

SETTLEMENT OF DEFAULTS IN THE LIFE INSURANCE POLICY BETWEEN THE INSURER AND THE INSURED

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Abstract

When the policy holder or insurance participant or the insured experiences a disaster or suffers a loss or damage as stated in the contract, the insured has the right to file an insurance claim. The recipient of this insurance is not only the insured whose name is listed as the policy holder of the insurance company but can also be another person appointed directly by the insured. The formulation of the problem in this study is the Default in the Life Insurance Policy between the Insurer and the Insured, how Settlement of Defaults in Life Insurance Policies Between the Insurer and the Insured and What are the Legal Consequences for Settlement of Defaults in a Life Insurance Policy between the Insurer and the Insured. The purpose of this research is to analyze Default in a Life Insurance Policy between the Insurer and the Insured, To Analyze Settlement of Defaults in Life Insurance Policies Between the Insurer and the Insured To Analyze Legal Consequences Settlement of Defaults in Life Insurance Policies Between the Insurer and the Insured. This research method is normative legal research. The conclusions in this study have answered the problems that arise, namely: Default in a Life Insurance Policy between the Insurer and the Insured that a life insurance agreement is made between the policy holder and the insurer, with the consequence that the policy holder pays the premium and the insurer provides risk protection to the policy holder and/or the insured within a certain time as stipulated in the agreement. Default can be done by the policyholder, one of which is by not paying life insurance premiums until the grace period ends. Settlement of Defaults in Life Insurance Policies Between the Insurer and the Insured that The insurer and the insured binding themselves in the insurance agreement must be in accordance with the provisions of the applicable laws and regulations, which are contained in Article 1338 Paragraph (1) of the Civil Code. This provision states that when the agreement has been agreed by both parties, then the agreement will apply as a law that will bind the parties therein. Because of law Settlement of Defaults in Life Insurance Policies Between the Insurer and the Insured that if the premium is not paid by the policyholder, the life insurance agreement can be canceled by law and the policy will be canceled or called lapsed, namely the termination of insurance coverage as a result of not paying premiums until the insurance contract period ends and the premiums that have been paid will not be returned.

Keywords: Insured, Insurer, Insurance Policy

INTRODUCTION

The process of transferring risk from the insured to the insurer does not just happen without any obligations. The insured who has agreed to enter into an insurance agreement with the insurer which in this case is life insurance, has the obligation to pay a sum of money to the insurer. The payment of the money is used to replace the loss suffered by the insured while the insurer is obliged to bear the amount of the loss. However, if later the event referred to in the agreement does not occur then the money remains the property of the party who bears it.¹

For example, the District Court Decision No. 226/Pdt.G/2005/PN. Jkt. Pst. Regarding Default in payment of insurance claims and related laws and documents, the claim he submitted was really complicated by the defendant, even the defendant stated that the plaintiff was not included in the Manulife Indonesia life insurance program as stated in the defendant's exception. The plaintiff is registered as the holder of the life insurance policy of the defendant since March 12, 2004. In this case, the plaintiff also includes his two sons on behalf of Deny Indra Gunawan and Calvin in this insurance. On December 29, 2004 the Plaintiff fell ill and had to be hospitalized and treated at several hospitals both domestically and abroad.

As with case No. 226/Pdt.G/2005/PN. Jkt. Pst About Default in payment of insurance claims by Mrs. Henny Susianti (plaintiff) against Manulife Indonesia Life Insurance (defendant). The claim he submitted was really complicated by the defendant, even the defendant stated that the plaintiff was not included in the Manulife Indonesia life insurance program as stated in the defendant's exception.²The plaintiff has been registered as the holder of the defendant's life insurance policy since March 12, 2004. In this case the plaintiff also included his two sons on behalf of Deny Indra Gunawan and Calvin in this insurance. On December 29, 2004 the Plaintiff fell ill and had to be hospitalized and seek treatment at several hospitals both domestically and abroad, on January 12, 2005 the Plaintiff filed a claim against the defendant for the costs incurred during treatment, it turned out that the claim was rejected twice by the parties. the first defendant on February 11, 2005 and the second on April 21, 2005. Thus, the plaintiff considers, that the defendant has defaulted or broken a promise because the plaintiff has used the services and paid the premium properly for Manulife Indonesia Pro Life-20 Insurance with the addition of Hospital Benefit 99 PLAN AA 4 (Hospital care benefits 99) and is entitled to 24-hour emergency medical services from Global Assistance & Healteare but the defendant is reluctant to pay the insurance claim suffered by the plaintiff. Meanwhile, the terms and conditions for submitting a claim have followed the provisions contained in the insurance policy. However, the defendant was reluctant to pay the insurance claim to the plaintiff by arguing that his claim had expired (the term in Lapse insurance). Although the plaintiff's claim has been rejected, there is still good intention from the plaintiff to settle it amicably with the assistance of a lawyer from the plaintiff. However, it turned out that there was no goodwill response from the defendant, so the plaintiff felt that he was in a disadvantaged position and tried to take this case to law.

¹ Djoko Prakoso and I Ketut Murtika, *Indonesian Insurance Law*, (Jakarta: Bina Aksara, 1989), p.1

² Djoko Prakoso and I Ketut Murtika, *Indonesian Insurance Law*, (Jakarta: Bina Aksara, 1989), p.1

Decision No. 603/Pdt.G/2010/PN Jkt Sel, dated May 26, 2011 categorically rejected the Plaintiffs' claim in its entirety. Subsequently, the Plaintiffs filed an appeal to the Jakarta High Court. The Jakarta High Court overturned the Decision of the South Jakarta District Court by issuing its Decision Number 652/PDT/2011/PT DKI, dated April 4, 2012, by agreeing to accept the appeal from the Appellants and canceling the South Jakarta District Court's Decision Number 603/Pdt.G/2010 /PN Jkt Sel.³

Regarding the reasons for the Cassation Petitioner, the Supreme Court is of the opinion that the cassation application submitted by the Cassation Petitioner cannot be justified, with the consideration that the *judex facti* (High Court) both in its considerations and decisions are correct and correct and not wrong in applying the law. Due to this reason being rejected by the Supreme Court, the cassation application submitted by the Cassation Petitioner was also rejected.

In a life insurance policy, it is stated that the policyholder has an obligation to pay a sum of money called a premium to the insurance company in accordance with the agreement made in the life insurance agreement. If the insured does not pay the premium in accordance with the agreement made in the life insurance agreement, the insured is considered a default, and vice versa if the insured submits a claim to the insurance company, and the insurer does not comply with the agreement, the insurer is also considered a default.

RESEARCH METHODS

This research can be classified as normative legal research or library research method, namely legal research conducted by reviewing and researching library materials in the form of primary legal materials and secondary legal materials.⁴ Judging from the type, this research can be classified into normative legal research or library research methods, namely legal research carried out by reviewing and researching library materials in the form of primary legal materials and secondary legal materials.⁵ The data source comes from secondary data. Secondary data in this type of research is divided into three types of data, namely primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are legal materials originating from the Civil Law Law, Law Number 40 of 2014 concerning Insurance, the Commercial Code and Law Number 8 of 1999 concerning Consumer Protection, secondary legal materials in the form of draft laws, laws, research results, scientific works from legal experts and tertiary legal materials⁶ such as the Big Indonesian Dictionary, the Legal Dictionary and articles that can help with this research.

Collecting data using documentary studies/library studies. In certain circumstances, non-structured interview techniques can be used which serve only as a support, not as a tool to obtain primary data. The data were analyzed descriptively qualitatively, this analysis technique does not

³ Djoko Prakoso and I Ketut Murtika, *Indonesian Insurance Law*, (Jakarta: Bina Aksara, 1989), p.1

⁴ Djoko Prakoso and I Ketut Murtika, *Indonesian Insurance Law*, (Jakarta: Bina Aksara, 1989), p.1

⁵ Djoko Prakoso and I Ketut Murtika, *Indonesian Insurance Law*, (Jakarta: Bina Aksara, 1989), p.1

⁶ Djoko Prakoso and I Ketut Murtika, *Indonesian Insurance Law*, (Jakarta: Bina Aksara, 1989), p.1

use statistical figures, but rather an explanation in the form of sentences that are presented in a straightforward manner. The data that has been analyzed and described is then concluded by using a deductive method, namely concluding from a general statement into a specific statement.

RESULT AND DISCUSSION

A. Default in a Life Insurance Policy between the Insurer and the Insured

The insurance agreement is a consensual agreement, meaning that the agreement is a reciprocal agreement that gives rise to rights and obligations between the parties who entered into the agreement. For this reason, if it occurs from an uncertain event, namely the death of a person, the insured or heirs are entitled to compensation from the insurer. However, if the term of life insurance expires, you are also entitled to a refund of an amount of money from the insurer whose amount has been determined based on the agreement. This claim for compensation by the insured to the insurer is usually called a claim.

The risks faced by humans include all aspects of life, including death. Risk is an event that is not certain to occur and causes losses. For this reason, humans are always trying to find ways to overcome the possibility of these risks. If the risk involves human life, then a person's life is insured and the risk of death is borne by the life insurance company (the insurer). Because the basic nature of life insurance is protection against financial losses due to loss of ability to generate income caused by death or old age. In addition, life insurance has an additional function as an investment and or savings.

The types or types of claims that exist are claims for contract expiration, claims for death, claims for learning continuity funds, claims for receiving funds in prime stages, claims for hospitalization funds, claims for redemption, claims for taking cash value of gems, claims for policy loans, claims for premium-free sum assured.

If an insured or policy holder is going to file a claim, he or she can directly contact the insurance company concerned to get the compensation money by asking for a claim submission letter and completing the necessary conditions. Claims can be submitted by the heirs or appointed proxies by attaching the necessary documents as stated in the policy. In insurance companies, there is usually a claims unit whose job is to take care of all insurance participants who will submit claims. This claim unit will check archives and databases to find out the amount of premium that has been paid and other conditions.

As referred to in the Consumer Protection Act, the purpose of consumer protection is to protect the interests of debtor customers in banking credit agreements. In the formation of credit, usually the position of the debtor customer is always under the creditor, so that the debtor customer does not have a sufficient bargaining position to risk his rights.

In the practice of insurance, each insurer has provided a form (form) of a policy agreement, the contents of which have been prepared in advance (standard contract). The contents of this form are presented to each customer, the contents of which are not discussed with the consumer first. Consumers are only asked for their opinion whether they can accept or not. The form and format is submitted by Insurance to each bank to determine it, but at least must pay attention to

the following things:⁷

- a. Fulfill legal and legal requirements that can protect insurance interests;
- b. Contains the amount, period, procedures for repayment of premiums and other policy requirements as stipulated in the said insurance policy approval decision.

The unbalanced position of the parties is used by the insurance company to make clauses that are burdensome to the debtor customer, on the other hand the insurance party is protected by the debtor customer therefore the debtor customer is burdened with a number of obligations and are insurance rights that must be fulfilled. With the weakness of the position of the debtor customer, the insurance company takes advantage of it by making more clauses that are not fair and unfair.

However, if a new claim is submitted after more than two years, the company can still provide a dispensation if there is a justifiable reason, for example, an heir only submits his claim after four years since the event occurred because the heirs did not know beforehand if the insured was taking life insurance, then in this case the company will provide dispensation and pay the compensation to the heirs or the person appointed by the insured. For insurance policies, the requirements along with supporting documents to manage claims are:⁸

1. Pure life insurance

If the insured is still alive:

- a. Completed claim form.
- b. the police concerned.
- c. Police holder's proof of identity.
- d. Last premium payment receipt.

If the insured dies:

- a. Completed claim form.
- b. the police concerned.
- c. Death certificate from the competent authority.
- d. A certificate from a doctor examining or treating the insured and explaining the cause of death in question.
- e. Proof of receipt of benefits.
- f. Last premium payment receipt.

The insured is someone who is the object of insurance, which if something happens to someone we call the insured, for example death or illness, then compensation or sum assured is given. Legal protection is a protection given to legal subjects in the form of legal instruments, both preventive and coercive, both written and unwritten. In other words, legal protection is an illustration of the function of law, namely the concept where the law can provide justice, order, certainty, benefit and peace.

Legal protection for the insured in the insurance agreement is regulated in the policy, the policy as a reference in the legal protection of the insured. The insurance policy contains the

⁷ Djoko Prakoso and I Ketut Murtika, Indonesian Insurance Law, (Jakarta: Bina Aksara, 1989), p.1

⁸ Djoko Prakoso and I Ketut Murtika, Indonesian Insurance Law, (Jakarta: Bina Aksara, 1989), p.1

rights and obligations of the parties.

The type of insurance that is most in demand by insurers is the planned scholarship partner insurance, this is because the participants of this type of product benefit from the advantages of cheaper premiums compared to other types of products.

As a life insurance company, it always strives to improve the quality of its insurance services to the public, one of which is by increasing the number of insurance products that will be offered along with the benefits of each type of insurance.

To register as a prospective insured in an insurance company, usually a person has the right to choose and come directly to the insurance company he wants, this is as stated in Article 6 of Law No. 2 of 1999 concerning insurance businesses in conjunction with Law of the Republic of Indonesia Number 40 of 2014 concerning Insurance, which stipulates that insurance coverage for insurance objects must be based on the freedom to choose the insurer, except for social insurance programs. This provision is intended to protect the insured's right to freely choose an insurance company as the insurer. This is deemed necessary considering that the insured is a party with an interest in the object being insured.⁹

In accordance with the above provisions, to become a prospective insured in life insurance, usually the insured candidate comes directly to the company and registers by requesting an Insurance Request Letter (SPA) accompanied by a photocopy of ID card as proof of self or for those who are less than 18 years old then submit a birth certificate .

Many agreements in business transactions that occur not through a balanced negotiation process between the parties, but the agreement occurs in a way that one party has prepared standard conditions on an agreement form that has been printed and then presented to the other party for approval with almost no agreement. give the other party complete freedom to negotiate on the proposed terms.

What is meant by an exoneration clause is a clause that limits the liability of the creditor.¹⁰In simple terms, this exoneration clause is defined as an exclusion clause of obligations/responsibility in the agreement and clauses containing conditions that limit or even completely eliminate the responsibilities that should be borne by one of the parties. Problems also arise when in practice the bank actually uses this to pressure debtors by making burdensome clauses, which are referred to as exoneration clauses so that what happens is an imbalance in their bargaining position. In essence, the purpose of limiting or releasing responsibility (exoneration clause) is not to corner or harm one of the parties, but instead to share the appropriate risk burden.

The limitation of the exoneration clause is intended to prevent abuse of circumstances by parties with a stronger position which will ultimately harm consumers.

In the practice that occurs in life insurance, there are 3 factors to determine the amount of premium, namely:

⁹ Djoko Prakoso and I Ketut Murtika, *Indonesian Insurance Law*, (Jakarta: Bina Aksara, 1989), p.1

¹⁰ *Ibid*, p. 81

- a. Sum insured, the amount of money listed in the policy whose payment is related to the life and death of the insured, the greater the sum insured, the greater the premium to be paid because of the risks that must be borne by the insurance company the higher it is.
- b. Age, the younger the age of the insured, the lower the premium to be paid, while the older the age of the insured, the more expensive the premium to be paid. This is because the higher the age of the insured, the greater the risk of death.
- c. The term or period of premium payment, the shorter the period or period of premium payment, the lower the amount of premium to be paid, especially for the premium payment period at once, it will be cheaper because the company will provide discounts, while the longer the payment period the premium, the premium to be paid will be more expensive.

The premium to be paid by the insured to the insurer, in this case life insurance, can be made at once or in installments. For payment in installments, the insured can choose to pay the premium once a year, semi-annually, quarterly, or monthly.

But sometimes as humans, we often make negligence either intentional or unintentional. In response to this, the life insurer will take action by imposing a fine on the insured if he is late for up to two months, if more than that time period has not been paid, then there is a grace period of two years, if more than that grace period has not yet been paid. paid, the premium is deemed invalid and thus the insurance agreement ends.

So the judge in upholding propriety in case No. 226/Pdt.G/2005/PN. Jkt. Pst About Default in the payment of insurance claims must be based on considerations based on law which should be at least close to the formal truth. The decision does not necessarily fulfill the sense of justice of all parties, therefore the author tries to analyze the decision independently based on the legislation and related documents.

Decision No. 603/Pdt.G/2010/PN Jkt Sel, dated May 26, 2011 categorically rejected the Plaintiffs' claim in its entirety. Subsequently, the Plaintiffs filed an appeal to the Jakarta High Court. The Jakarta High Court overturned the Decision of the South Jakarta District Court by issuing its Decision Number 652/PDT/2011/PT DKI, dated April 4, 2012, by agreeing to accept the appeal from the Appellants and canceling the South Jakarta District Court's Decision Number 603/Pdt.G/2010 /PN Jkt Sel.¹¹

On August 9, 2012, the Defendant/Appellate filed an appeal to the Supreme Court. That the appeal filed by the Cassation Petitioner is formally accepted. The Petitioner for Cassation in his memorandum of cassation gave the reason that the Panel of Judges of the High Court gave a wider or different interpretation to Article 7 paragraph (1) General Conditions of Individual Personal Accident Insurance Policy in both insurance policies, which requires that accidents be determined by medical science.

Regarding the reasons for the Cassation Petitioner, the Supreme Court is of the opinion that

¹¹<http://digilib.unila.ac.id/25766/3/SKRIPSI%20TANPA%20BAB%20PEMBAHASAN.pdf>, accessed on 12 January 2019.

the cassation application submitted by the Cassation Petitioner cannot be justified, with the consideration that the *judex facti* (High Court) both in its considerations and decisions are correct and correct and not wrong in applying the law. Due to this reason being rejected by the Supreme Court, the cassation application submitted by the Cassation Petitioner was also rejected.

Furthermore, an example is the case with Bumi Putera Life Insurance in Pekanbaru, that the insured named Mr. Antonis who already had a policy in 2011, but with a loss, the insured submitted a claim to Bumi Putera Life Insurance, but when submitting a claim, the company did not according to the agreement in the policy. and an example of the decision in Pekanbaru with Decision Number 301/PID.B/2016/PT.PBR that many of the losses suffered by the insured were caused by not depositing the premium paid by the agent to the insurance company.

Insurance is a form of special agreement regulated in the KUHD. As an agreement so that the provisions of the valid terms of an agreement, the Civil Code also applies to insurance agreements, because the insurance agreement is a special agreement, then in addition to the provisions of the legal terms of an agreement, the valid terms of an agreement also apply the special conditions stipulated in the agreement. KUHD.

The second general requirement is the ability to make an engagement. This relates to both parties who entered into an agreement to carry out legal actions recognized by law. The authority to do this is subjective and some is objective. Subjective authority means that both parties are adults, healthy in mind, not under guardianship, not in a state of bankruptcy and legal power holders. Objective authority, meaning that the insured has a legal relationship with the object of the insurance, while the insurer is a legitimate party representing the insurance company based on the company's articles of association. that coverage.¹²

In the insurance agreement, in addition to meeting the general conditions of the agreement, it must also meet the special requirements for a life insurance agreement, namely:

- a. The principle of indemnity (principle of indemnity), is the main principle of the life insurance agreement. Life insurance has a specific main purpose which is to provide compensation to the insured in the form of sum assured. The insurance company provides compensation to the insured in the amount of the sum insured in accordance with the value stated in the policy agreement.
 1. If the insured dies during the insurance period, the designated person is paid:
 - a. Compensation of 100% Sum Assured.
 - b. The accumulation of funds in the amount according to the calculation.
 2. If the insured dies due to an accident during the insurance period and the person concerned takes a rider with risk A, the person appointed is paid:
 - a. Compensation of 200% Sum Assured.
 - b. The accumulation of funds in the amount according to the calculation.
 3. If the insured lives until the end of the insurance period, the policyholder is paid the accumulated funds.

¹² Djoko Prakoso and I Ketut Murtika, *Indonesian Insurance Law*, (Jakarta: Bina Aksara, 1989), p.1

- a. Principle of interest (Principle of insurable interest). That in the insurance agreement the insured must be attached to the nature of being a person who has an interest in an event that does not necessarily mean that as a result of that event he can suffer a loss or in other words there is an interest from the insured party to his life being insured or to the life of the insured. someone who is insured. That the prospective insured has an involvement to provide protection for himself, namely self-protection for something that will surely happen but it is not known when death occurs, which has an impact on the loss of economic capacity
- b. Principles of Perfect Honesty / utmost good faith). Regarding the principle of good faith, in its implementation the insured is obliged to provide true information related to the agreement, be it personal identity, medical history and so on. Meanwhile, the insurer must provide true and clear information regarding the life insurance to be followed by the insured as well as other important matters, such as types of insurance, payment of premiums, submission of claims up to maturity. Thus the principle of good faith requires honesty from the parties. Usually from the life insurance company in order to anticipate the occurrence of things that are desired, for example data manipulation or writing errors, then when the prospective insured asks for an Insurance Request Letter,

The above insurance policy agreement seems that the bank is trying to be free from responsibility, and this clause is arranged so neatly in the insurance policy agreement that in a short time it is difficult to understand. Therefore, the inclusion of a clause on the transfer of responsibility from business actors must be seen whether the clause is to transfer the responsibility of the bank or just to emphasize the responsibility of the consumer. because with this provision, it is possible for business actors to escape their responsibilities.

In relation to the interests of the insured/policy holder, there are several provisions in the Civil Code which are a form of legal protection for the insured, namely:

- a. Article 1320 of the Civil Code which regulates the conditions for the validity of the agreement, namely: agreeing that they are binding themselves, the ability to make an engagement, a certain thing, a lawful cause. This provision has the consequence that the insured/policy holder who believes that the insurance agreement occurred due to misguidance, coercion and fraud from the insurer may apply for the cancellation of the insurance agreement to the court. If the insurance agreement is declared null and void, either in whole or as part of the insured/policy holder in good faith, then the policy holder has the right to demand a refund of the premium that has been paid.
- b. Article 1267 of the Civil Code is stipulated in the insurance agreement; if the insurer who has the obligation to provide compensation or a sum of money to the insured turns out to have broken his promise, then the policy holder can claim reimbursement of costs, compensation and interest.
- c. Article 1318 of the Civil Code can be used by the heirs of the policy holder to demand the insurer to provide compensation or a sum of money to the insurer. This article stipulates

that if a person asks for an agreement on something, it is considered that it is for his heirs and those who have rights thereof, unless it is expressly stipulated that this is not the case.

d. Article 1338 contains several principles in the agreement

First, the principle of binding power. This principle, if associated with an insurance agreement, means that the insurer and the insured/policy holder are bound to carry out the terms of the agreement that they have agreed upon. The policy holder has a legal basis to sue the insurer to carry out his achievements.

Second, the principle of trust implies that the agreement gives birth to trust between the two parties that each other will fulfill their promise to carry out the achievements in accordance with the agreement.

Third, in good faith, which means that all agreements including insurance agreements are also interpreted as a whole that in the implementation of the agreement the parties must heed common sense and propriety.

e. Article 1365 concerning unlawful acts can be used by the policyholder to sue the insurer if he can prove that the insurer has committed an act that harms him.

In the practice of contracts that contain exoneration, it is still a problem because the insurer provides and prepares the contract so that the insured / customer does not know what could be detrimental from the emergence of the contract.

According to Article 6 of Law Number 40 of 2014 concerning Insurance, Life Insurance Business is a business that provides risk management services that provide payments to policyholders, the insured, or other entitled parties in the event that the insured dies or remains alive, or other payments to the insured. the policy holder, the insured, or other party who is entitled at a certain time as stipulated in the agreement, the amount of which has been determined and/or is based on the results of fund management. In life insurance, the insured is caused by death. The death results in the loss of income of a certain person or a family. The risks that may arise in life insurance mainly lie in the time element, because it is difficult to know when someone dies.

Article 255 of the KUHD states that the coverage or insurance must be made in writing in a deed called a policy. An insurance policy is a document that contains a contract between the insured party and the insurance company. The premium is one of the important elements in the insurance policy in the coverage because it is the main obligation that must be fulfilled by the insured to the insurer, the amount of which must be paid is determined by a percentage of the amount insured based on the risk assessment borne by the insurer.¹³ The policy holder in this case is a person or entity that enters into an insurance agreement with a life insurance company or insurer.

The role of the life insurance policy holder is to be able to pay various costs arising from the life insurance agreement and must not make mistakes in filling out information. The amount of the policy paid usually depends on the age of the insured so that the insured must be able to

¹³ Djoko Prakoso and I Ketut Murtika, Indonesian Insurance Law, (Jakarta: Bina Aksara, 1989), p.1

provide correct information. The specified premium must be paid at the agreed time. During the premium payment period, there is a grace period in which the life insurance policy holder is given the freedom of time to pay the premium, even if it is too late. However, during this period the insurance policy holder must bear the possibility of reducing claims in the event of the death of the insured.

B. Settlement of Defaults in Life Insurance Policies Between the Insurer and the Insured

As an agreement, so that insurance or coverage is valid, it must fulfill all the conditions for a valid agreement as regulated in Article 1320 of the Civil Code (KUH Perdata), namely the existence of 4 (four) conditions:

1. Agree on those who bind themselves;
2. The ability to make an engagement;
3. A certain thing ;
4. A lawful cause;

For the validity of the insurance agreement, in addition to complying with Article 1320 of the Civil Code, it must also comply with the provisions of Article 251 of the KUHD which requires reporting of all conditions known to the insured regarding the insured object.¹⁴

Article 251 of the KUHD stipulates that all false or untrue reporting or concealment of circumstances that are known to the insured, no matter how honest it may be on his part of such a nature that the agreement will not be entered into or held under the same conditions if the insurer knows of the object, causing the coverage to be void.¹⁵

In insurance, especially loss insurance, there are 4 (four) principles of insurance, namely:

1. The principle of insurable interest (Insurable interest);
2. The principle of guarantee for loss (Indemnity);
3. The principle of trust (Trustfull);
4. The principle of good faith (Utmost Goodfaith)

This principle of good faith relates to Articles 1320, 1321, 1323, 1328 and 1338 of the Civil Code and Article 251 of the KUHD. What is meant by good faith in Article 1338 paragraph (3) of the Civil Code is that the agreement must be carried out in a proper and proper manner.¹⁶ Good faith must not only exist at the time of execution of the agreement, but also at the time an agreement is made or signed.¹⁷ In order for this principle of good faith to be truly fulfilled, it is hoped that the insured party will not abuse the trust that has been given by the insurer. The insurer must also have good intentions by explaining the extent of the guarantee provided and the rights of the insured

Article 251 of the KUHD is a special provision of Articles 1321 and 1322 of the Civil Code. The specificity is that Article 251 of the KUHD does not consider whether the insured's act was

¹⁴ Djoko Prakoso and I Ketut Murtika, Indonesian Insurance Law, (Jakarta: Bina Aksara, 1989), p.1

¹⁵ Djoko Prakoso and I Ketut Murtika, Indonesian Insurance Law, (Jakarta: Bina Aksara, 1989), p.1

¹⁶ Djoko Prakoso and I Ketut Murtika, Indonesian Insurance Law, (Jakarta: Bina Aksara, 1989), p.1

¹⁷ Djoko Prakoso and I Ketut Murtika, Indonesian Insurance Law, (Jakarta: Bina Aksara, 1989), p.1

committed intentionally or unintentionally. In principle, if the insurer knows the actual condition of the insured object, he will not provide insurance with such conditions.¹⁸

The purpose of Article 251 of the KUHD is to protect the insurer or free him from risks that are unfairly transferred to him, so that in Article 251 of the KUHD it does not become a consideration whether the insured has good faith or not. Thus, the concealment or silence of a situation regarding the insured object is not a question whether it occurs intentionally by the insured or because he does not know the situation or because he considers the situation unimportant. It is not necessary whether the insured has known beforehand as required in the Civil Law regarding errors.¹⁹

Insurance provisions have been explained in the Commercial Code (hereinafter referred to as KUHD) and also in Law Number 40 of 2014 concerning Insurance. Insurance provisions in the KUHD are regulated in Article 246 while in Law Number 40 of 2014 concerning Insurance it is regulated in Article 1 Number 1.

The provisions of the two articles explain that there are at least two parties related to insurance or coverage, namely the insurer and the insured. The insurer is the party who is entitled to receive the sum assured payment and provide compensation in the event of a loss. The insured is the party who entered into an insurance agreement by paying a sum of money and receiving compensation for the losses suffered. The insured is usually also referred to by different terms such as “insurance taker” or “policy holder”, but Article 304 Paragraph (2) of the KUHD uses the term insured.²⁰

In life insurance for an elderly person, the premium value to be paid will be greater than for a young person. Someone who is old will be more at risk of dying sooner than someone who is young.²¹

The insurer and the insured binding themselves in the insurance agreement must be in accordance with the provisions of the applicable laws and regulations, which are contained in Article 1338 Paragraph (1) of the Civil Code (hereinafter referred to as the Civil Code). This provision states that when the agreement has been agreed by both parties, then the agreement will apply as a law that will bind the parties in it.

C. Because of law Settlement of Defaults in Life Insurance Policies Between the Insurer and the Insured

Life insurance as we know it today, is regulated in the Third Book of the Civil Code (KUHPERDATA) concerning Engagement, First Book Chapter X articles 302 to 308 of the Commercial Code (KUHD), and Law Number 40 2014 concerning Insurance

Engagements are born from agreements and laws, as regulated in Article 1233 of the Civil

¹⁸ Djoko Prakoso and I Ketut Murtika, Indonesian Insurance Law, (Jakarta: Bina Aksara, 1989), p.1

¹⁹ Djoko Prakoso and I Ketut Murtika, Indonesian Insurance Law, (Jakarta: Bina Aksara, 1989), p.1

²⁰ Djoko Prakoso and I Ketut Murtika, Indonesian Insurance Law, (Jakarta: Bina Aksara, 1989), p.1

²¹ Djoko Prakoso and I Ketut Murtika, Indonesian Insurance Law, (Jakarta: Bina Aksara, 1989), p.1

Code and life insurance is one of the engagements born from agreements. The life insurance agreement adheres to the principle of *pacta sunt servada* which has the same understanding as specified in Article 1338 paragraph (1) of the Civil Code that all agreements made based on agreements or agreements made legally apply as law for those who make them.

The parties who make the agreement in life insurance are the insurer, namely the life insurance company and the policy holder. In a legal relationship between one party and another, if both parties have good ethics in establishing legal relations, then there will not be legal problems that can harm one of the parties in the legal relationship.²² If in the life insurance agreement, in this case, the policyholder defaults, then the insured will no longer be reimbursed as a form of protection from the life insurance if the insured dies, and the agreement will automatically be void.

In practice that often happens, there is actually no prohibition for a person to follow more than one life insurance in different insurance companies, because this is the right for everyone to insure their life. If the insured becomes a life insurance participant in two different life insurance companies and one of them is life insurance, the insurance company can submit a claim to life insurance. For example, the death of the insured due to an accident. Usually, in this case, the submission of a claim must attach an original certificate from the Police or from the Hospital.

Each insurance company has its own method of payment and is different from one another. After all claim submission documents are complete and processed, the insured or heirs are entitled to receive claim payments in accordance with the previously agreed sum insured.

In entering into an insurance agreement, actually both parties (the insured and the insurer) are required to have good faith or good faith, so that the insurance agreement can be ensured to run smoothly. However, in its implementation there are often obstacles.

This is contrary to the legal protection of the insured regarding the right to correct, clear and honest information regarding insurance benefits and guarantees as well as the good faith of the insurance company to explain it and the parties' policy documents should have the same interpretation of the clauses contained therein. .

A coverage based on article 3 of the general policy provisions applies, starting from the start date of coverage stated in the policy summary provided that the first premium has been paid off. The contents of the policy cannot be changed, added or reduced by anyone other than with the approval of the policyholder and the insurer, unless otherwise stipulated in the policy or if the change is required by applicable laws and regulations.

If you look at Article 257 of the KUHD, it turns out that this is not true. In this article it is stated that the insurance agreement exists immediately after it is closed, the mutual rights and obligations of the insured and the insurer come into effect from that time. This means that if both parties have closed the insurance agreement but the policy has not been made, then the insured is still entitled to claim compensation if the agreed event occurs. The insured must prove that the insurance agreement has been closed with other evidence, such as correspondence between the

²² Djoko Prakoso and I Ketut Murtika, *Indonesian Insurance Law*, (Jakarta: Bina Aksara, 1989), p.1

insurer and the insured, insurer's notes, closing notes and others.

The objections to the standard agreement, among others, are because the contents and conditions have been prepared by one of the parties, they do not know the contents and terms of the standard agreement and even if they know they do not know the scope of the legal consequences, one of the parties is economically stronger, there is an element of "forced" to sign the agreement. The reason for the creation of a standard agreement is for efficiency.²³

This shows that the standard agreement contradicts both the principles of contract law (Article 1320 in conjunction with Article 1338 of the Civil Code) and morality. However, in practice, this agreement grows because the circumstances require it and must be accepted as reality. Thus the legal consequences of a standard agreement for the debtor (customer) in the implementation of the insurance policy, namely the debtor (customer) as a weak party must agree and submit to the terms and conditions in the policy that has been standardized by insurance without an agreement between the parties regarding policies and regulations.

Default is not always that a debtor cannot fulfill all achievements at all, but it can also be in the case that a debtor is not on time to fulfill his achievements.²⁴ In a life insurance agreement, a debtor (policy holder) can default by not paying premiums in accordance with the specified time, or the time that has exceeded the grace period (grace period). For deferral of premium payments, the insured is subject to interest, the amount of which is in the form of a percent determined by the insurer based on the basis of bank interest. After the grace period ends, but the policyholder has not yet paid the deferred premium, then:

1. The coverage is void if the policy does not have a cash value, while the premium that has been paid is not returned;
2. Insurance is void if the cash value is less than the arrears of premiums and interest.²⁵

So, the legal consequence received by the policy holder if the premium is not paid is that the life insurance agreement can be canceled by law and the policy will be canceled or called lapsed, namely the termination of insurance coverage as a result of not paying premiums until the insurance contract period ends and the premiums already paid will not be paid. returned.

CONCLUSION

The conclusions that can be drawn from the results of research that have been carried out include Settlement of Defaults in Life Insurance Policies between the Insurer and the Insured that a life insurance agreement is made between the policyholder and the insurer, with the consequence that the policyholder pays the premium and the insurer provides risk protection to the policyholder and/or or the insured within a certain time regulated in the agreement. Default can be done by the policyholder, one of which is by not paying life insurance premiums until the

²³ Djoko Prakoso and I Ketut Murtika, *Indonesian Insurance Law*, (Jakarta: Bina Aksara, 1989), p.1

²⁴ Hartono Hadisoeparto, *Series of Civil Law: Fundamentals of Engagement Law and Guarantee Law, Liberty*, Yogyakarta, 1984, p.43

²⁵ Radiks Purba, *Understanding Insurance in Indonesia*, PT Pustaka Binaman Pressindo, Central Jakarta, 1992, p. 304

grace period ends.

Settlement of Default in the Life Insurance Policy between the Insurer and the Insured that the Insurer and the Insured bind themselves in an insurance agreement must be in accordance with the provisions of the applicable laws and regulations which are contained in Article 1338 Paragraph (1) of the Civil Code. This provision states that when the agreement has been agreed by both parties, then the agreement will apply as a law that will bind the parties therein.

Legal Consequences of Settlement of Defaults in Life Insurance Policies between the Insurer and the Insured that if the premium is not paid by the policyholder, the life insurance agreement can be canceled by law and the policy will be canceled or called lapsed, namely the termination of insurance coverage as a result of not paying premiums until the insurance contract period ends and premiums already paid will not be refunded.

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