protect the guarantor..
 - a) Subrogation in insurance is subrogation regulated in the law so that it can only be applied if it meets the requirements, namely:
 - b) a) If the insured in addition to having rights to the guarantor still has rights to third parties.
 - c) b) The right arises, due to a loss. In the case of a claim between the insured, PT. P (Persero) with PT. Tugu Pratama Indonesia has no implementation of this principle because it does not meet the conditions set for subrogation due to damage to MT ships. K is not caused by a third party.

After the agreement is agreed, it will have legal consequences as regulated in Article 1338 of the Civil Code, namely (Ganie, Junaedy, 2003):

1. All treaties made legally apply as a law to those who make them;

2. The agreement cannot be withdrawn other than by agreeing between the two parties, or for reasons which by law are declared sufficient for that;
3. The agreement must be implemented in good faith. The agreement made between the parties will legally become a law that binds the parties to the said agreement, in this case the law is a document called a policy signed by both parties at the time the insurance agreement is closed.

The policy has an important meaning for the insured, because the policy is perfect proof and the only perfect proof of what is the insured and the party responsible for an insurance agreement. For the insured the policy has a vital and very decisive role in proving his rights, even though it is not an absolute requirement for the validity of an insurance agreement. The policy will become a binding basis for the legal relationship between the guarantor and the insured where as a result of the legal relationship will give birth to the rights and obligations of each party in carrying out the agreement. The responsibility of the guarantor for claims in Marine Hull and Machinery insurance is to provide protection for the rights of the insured that has been promised at the time of insurance closure that has been made with a deed, which is an insurance policy or in other words the guarantor is responsible for providing compensation to him due to a loss, damage or loss of expected profits, which may be suffered due to an unspecified event based on the policy that has been agreed as long as the policy is made meeting the basic conditions of the agreement and fulfilling the principles of the insurance agreement.

It is important for the insured to understand what he has promised in the policy with the guarantor so that when an event occurs he can understand what must be done so that the rights can be fulfilled by the insurer and can also carry out what is his obligation in the agreement so that at the time of the event the insured is in a strong position and his rights can be fulfilled. This agreement also requires good faith from both parties to avoid any problems in the event of a claim in the agreement where the insured must be honest in providing information about the state of the object to be insured and the guarantor as well..

Conclusion

Liability of the guarantor for claims in Marine Hull and Machinery insurance is to provide protection for the rights of the insured that has been promised at the time of insurance closure that has been made with a deed that is an insurance policy or in other words the guarantor is responsible for providing compensation to him due to an expected loss, damage or loss of profit, which may be he will suffer because of an unspecified event based on the policy agreed upon as long as the policy is made meeting the basic conditions of the agreement and fulfilling the principles of the insurance agreement.

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