

THE MEANING OF THE PRINCIPLE OF INTEREST (INSURABLE INTEREST) IN THE INSURANCE AGREEMENT FOR LEGAL PURPOSES

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Abstract

The juridical problem in this study is that there has been no explanation of the basic meaning of interest in Law Number 14 of 2014 on Insurance (vacuum of norms), so there is no standardization of the basic meaning of interests and their characteristics. This research is juridical-normative, using legal theory, contract theory, and insurance theory, as well as using statute approach and conceptual approach. According to interest theory, the object of insurance is attached to subjective rights that are intangible. The interest is absolute, meaning it must be on every insurance object and follow wherever the insurance thing is located. The interest must already be on the insurance object at the time the insurance is held or at least at the time of the event that incurs a loss (evenemen). For the insured who have insurance, the interest is attached to the insurance object. In the context of insurance agreements, achieving interests based on fairness and benefit can not only be based on the insurance benefit but rather the benefit of the opportunity for the party that should be insured for equality.

Keywords: *Insurance; Legal Purpose; Meaning; Principle of Interest*

INTRODUCTION

One of the non-bank financial institutions that have a role in the mobilization of public funds for development financing is an insurance institution. Insurance Institutions are very helpful in bearing various risks that can cause losses in the implementation of development, the need for the presence of insurance businesses is felt also by the business world considering, on the one hand, various risks that are consciously and rationally felt can interfere with the continuity of its business activities. An insurance company is a service company, on the one hand selling services to customers, while on the other hand, insurance companies are investors from saving people to productive investment¹. Indirectly, insurance or insurance institutions are risk-shifting institutions. Every decision that a human being made in living his life is always filled with risks. Risk is the possibility of losses experienced, resulting from possible hazards, but it is not known in advance whether it will occur and when it will occur. Risk can

¹ Rosiani Niti Pawitri, *Position And Legal Protection Of Policyholders In Bankruptive Insurance Companies Based On Law Number 40 Of 2014 Concerning Insurance*. Legal Discourse, Vol. 23 No. 1, 2017, <https://doi.org/10.33061/1.jwh.2017.23.1.2027>, pg. 66.

also be interpreted as uncertain losses (uncertainty of financial loss) in which there are two elements, namely: uncertainty and loss This risk-shifting benefit is obtained by the consumer (insured)².

In insurance, there is an object of insurance in the form of interests attached to the object, and a certain amount of money called premiums or indemnity. Through the object of insurance, there is a goal to be achieved by the parties. Insurers aim to obtain payment of a certain amount of premiums in exchange for risk transfer. The Insured aims to be free from risk and obtain reimbursement if losses arise on his property. The insurance agreement related to the transfer of risk from the insured to the insurer is offset by the payment of premiums by the insured that is balanced with the weight of the risk transferred although it can be promised the possibility that the achievement does not need to be balanced. In the chance agreement, the parties deliberately commit acts of profit that are not suspended on a balanced achievement, for example, gambling and betting.

In insurance agreements, the element of interest is an absolute requirement that must exist in the insured. If this condition does not exist, then the threat is that the insurance is void. In the agreement of profiteering, that element of interest does not exist. Article 250 of the KuHD is determined: "if a person conducts insurance for himself or the benefit of a third party, at the time of the insurance is held the insured or the third party concerned has no interest in the insurance object, then the insurer is not obliged to indemnified". Thus it is clear that the insured's interest in the insurance agreement is an absolute condition, if the interest does not exist, then the insurance is void.

Insurance objects are objects that become objects of insurance agreements (object of insurance). Insurance items are wealth that has economic value, which can be valued with a certain amount of money. Cell insurance objects are all tangible such as shopping buildings, houses, and shops. Insurance objects are always threatened by dangers or events that occur that result in insurance objects can be damaged, lost, destroyed, or reduced in value.

Insurance objects are closely related to the theory of interest (interest theory) which is commonly known in insurance law. According to the theory of interest, insurance objects are attached to subjective rights intangibles, because insurance objects can be damaged, lost, destroyed, or reduced in value. In the insurance law literature, this subjective right is called interest. The interest is absolute, meaning it must be on every insurance object and follow wherever the insurance object is located. The interest must already exist in the insurance object at the time the insurance is held or at least at the time of the event that causes losses (evenemen). Thus, if the principle of interest is not standardized and characteristic about meaning, then this is the problem in this research.

² Ridwan Khairandy, 2012, *Basics Of Indonesian Commercial Law*, FHUII Press, Yogyakarta, pg. 20.

The juridical problem in this study is that there is no explanation related to the principle of interest in Law No. 14 of 2014 on Insurance (vacuum of norms), so there is no standardization of the principle of interest and its characteristics. In developed countries insurance gets a major place even though the country's progress is encouraged along with the progress of its insurance. Insurance is a guarantee, an umbrella of progress and life. Insurance will generate economic growth. By not being explained the principle of interest in insurance law, it implies the absence of legal certainty in the insurance agreement. This study has no previous research that distinguishes it from other studies, other research discusses conventional insurance.

The type of research used in the study is juridical-normative. Juridical-normative approaches examine, test, and apply legal principles as well as general principles of insurance law. This study uses law certainty theory, and interest theory in insurance, as well as using statute approach and conceptual approach. The statute approach studied includes: the 1945 Constitution of the Republic of Indonesia; KUHD; KUHPerdata and; Law Number 40 of 2014 concerning Insurance. Meanwhile, the concepts studied are the principle of interest in insurance law, as well as the theory of legal certainty, and the theory of interest in insurance. The analysis used in this research is an inventory of legal materials, then they are classified in terms of concepts and laws and are systematized from these qualifications. After everything is collected, then do a study or analysis of legal issues related to the objectives. Then formulate the results of the analysis into a conclusion.

DISCUSSION

The principle of interest (insurable interest) in insurance agreements manifests itself through the rule of law because every legal order is supported by the principle of law. The principle of law serves to maintain and realize the standard of value as a benchmark hidden in or underlying the norm. Analysis of the principle of interest (insurable interest) in this research is carried out by examining the relationship between the three main elements of legal objectives: justice, expediency, and legal certainty to obtain interests at the first level, namely interests among the main values of legal objectives. Justice is the ultimate goal of the law. This research focuses on the theory of justice which can explain its relationship with the principle of interest (insurable interest) as the topic of this research. In the business world, a company that cooperates with other companies must act fairly, meaning that there is an exchange of justice, so attached to ethics³. Legal subjects who uphold ethics will keep their promises to fulfill the rights of other parties as a form of justice. The ethical principle of "keeping promises" is rooted in this justice.

This research begins with injustice in an insurance agreement that is closely related to individual justice, namely that the insured who is not the owner of the object of

³ Manuel G. Velasquez, 2006, *Business Ethics - Concepts and Cases*, 6th Edition, Pearson Education Inc., pg. 14.

insurance is prohibited from insuring the object under his control because it is not considered the owner of the object so that the insured who is not the owner of the object of insurance is considered to have no interest in the object of insurance. If justice is interpreted as “giving everyone what should be their rights”, then social justice is also fulfilled if social rights are fulfilled. In the context of an insurance agreement, the principle of interest (insurable interest) appears clearly. As explained above, justice has a strong connection with ethics⁴. Ethics upholders will keep their promises to fulfill the rights of other parties as a form of justice. The obligation to fulfill promises is an ethical principle rooted in justice. In the world of business or economic activity, the connection is getting bigger because it is not limited to inner attitudes but also concerns the interests of goods and services that are demanded by various parties.

Thus, the advantage of interest theory is an effort to prevent the occurrence of acts of enriching oneself without rights by expecting to obtain compensation from the insurer in the event of evenemen through insurance without interest. In this case, the insurer is protected from the speculative actions of dishonest parties. However, the weakness is that the insured who has good intentions is harmed by the cancellation of the insurance due to the delay in the written authorization from the owner of the goods, while evenemen occurs before the written authorization.

The absence of the insured's interest in the insurance object can result in legal consequences that the insured is not entitled to claim compensation in the event of an event evenemen though the insured has paid a premium to the insurer. Insured who are not interested and receive compensation payments due to evenemen are tantamount to enriching themselves without rights that are contrary to legal principles that are highly upheld in social life⁵. In other words, any insurance held by the insured who has no interest is considered to have never existed (no interest no insurance). How about the premium that has been paid to the insurer, can it be claimed for its return, the premium that has been paid is considered a loss for the insured who is dishonest so it cannot be demanded its return.

Insurance objects are assets because interests are attached to insurance objects, interests are also assets. As assets, interests have economic elements. According to the provisions of Article 268 of the KUHD, insurance can cover all kinds of interests that can be valued in money, are threatened by danger, and are not excluded by law. Based on the provisions of this article, the criteria for interest can be determined, namely: must exist in every insurance (Article 250 KUHD); must be able to be valued in money; must be threatened by danger; should not be excluded by law.

Not excluded by law means that it is not prohibited by law, and does not conflict with public order or decency. For the insured who owns the object of insurance, the

⁴ E Setiawan, 2019, *Indonesia Dictionary*, pg. 90.

⁵ Muhammad Noor, *Application of Legal Principles of Obligation in Contract Making*. Islamic Law, Vol. 7 No. 1, 2015, pg. 15.

interest is attached to the object of the insurance. In this case, the insurance object and interests are on one hand. However, it may also happen that the insurance object and the interest are not on one hand, but are separate. Insurance objects are in the hands of the owner, while interests are in the hands of other people, such as guarantee holders, ship charterers, or home users.

In every insurance, the interest must exist. If there is no interest in the object being insured, the insurer is not required to pay a claim for compensation (Article 250 KUHD). This means that if there is no interest, there is no insurance. In the event of an event that causes a loss, there is no claim for compensation for the insured who is not interested. So, interest is an absolute requirement in every insurance.

In every insurance, if the insured object is lost or damaged, the insured concerned will receive compensation from the insurer. However, his rights only reach the amount of the value of his interests. The guarantee holder is only entitled to the amount of the receivable value. The remaining amount remains the property of the owner of the insurance object. In loss insurance, interests must be valued in money (Article 268 of the KUHD). So it can be determined how much amount is insured. This is important to determine how much premium must be paid by the insured, and how much compensation must be paid by the insurer in the event of an event that causes a loss.

If the insurance object is transferred to another party, for example, because it is sold, then the insurance follows the interests attached to the insurance object. All rights and obligations of the old insured are transferred to the new insured unless otherwise agreed between the old insured and the insurer (Article 263 paragraph (1) KUHD). However, if the buyer or new owner of the insurance object refuses to pass the insurance, while the old insured still has an interest in the object being insured, the insurance will continue to run for the benefit of the old insured (Article 263 paragraph (2) of the KUHD). If the old insured is no longer interested, the new owner must notify the insurer to terminate the insurance.

As described earlier, in every insurance there must be an interest in the object being insured. The question is when that interest must exist? According to the provisions of Article 250 of the KUHD, the interest must already exist at the time the insurance is held. This means that if at the time of making an insurance agreement the insured has no interest, then in an event that causes a loss occurs, the insurer is not obliged to pay a claim for compensation.

The provisions of Article 250 of the KUHD should be shown to the insured as a sign that at the time of making insurance, the insured needs to state firmly and clearly what his interest is in carrying out the insurance. With an interest, some premiums can be paid, so the insurance runs. In the event of an event that causes a loss, the insured concerned has the right to claim payment of compensation from the insurer. Logically, every person who provides insurance has an interest, either for himself or for a third

party. If you don't have an interest, why enter into an insurance agreement and spend money to pay premiums. For those who have bad intentions to hold insurance as if they have an interest, it should not be protected by law. This means that the insurer is not obligated to pay compensation if an incident occurs to the insured object, even though the dishonest insured has paid the premium, insurance is not chancy.

In practice, there will be no difficulty in determining when there is an interest because everything has been regulated by the insurer and has been determined in the policy. Therefore, it depends on the insured whether or not to carry out insurance with the conditions determined by the insurer. When there is an interest as specified in Article 250 of the KUHD, it has a clear function in terms of that interest. However, if the insured changes, the interest shifts to the new insured, unless agreed otherwise by the old insured and the insurer (Article 263 of the KUHD)⁶.

The sum insured is the amount used as a measure to determine the maximum amount of compensation that must be paid by the insurer in loss insurance. The amount insured is closely related to the value of the insurance object. By determining the amount insured, it can be seen whether the insurance is below the value of the object of insurance (under insurance), equal to the value of the object of insurance (full insurance), or exceeds the value of the object of insurance (over insurance). Thus, it can be determined the maximum amount of compensation that can be paid if a loss occurs due to an event that is the burden of the insurer.

According to the provisions of Article 253 paragraph (1) of the KUHD, insurance that exceeds the actual value of the object of interest is only valid up to the total value of the object. If the amount insured is greater than the actual value of the object, the insurer is only responsible for paying compensation claims up to the total value, a house is insured against fire hazards with an insurance amount of Rp. 150,000,000 (one hundred and fifty million rupiah). The real value of the house is IDR 100,000,000 (one hundred million rupiahs). If the house burns down, the insurer is obliged to fulfill the compensation claim only up to the amount of Rp. 100,000,000 (one hundred million rupiahs).

According to the provisions of Article 253 paragraph (2) of the KUHD, if an object is not insured for the full value, then if a loss occurs, the insurer is only required to fulfill a claim for compensation according to the ratio between the insured portion and the uninsured portion. The provisions in the article can still be deviated by the parties, as long as it is explicitly agreed in the policy without regard to the principle of balance, the loss that befell the insurance object will be fully reimbursed up to the amount insured (Article 253 paragraph (3) KUHD). The clause that arises is called *premier risque* and must be stated expressly in the policy. This *premier risque* clause is possible because it is difficult to determine the limits of the full value of the interest in that type of insurance.

⁶ Abdulkadir Muhammad, 2006, *Indonesian Insurance Law*, Citra Aditya Bakti, Bandung, pg. 93-94.

Thus, it is also difficult to determine the overall risk limits. This clause is usually used in insurance against hazards that rarely cause a total loss of the insurance item, but only partially.

The insurance that occurs is that which is not in full, meaning that the amount insured is always under the actual value of the insurance object⁷. This has an advantage for the insurer, namely the insured is still expected to have a caring attitude to maintain the safety of the insured object because some of the insurance objects are still his responsibility. However, if the insured is in full amount, meaning that the insured amount includes the entire actual value of the object (full insurance), there is a tendency that the insured is not careful to protect the safety of the insured object from the threat of danger. However, in the opinion of the researcher, the insurance company can consider what objects are approved for insurance at full value and which are not at full value. If an object is insured at full value, the insurer measures its capabilities, and to overcome its inability, it can also relate to a reinsurance company.

In Indonesia, in insurance that is held for a certain period or according to a trip, the amount insured is the maximum amount of compensation that can be paid by the insurer for the entire period of insurance or one trip. If the insured and the insurer agree otherwise and this must be stated in the policy, the amount of compensation can be limited to the amount insured. This is what is meant by the sentence unless the policy otherwise provides in that provision.

In Article 256 of the KUHD which regulates the contents of the policy, there are no provisions regarding the value of the insurance object, or what is included in the item regarding the object being insured. Perhaps the item also includes an assessment of the insured object. Article 273 of the KUHD regulates the value of insurance objects that are not stated in the policy. Article 274 of the KUHD regulates the value of the insurance object stated in the policy. Based on the provisions of the two articles, it can be concluded that there is no obligation to include the value of the insurance object at the time of insurance. The value of the insurance object stated or not in the policy does not matter. There is no requirement to include the value of the object of insurance in the policy, reinforced by the reasons stated in the policy, the insurer may submit a reason not to approve the value of the object of insurance if the insurer suspects that the value is too high. In addition, it may also happen that the value of the object of insurance at the time the insurance is held is not the same or changes when the event that causes the loss occurs. If at the time of carrying out the insurance, the value of the object of insurance has not been stated in the policy, then in the event of an event that causes a loss, the insured shall notify the insurer of the value of the object of insurance by using all kinds of evidence (Article 273 of the KUHD). The evidence is used to convince the

⁷ Djoko Prakoso, I Ketut Murtika, 1989, *Indonesian Insurance Law*, PT. Literacy Development, Jakarta, pg. 13.

insurer that the value of the insurance object is true and proper. A policy that does not include the value of the insurance object is called an open policy⁸.

At the time of making insurance, the insured and the insurer enter into an agreement on the value of the object of insurance by taking into account the condition, nature, and purpose of the object. If there is an agreement, then the value of the insurance object is included in the policy, so there is a fixed value of the object. If an event occurs that causes a loss, the value of the object listed is used as the basis for calculating compensation. A policy that contains the value of an insurance object is called a valued policy.

An important issue is understanding the value of insurance objects because the value can change from time to time depending on the nature and condition of the object. Fixed objects such as houses and land, their value will not change much, maybe even stay or increase. Items that are prone to shrinkage, damage, or rot such as gas, agricultural products, and ripe fruits will experience a change in value or depreciation so that the value at the time of being insured will be different from the value at the time of the event that causes the loss. Likewise, if the value of the object is related to the purpose of its use, for example, the object is traded or for personal use, such as cars, equipment, household, or cement for buildings. The value of the object can change and the difference between the value of the object at the time it is purchased and when it is sold again. In other words, the value of the object at the time the insurance is held is different from the value of the object at the time of the insurance, which is different from the value of the object at the time of the event that causes the loss occurs. Objects that are not traded, such as historical objects or heirlooms, may not experience a change in value, either at the time the insurance is issued or when the adverse event occurs. If the insured object is damaged or destroyed as a result of the event against which the object is insured, which value is used as the basis for calculating the compensation, what is the value of the object at the time the insurance is made or the value of the object at the time the adverse event occurs? If it is guided by the purpose of insurance, which is to provide compensation for the actual loss experienced by the insured, then it is only natural that the value of the object occurs at the time the event that causes the loss occurs. Because the basis for the calculation is the value at the time the event occurs, the value used as the value of the insurance object is the sales value, not the purchase value if the object is traded. If the insurance object is an object for personal use or not a trade object, then the value of the insurance object is the exchange value. If the insurance object is an object of trade and the replacement value or exchange value (substitution price) and the insurance object is an object used alone, the emphasis is on the sale value⁹.

At the time of holding insurance, the parties can assess the value of the insurance object. The estimated value is set in the policy. If an event occurs that causes a loss, then

⁸ Junaedy Ganie, 2013, *Indonesian Insurance Law*, Sinar Graphic, Jakarta, pg. 32.

⁹ Wirjono Prodjodikoro, 1987, *Insurance Law in Indonesia*, PT. Intermas, Jakarta, pg. 1.

the value stated in the policy is used as the basis for calculating compensation. However, it is also possible that the estimated value of the agreed object exceeds the actual value when calculating compensation after the event. If this happens, according to Article 274 of the KUHD, the insurer can file an objection by stating the reasons that the value of the insurance object is too high.

In the practice of insurance in Indonesia, the estimates of the experts are not absolute and are not commonly carried out. This is understandable because the estimates of experts regarding the value of insurance objects before insurance are held are perceived as obstacles and delays that are difficult to overcome, especially in today's competitive insurance business world. Therefore, the estimation of the parties as regulated in Article 274 of the KUHD is used as a general rule, while the estimators and insurers are experts¹⁰.

In Article 246 of the KUHD, there is a formula: "with the name of the insurer binding himself to the insured by receiving a premium". Based on this formula, it can be seen that the premium is one of the important elements in insurance because it is the main obligation that must be fulfilled by the insured to the insurer. In a legal insurance relationship, the insurer accepts the transfer of risk from the insured and the insured pays a premium in return. If the premium is not paid, the insurance can be canceled, or at least the insurance does not run. Premiums must be paid in advance by the insured because the insured is the party concerned.

As a reciprocal agreement, insurance is consensual, meaning that since an agreement has been reached, the obligations and rights of both parties arise. However, new insurance runs if the insured's obligation to pay premiums has been fulfilled. In other words, the risk of the object passes to the insurer since the premium is paid by the insured. Therefore, it is understood that the presence or absence of insurance is determined by the payment of premiums. Premiums are the key to insurance agreements.

In insurance that is held for a certain period, the premium is paid in advance at the time the insurance is held. In insurance that is provided for one trip, the premium can be paid when the danger has started, for example on a departing ship (Article 603 of the KUHD). However, some insurances are held for a long period, for example, in life insurance, premium payments can be made periodically, namely at the beginning of every month. In this kind of insurance, if at a certain period the premium has not been paid, the insurance stops. After the premium period in arrears is paid, the insurance runs again. If the premium period in arrears is paid, the insurance runs again. If the premium is not paid, the insurance will be canceled. To prevent the cancellation of insurance because the premium has not been paid, usually, the parties include a clause in the policy which states the premium must be paid in advance (at a predetermined

¹⁰ Abdulkadir Muhammad, *op.cit.*, pg. 102-103.

time). If the premium is not paid at the appointed time, the insurance does not run. If an event occurs that causes a loss, the insurer is not obliged to pay the insured's claim.

Based on the description above, it can be understood that the insurance premium is an absolute requirement to determine whether the insurance agreement is implemented or not. The criteria for insurance premiums are as follows: in the form of a sum of money; paid in advance by the insured; in return for risk transfer; calculated based on the percentage of the value of the risk transferred. In insurance practice, the insurer usually has determined the general terms of premium payment as stipulated in the policy.

Determination of the level of insurance premiums must be based on a sound risk analysis calculation¹¹. The amount of premium to be paid by the insured is determined based on the risk assessment borne by the insurer. In practice, the determination of the amount of the premium is properly agreed upon by the insured and the insurer and is included in the policy. The amount of the premium is calculated in such a way that by receiving premiums from several insurers, the insurer can pay compensation claims to the insured who is affected by the event that causes the loss. The amount of premium to be paid by the insured also includes costs related to the procurement of insurance. The details that can be calculated in the amount of the premium are the percentage amount of the insured amount; the number of costs incurred by the insurer, such as stamp duty, policy fees; kurtase for brokers if insurance is held through brokers; profit for the insurer and the number of reserves.

The premium level is considered excessive if it is so high that it is not commensurate with the benefits promised in the insurance policy in question. The application of the premium rate is considered discriminatory if the insured has the same procurement area and has the same type and level of risk due to different premium levels.

Insurance premiums can be paid directly by the insured to the insurance company or through an insurance brokerage company for the benefit of the insured. In this case, the insurance premium is paid through an insurance brokerage company, this company is required to submit the premium to the insurance company before the end of the premium payment grace period specified in the insurance policy concerned. If the premium delivery by the insurance brokerage company is carried out after the expiration of the grace period. The insurance brokerage company concerned must be responsible for the payment of claims arising from losses that occur within the period between the expiration of the grace period until the premium is handed over to the insurance company.

From this description, it can be concluded that if the principle of interest is not standardized and is unique in meaning, then this is the problem. Thus, it is necessary to regulate interests that are specifically regulated in the Insurance Law which includes standardization of the principle of interest and its characteristics. Because in the

¹¹ Mulhadi, 2017, *Fundamentals of Insurance Law*, PT. Rajagrafindo Persada, Depok, pg. 5.

insurance agreement the element of interest is an absolute requirement that must exist in the insured. If this condition does not exist, then the insurance threat is void. Thus it is clear that the insured's interest in the insurance agreement, namely the interest is an absolute requirement, if that interest does not exist, then the insurance is void. By not explaining the principle of interest in insurance law, it can have implications for the absence of legal certainty in the insurance agreement.

CONCLUSION

The meaning of the principle of interest (*insurable interest*) in the insurance agreement is the benefit for the insured and the insurer based on the values of justice with legal certainty, following the KUHD, KUHPdata, and Law Number 40 of 2014 concerning Insurance. Injustice in the insurance agreement is closely related to individual justice, namely, the insured who is not the owner of the object of insurance is prohibited from insuring the object controlled because it is considered not the owner of the object so that it is considered to have no interest in the object of insurance. In the business context, especially in insurance agreements, it can be explained that the policies in the insurance agreement guidelines are about the principle of insurable interest. Justice for the insured if the insured is allowed to underwrite the insurance object under his control even though not the owner. The principle of insurable interest can be interpreted as having to minimize the insured who gets a loss even though not the original owner of the object being insured.

According to interest theory, insurance objects are inherent in intangible subjective rights. Interest is absolute, meaning that it must exist in every object of insurance and follow wherever the object of insurance is. The interest must already exist in the insurance object at the time the insurance is held or at least at the time of an event that causes a loss (evenemen). For the insured who owns the object of insurance, the interest is attached to the object of the insurance.

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