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REINSURANCE ARRANGEMENTS ASSOCIATED WITH GUARANTEE LEGAL RESPONSIBILITIES

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Abstract

The use of diversion responsibility or reinsurance arrangements as a way for insurance companies to protect themselves from losses by cooperating with a reinsurance company. One reason for utilizing reinsurance is to distribute risk. Reinsurance becomes more understandable when insurance claims occur, and it is not possible to have reinsurance without having insurance first. The legal framework for insurance and reinsurance is explained in the Criminal Code or Law Number 40 of 2014 concerning business insurance. However, there is no provision that clearly defines what is meant by reinsurance, which can cause problems if there are insufficient answers regarding the company's reinsurance payment for losses. Therefore, legal certainty is necessary. The research objective is to determine the form of responsibility of the guarantor in reinsurance, and the normative law method is used. The Ex-Gratia Payment clause outlines the responsibility of the reinsurance company to the insured, allowing the insured to claim compensation from the insurer for reinsurance claims.

Keywords: *Insurance; Reinsurance; Responsibility; Insured; Insurer.*

INTRODUCTION

The feeling of worry about uncertain events (uncertainty) that may threaten one's life and valuables can lead to the need for insurance protection (J.A Ganie, 2011). The risk of loss, or danger, can occur unexpectedly and can be estimated whether it will occur or not (Santri, 2018), potentially threatening human life and property. When incidents occur that result in loss, they are referred to as *événement* in the insurance industry. In order to make a claim we need to have an *événement* that can be proven. The *événement* must be proven to exist and be covered in the insurance policy (Selvi Harvia Santri, 2019). The most appropriate way to prepare for potential losses is through the use of insurance, which helps to mitigate risk for individuals and companies by diverting risk to the insurance company (NA Savitri, 2019).

The significance of insurance lies in its ability to mitigate risks in human life, enabling individuals to safeguard themselves against potential threats. Insurance provides a sense of security and reassurance that individuals will be protected in the event of an unforeseen loss or damage. It can be regarded as a just transfer of risk from one entity to another through the distribution of risk with the payment of premiums. (Ganie, 2011). Insurance companies offer protection against potential dangers or hazards that may arise (AW, 2020).

In order to increase their business and achieve higher goals, insurance companies employ various techniques to divert risk, such as company reinsurance (KV A, 2020). The collection of premiums also serves as a means to

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develop the business and maintain trust with the insured, whose benefits are solely experienced by the insured. Insurance companies not only serve as a provider of insurance services to society, but also as an investor and seller of services (SR Hartono, 1992).

The transfer of responsibility from the primary insurer to the reinsurer occurs when there is a legal connection between the two parties, which is typically established through an agreement. The agreement is a primary requirement for reinsurance to take place, and it can be between the primary insurer and the reinsurer, or between two reinsurers. The primary insurer can transfer all or a portion of the risks exceeding its capacity or power to the reinsurer, and the transfer must be agreed upon by both parties.

There are several reasons why insurance companies engage in reinsurance. One of the key reasons is to share risks effectively. Reinsurance enables insurers to share risks with other companies and take a more efficient approach to risk management (Hartono, 1992). Additionally, if the premiums for a particular policy are high, the insurer can transfer some of the risks to the reinsurer. This can be a strategic decision to mitigate the risk of insolvency for the insurer.

Choosing reinsurance is an effective method for insurance companies to anticipate their inability to handle risks on their own. Reinsurance allows insurers to manage risks effectively and operate with greater financial stability. As a result, reinsurance is a beneficial option for insurance companies seeking to mitigate risks and ensure long-term financial success.

Insurance companies engage in reinsurance in order to transfer risks to the reinsurer and achieve greater profitability. Through reinsurance, the primary insurer, which is typically an insurance company, also gains legal protection to safeguard the interests of the parties involved, including individuals and entities (Salahudin AT, 2022).

Reinsurance can be categorized into two types: proportional reinsurance and non-proportional reinsurance. In proportional reinsurance, the reinsurer shares the risk of loss with the primary insurer in proportion to the loss that occurs. This method involves transferring risks in a proportional manner, based on the extent of the loss that has been incurred.

For example, if a loss occurs and the amount of the loss is 35%, the insurance company will cover 65% of the loss, while the remaining 35% of the loss will be taken over by the reinsurance company, if the reinsurance is proportional. In the case of non-proportional reinsurance, the maximum limit provisions of the reinsurance agreement will determine the extent to which the reinsurer will bear the claims.

In an agreement between the insurance company and the reinsurance company, it may be stipulated that the insurance company will bear the loss above a certain limit, such as 1 billion. For instance, if the total loss and claims amount to 900 million, the primary insurer will bear the entire loss. However, if the loss exceeds 2 billion, the insurance company will bear up to 1 billion as per the agreement, while the remaining loss will be borne by the reinsurer. When the risks are significant, the primary insurer may transfer them to multiple existing insurance companies.

The term "lead insurer" refers to the insurance company that takes the lead in a reinsurance agreement, while other participating insurance companies are referred to as "following reinsurers." The concept of insurance is inseparable from the concept of reinsurance, which is a form of protection provided by reinsurers to the primary insurer.

Reinsurance provides protection in the form of compensation that will be paid if the insured submits a claim based on the risk suffered. (Selvi Harvia Santri, 2019) Reinsurance serves as a means of spreading risk, which can be interpreted as a threat to individuals and their property that can cause harm. Reinsurance is a suitable choice for transferring larger risks, which can be broken down and shared among insurance companies.

Previous studies have focused on reinsurance, including one entitled "The Legal Certainty of Reinsurance According to Law No. 2 of 1992." This research examined regulations related to reinsurance and the responsibilities of the guarantor in reinsurance. If the insured is not aware that the object has been reinsured to the reinsurer, legal problems may arise for the reinsurance company. Therefore, legal certainty and clear legal instruments are necessary, including a clear understanding of the responsibilities of the reinsurer in reinsurance. (Isaac, 2022)

RESEARCH METHODS

This study adopts a normative legal approach using secondary data as the primary source of information, with the research method based on reference materials (Soejono Soekanto, 2003). The research design is descriptive in nature, which aims to describe the phenomenon, symptoms, or facts related to the law. In order to analyze the legal framework of reinsurance, the secondary data is divided into three categories: primary legal materials, secondary legal materials, and tertiary legal materials. The primary legal materials are obtained from various legal acts related to reinsurance, while the secondary legal materials consist of books and research studies on the topic. Tertiary legal materials, such as legal dictionaries, are also used to aid in the analysis.

In drawing conclusions, the study examines the unique aspects of the legal framework of reinsurance and how they relate to common legal principles.

RESULTS AND DISCUSSION

A. Definition, Arrangements, and Principles reinsurance

In Law No. 40 of 2014, reinsurance is defined as a transfer of responsibilities from the initial guarantor to the final guarantor. Insurance business is categorized into insurance for loss of objects and insurance for a sum of money for objects of life, as well as social insurance (Hartono, 1990).

Reinsurance, also referred to as re-insurance, is an agreement made between the insurer and the reinsurer at the beginning of the agreement, where the amount reinsured is determined. Another term for this reinsurance is sequential insurance, where the reinsurer acts as the second guarantor willing to pay change loss to the first guarantor. Compensation will be disbursed to the insured as a result of the insurance made between the insurance company and the insured party.

The reinsurance business is a type of insurance business run by insurance companies. This business can sell related products in the fields of insurance for loss objects and insurance for objects of life. The main aim of the reinsurance business is to cover payment claims given to the insured in matters that happen incidentally, but not of course. In case the initial guarantor is not capable of paying the claim, the most appropriate step is for the insurance company as the initial guarantor to repeat the insurance. The transition of risk from the initial guarantor to the repeat guarantor can only be done once, so the principle of balance is fulfilled. The choice to reinsure is done to relieve the burden of the initial guarantor. The position of the insurance company and the reinsurance company is balanced, and the positions of the initial guarantor and the repeat guarantor are the same, as they both accept the transition of risk.

Reinsurance can be understood by different parties with different assumptions, which can result in different views and perspectives from society. For instance, Article 779 of the German Commercial Law provides the understanding of insurance as "Reinsurance is the insurance of the risks assumed by the insurer." Mollengraff, an observer of law originating from the Netherlands, defines reinsurance as an agreement between the insurer and other insurers, where the other guarantor is referred to as the reinsurer.

Principles of reinsurance are among them.

1. The Principle of Utmost Good Faith The meaning of the principle of utmost good faith is that the insured must provide the true and accurate information about the insured object or other related things to be insured. This principle recommends transparency and openness in the agreement between the insured and the insurer. The arrangement of the principle of utmost good faith is mentioned in Article 251 KUHD. This chapter mentions the provision that the insured must inform the insurer about the real circumstances related to the insured object. The insured party is considered to be the party who knows the ins and outs of the insured object, and the insurer is considered the party who knows about the related matters of the guaranteed risk. Neither party has the right to hide material facts related to the closing of the insurance agreement, and both parties are obliged to disclose them in an open and clear manner.
2. The Principle of Indemnity The principle of indemnity is one of the most important principles in insurance, which distinguishes insurance from gambling or profit-luck agreements. The indemnity principle means that the amount of change in loss must be the same as the amount of losses suffered. The principle of indemnity is often translated as the principle of balance, but this view has been criticized because if the principle of indemnity is considered as the principle of balance, it means that the change in loss has not been equated with the actual amount of loss suffered by the insured. The related articles to the principle of indemnity in the Commercial Law Code are contained

in Article 252, Article 253, Article 266, Article 268, Article 277, Article 278, Article 280, and Article 281.

3. The Principle of Interest in Insurance (Insurable Interest) The interest in what is insured and the insured person is a mandatory matter that must be fulfilled in insurance. This principle is known as the insurable interest principle, which is regulated in Article 250 of the Criminal Code. The insured's interest is an absolute must in every insurance agreement, so that the agreement is not considered gambling or betting. For example, the insured's interests can be connected to family relationships such as husband, wife, child, mother, or expert inheritance, as well as business relationships such as creditor-debtor or company-employee relationships. The insured interest according to the monograph is the interest formulated as wealth or part of the insured's riches, which can cause a loss for the owner or people who have legal relationships with the riches. The term riches must be interpreted broadly and can cover possible wealth rated with money or not in the form of goods.
4. The Subrogation Principle The subrogation principle is arranged in Article 284 of the KUHD, which states that "An insurer who has paid for the loss of an insured item replaces the insured in all the rights he has acquired." Subrogation is a right for the insurer who has given compensation for the loss to replace the insured in a position to receive all possible benefits (recovery) that can be obtained from the other party. The subrogation principle is also referred to as the principle of diversion of guardianship rights or other terms.
5. The Principle of Contribution If there is protection insurance for the same object from more than one insurance company and each company issues an insurance policy with the same coverage amount or price, the object being insured will be the responsibility of the insurance companies to pay the change in loss on a pro rata basis. Collaboration can be carried out by insurance companies to carry out the principle of contribution in resolving issues related to object coverage. Each insurer must bear the same responsibility according to the agreement in the policy. Reinsurance agreements by insurance companies are done if the risks experienced.

B. Legal Responsibilities of Insurers on Reinsurance

The same problem regarding the risks involved in insurance is also faced by the reinsurer in reinsurance. The problem is that finance, insurance, and reinsurance business activities are continuous activities, and the connection can be seen in the position of the guarantor. In an insurance company, the insurer accepts the transfer of risk from the insured, and in a reinsurance company, the reinsurer accepts the transfer of risk from the insurer. The position of the insurance company is that of the insured in reinsurance. The legal relationship between the insurer and the reinsurer is based on an agreement (Muhammad, 2006). The agreement between the guarantor and insured is a binding document (Selvi Harvia Santri, 2020).

The responsibility for reinsurance can be seen in the Ex-Gratia Payment section, where the insured party can demand compensation for losses. The insured has the right to demand compensation in the event that the insurance company cannot fulfill its obligations to the insured due to bankruptcy or liquidation by the government. The law protects the rights of the insured, as stated in the Financial Services Authority Regulation No. 28/PJOK.05/2015 concerning the dissolution, liquidation, and bankruptcy of insurance companies, sharia insurance companies, reinsurance companies, and sharia reinsurance companies. Without prejudice to the enactment of the provisions in the bankruptcy regulations, Article 18 states that the Minister, based on public interest, may request the court to declare the bankrupt company and grant the policyholder the right to receive the distribution of the company's liquidated assets.

The responsibility of the guarantor can be collected in the form of an Ex-Gratia Payment clause in the reinsurance policy agreement, which allows the reinsurer to give compensation for losses suffered by the insured. This clause is binding and states the maximum amount of compensation that can be given.

CONCLUSION

The arrangement of reinsurance is regulated under the Indonesian Law No. 40 of 2014 on Insurance Business. According to Article 1 point (7), reinsurance business is defined as a service that provides coverage for risks faced by insurance companies. The responsibility of the guarantor in reinsurance can be found in the insurance policy agreement, specifically in the Ex-Gratia Payment clause. This clause provides for payment claims on risks that are not guaranteed in the policy, but which meet certain technical conditions. If these technical conditions are not met, the insured party may still claim their right to compensation from the insurer in the reinsurance agreement.

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BIBLIOGRAPHY

A W. (2020). Perlindungan Hukum Terhadap Pemegang Polis Asuransi Jiwa. Business Economic, Communication, and Social Sciences. *Business Economic, Communication, and Social Sciences*, *2*.

Hartono. (1990). *“Reasuransi, Kebutuhan Yang Tidak Dapat Dikesampingkan Oleh Penanggung Guna Memenuhi Kewajibannya Terhadap Tertanggung Tinjauan Yuridis*. Universitas Dipenogoro.

Ishak. (2022). Asas kepatuhan syariah dalam finansial teknologi. *Jurnal Cendikia Hukum*, *8*.

J. A Ganie. (2011). *Hukum Asuransi Indonesia*. Sinar Grafika.

KV A. (2020). Perlindungan Pemegang Polis PadaAsuransi Jiwa Di Kaitkan Dengan Nilai Investas. *Jurnal Unsrat*.

Muhammad. (2006). *Hukum Asuransi Indonesia*. PT. Citra Bakti.

N A Savitri. (2019). perlindungan tertanggung pada asuransi jiwa berdasarkan undang-undang no. 40 tahun 2014 tentang perasuransian. *Jurnal Hukum Magnum Opus*, *2*.

S R Hartono. (1992). *Hukum Asuransi Dan Perusahaan Asuransi*. Sinar Grafika.

Salahudin A T. (2022). Perlindungan Hukum Terhadap Pengguna Asuransi. *JCH (Jurnal Cendekia Hukum)*, *8*.

Santri, selvi H. (2018). Pelaksanaan prinsip subrogasi pada asuransi kendaraan bermotor menurut kitab undang-undang hukum dagang. *Uir Law Review*, *02*, 354–369. https://doi.org/https://doi.org/10.25299/uirlrev.2018.vol2(02).2073.

Selvi Harvia Santri. (2019a). Application of proxima cause principle in insurance of loss according to book of trade law and law no 40 of 2014. *IJICC*, *1*.

Selvi Harvia Santri. (2019b). Penerapan prinsip indemnitas pada asuransi kendaraan bermotor,. *UIR Law Review*, *3*.

Selvi Harvia Santri. (2020). Perlindungan Hukum Pemegang Polis Asuransi Jiwa Terhadap Penetapan Klausula Baku. *Jurnal UIR Law Riview*, *4*(1).

Soejono Soekanto. (1982). *Pengantar Penelitian Hukum*. UI Pers.

Soejono Soekanto. (2003). *Prinsip-Prinsip Manajemen Resiko Dan Asuransi*. Prinsip-Prinsip Manajemen Resiko Dan Asuransi.

Subekti. (2008). *Kitab Undang-Undang Hukum Dagang dan Undang-Undang Kepailitan (Wetboek Van Koophandel en Faillissements-Verordening).*

Undang-Undang Nomor 40 Tahun 2014 Tentang Usaha PerAsuransian

Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen